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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

Appellate Case No.: 2025-000379

Docket Nos.: 24-ALJ-07-0088-CC to 24-ALJ-07-0131-CC

South Carolina Coastal Conservation League

v.

Appellant,

South Carolina Department of Environmental Services
and Pulte Homes, LLC

Respondents.

RECORD ON APPEAL
VOLUME I

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Coastal Conservation League,

Petitioner,

v.

South Carolina Department of Health and
Environmental Control and Pulte Homes,
LLC,

Respondents,

In re: Lots #24 to 67.

Docket Nos.

24-ALJ-07-0088-CC to 24-ALJ-07-131-CC

ORDER FOR CONSOLIDATION

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a request for a contested case hearing filed by Coastal Conservation League relating to the determination by the South Carolina Department of Health and Environmental Control (Department) to issue Permit Nos. OSWW010845 v1.0, OSWW010846 v1.0, OSWW010848 v1.0, OSWW010850, v1.0 OSWW010852 v1.0m OSWW010853 v1.0, OSWW010855 v1.0 through OSWW010865 v1.0, OSWW010869 v1.0 through OSWW010875 v1.0, OSWW010877 v1.0, OSWW010879 v1.0, OSWW010880 v1.0, OSWW010882 v1.0, OSWW010884 v1.0, OSWW010886 v1.0 through OSWW010895 v1.0, OSWW010897 v1.0, OSWW010900 v1.0, OSWW010901 v1.0, OSWW010903 v1.0, and OSWW010904 v1.0 to Respondent Pulte Homes, LLC to construct an onsite wastewater system. On May 2, 2024, counsel for Petitioner Coastal Conservation League filed a Motion to Consolidate the cases for hearing because similar evidence is relevant and material for all four of the cases. Counsel for Respondents South Carolina Department of Health and Environmental Control and Pulte Homes, LLC consent to consolidation of these matters. The Court finds that the same or substantially similar evidence is relevant and material to the matters at issue in each case. Therefore, in the interest of judicial economy and with the consent of all parties,

IT IS HEREBY ORDERED that these matters are consolidated for hearing pursuant to ALC Rule 19(D).

AND IT IS SO ORDERED.

May 7, 2024
Columbia, South Carolina


Deborah Brooks Durden, Judge
S.C. Administrative Law Court



ROA 0001

CERTIFICATE OF SERVICE

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

Robin Coleman

Robin E. Coleman
Judicial Aide to Judge Deborah Brooks Durden

May 7, 2024
Columbia, South Carolina



**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Coastal Conservation League,

Petitioner,

v.

South Carolina Department of Health and
Environmental Control and Pulte Homes,
LLC,

Respondents,

In re: Lots #24 to 67.

Docket Nos.

24-ALJ-07-0088-CC to 24-ALJ-07-131-CC

**ORDER FOR
PREHEARING STATEMENTS**

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a request for a contested case hearing filed by Coastal Conservation League relating to the determination by the South Carolina Department of Health and Environmental Control (Department) to issue Permit Nos. OSWW010845 v1.0, OSWW010846 v1.0, OSWW010848 v1.0, OSWW010850, v1.0 OSWW010852 v1.0m OSWW010853 v1.0, OSWW010855 v1.0 through OSWW010865 v1.0, OSWW010869 v1.0 through OSWW010875 v1.0, OSWW010877 v1.0, OSWW010879 v1.0, OSWW010880 v1.0, OSWW010882 v1.0, OSWW010884 v1.0, OSWW010886 v1.0 through OSWW010895 v1.0, OSWW010897 v1.0, OSWW010900 v1.0, OSWW010901 v1.0, OSWW010903 v1.0, and OSWW010904 v1.0 to Respondent Pulte Homes, LLC to construct an onsite wastewater system.

IT IS HEREBY ORDERED that each party who intends to appear at the hearing must file with the undersigned's office a Prehearing Statement stating the following:

1. The nature of this proceeding;
2. Statutory provisions(s) conferring subject matter jurisdiction to the agency and other applicable statutes and regulations;
3. The issues presented for determination;
4. The action requested of the Court, if any;
5. A brief summary of the facts to be presented at the hearing;



ROA 0003

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion;
7. A list of proposed witnesses and exhibits;
8. A statement regarding the necessity for discovery, if any;
9. The estimated length of the hearing;
10. Any dates **within the next six months** when you will not be available for a hearing; and
11. An email address where you can be reached.

IT IS FURTHERMORE ORDERED that the Prehearing Statement must be filed with the Court and served on all parties within twenty (20) days of the date of this Order. The parties have a continuing obligation to update the information during the course of the proceedings.

AND IT IS SO ORDERED.


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

May 7, 2024
Columbia, South Carolina

CERTIFICATE OF SERVICE

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

Robin Coleman

Robin E. Coleman
Judicial Aide to Judge Deborah Brooks Durden

May 7, 2024
Columbia, South Carolina



**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Coastal Conservation League,

Petitioner,

v.

South Carolina Department of Health and
Environmental Control and Pulte Homes,
LLC,

Respondents.

Docket No. 24-ALJ-07-0088-CC to
24-ALJ-07-131-CC

**ORDER GRANTING RESPONDENTS'
MOTION FOR SUMMARY JUDGMENT
AND DENYING PETITIONER'S
MOTION FOR SUMMARY JUDGMENT**

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to a Request for Contested Case Hearing filed by the South Carolina Coastal Conservation League (SCCCL or Petitioner), on April 5, 2024. SCCCL contests forty-four permits issued by the South Carolina Department of Health and Environmental Control¹ (Department or DHEC) to Pulte Homes, LLC (Pulte) authorizing on-site wastewater systems designed for peak flows less than 1,500 gallons per day. The Department issued the permits without conducting a Coastal Zone Consistency review and without issuing public notice of the permit applications. SCCCL argues the Department's failure to conduct a Coastal Zone Consistency review violated South Carolina Code section 48-39-80 (2008 & Supp. 2023). SCCCL also argues the Department's failure to issue public notice of the permit applications denied SCCCL due process.

The Court has jurisdiction over this contested case pursuant to South Carolina Code section 44-1-60(F)(2) (2018). On May 28, 2024, SCCCL filed Petitioner's Prehearing Statement. On May 29, 2024, the Department filed Respondent South Carolina Department of Health and Environmental Control's Prehearing Statement. On May 30, 2024, Pulte filed its Prehearing statement. On October 1, 2024, the Department and Pulte Homes (collectively Respondents) filed Respondents' Joint Motion for Summary Judgment and Incorporated Memorandum. On October 10, 2024, SCCCL filed Petitioner's Response to Respondents' Joint Motion for Summary Judgment and Cross-Motion for Summary Judgment. Respondents filed a Joint Response to

¹ This matter was filed prior to the South Carolina Department of Health and Environmental Control splitting into two separate agencies, of which the South Carolina Department of Environmental Services retains authority over this matter.



Petitioner's Motion for Summary Judgment on October 22, 2024. On October 28, 2024, SCCCL filed Petitioner's Reply to Respondents' Joint Response to Petitioner's Motion for Summary Judgment. On November 4, 2024, SCCCL and Respondents participated in a motion hearing before the Court. After considering both parties' respective prehearing statements, motions, memoranda, and statements at the hearing, the Court grants Respondents' joint motion for summary judgment.

SUMMARY JUDGMENT STANDARD

Under SCALC Rule 68, the Court may apply the South Carolina Rules of Civil Procedure in contested case proceedings where no Administrative Law Court rule applies and when practicable. In this case, the Court applies Rule 56(c), SCRCP to determine whether summary judgment is proper in this case. Summary judgment is proper "when there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law." Holmes v. E. Cooper Cmty. Hosp., Inc., 408 S.C. 138, 153–54, 758 S.E.2d 483, 492 (2014) (citations omitted); Rule 56(c), SCRCP. Summary judgment should not be granted, even when there is no dispute as to evidentiary facts, if there is disagreement concerning the conclusions or inferences to be drawn from those facts. Id. at 154, 758 S.E.2d at 492. To determine whether any triable issues of fact exist, the trial court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party. Grimsley v. S.C. Law Enf't Div., 415 S.C. 33, 40, 780 S.E.2d 897, 900 (2015) (internal quotations and citation omitted). However, a party cannot create an inference that is not reasonable or an issue of fact that is not genuine in order to survive a motion for summary judgment. See id. "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). A party may not rest upon the mere allegations or denials of its pleadings, but must come forward with affidavits or other supporting documents demonstrating the existence of a genuine issue for trial. Rule 56(e), SCRCP.

DISCUSSION

Statutory Compliance

SCCCL argues it is entitled to summary judgment finding the Department failed to comply with section 48-39-80 when it issued the wastewater system permits without conducting a Coastal

Zone Consistency review. Section 48-39-80 states, in relevant part:

The department² shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program in accordance with the provisions of this chapter and any rules and regulations promulgated under this chapter. In developing the program the department shall:

(A) Provide a regulatory system which the department shall use in providing for the orderly and beneficial use of the critical areas.

(B) In devising the management program the department shall consider all lands and waters in the coastal zone for planning purposes. In addition, the department shall: . . .

(10) Devise a method by which the permitting process shall be streamlined and simplified so as to avoid duplication.

(11) Develop 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.

Pursuant to section 48-39-80(A), the Department created the Coastal Zone Management Program Document (CMP). “Upon review and approval of the proposed management plan by the Governor and General Assembly, the proposed plan shall become the final management plan for the State's coastal zone.” S.C. Code Ann. § 48-39-90(D) (2008). The CMP was approved by the General Assembly and the Governor approximately forty-five years ago and it includes an exemption from Coastal Zone Consistency review of individual wastewater system permits for systems with capacities of less than 1,500 gallons per day.

SCCCL argues section 48-39-80 requires the Department to review all wastewater system permits. Section 48-39-80(B) states, “In devising the management program the department shall: . . . (11) Develop a system whereby the department shall **have the authority to review** all state and federal permit applications in the coastal zone” The Department argues it has fulfilled its obligation under section 48-39-80(B) by creating the CMP, a system for reviewing permit applications in the coastal zone. SCCCL argues the Department’s interpretation of its obligation under section 48-39-80(B) creates an absurd result because the Department could create a system for reviewing permit applications that exempts all permits from review.

² The department referred to in the statute is the South Carolina Coastal Council, which was abolished July 1, 1994. The responsibility for administration of the Coastal Zone Management Act was transferred to DHEC’s Office of Ocean and Coastal Resource Management (OCRM). See 1993 Act No. 181.

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Id. “In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction.” Higgins v. State, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992). “[R]egardless of how plain the ordinary meaning of the words in a statute, courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not have been intended by the General Assembly.” Duke Energy Corp. v. S.C. Dep’t of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016). “[W]here the construction of the statute has been uniform for many years in administrative practice, and has been acquiesced in by the General Assembly for a long period of time, such construction is entitled to weight, and should not be overruled without cogent reasons.” Etiwan Fertilizer Co. v. S.C. Tax Comm’n, 217 S.C. 354, 359, 60 S.E.2d 682, 684 (1950).

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. “Authority” means, “Permission. Right to exercise powers; to implement and enforce laws; to exact obedience; to command; to judge. Control over; jurisdiction.” *Authority*, Black’s Law Dictionary (6th Ed. 1990). The plain meaning of “authority” does not impose a requirement to exercise power, but the right to. “As used in statutes . . . [‘shall’] is generally imperative or mandatory. . . . The word in ordinary usage means ‘must’ and is inconsistent with a concept of discretion.” *Shall*, Black’s Law Dictionary (6th Ed. 1990). The word “shall” in section 48-39-80(B)(11) precedes “have the authority to.” It does not directly precede the word “review.” Therefore, 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.

Additionally, section 48-39-80(B)(10) states the Department shall “[d]evise a method by which the permitting process shall be streamlined and simplified so as to avoid duplication.” In creating the CMP, the Department considered its limitation on review of wastewater systems with capacities less than 1,500 gallons per day to fulfill its requirement under section 48-39-80(B)(10)

to streamline the permitting process. Finally, the General Assembly, pursuant to section 48-39-90(D), reviewed the CMP and approved it. The 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. Therefore, there is no genuine issue of material fact supporting a finding the Department granted the permits in violation of South Carolina law and summary judgment is appropriate on this issue.

Constitutional Challenge

SCCCL argues it was denied due process of law by the Department's failure to issue public notice of the permit applications. There are no statutory or regulatory requirements for the Department to provide public notice of wastewater system permits. "Due process is flexible and calls for such procedural protections as the situation demands." Leventis v. S.C. Dep't of Health & Env'tl. Control, 340 S.C. 118, 131, 530 S.E.2d 643, 650 (Ct. App. 2000).

SCCCL was able to learn of the permits through significant effort on its part, including the use of FOIA requests. While the Court is concerned that the Department's lack of public notice creates a risk of due process violations in other cases, the fact remains there 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 SCCCL's due process rights are met in this proceeding, SCCCL was not prejudiced by the Department's lack of public notice. Therefore, there is no genuine issue of material fact supporting a finding SCCCL was denied due process and summary judgment is appropriate on this issue.

ORDER

THEREFORE, IT IS HEREBY ORDERED that Respondents' Motion for Summary Judgment is **GRANTED**.

IT IS ALSO ORDERED that Petitioner's cross Motion for Summary Judgment is **DENIED**.

AND IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C Administrative Law Court

December 18, 2024
Columbia, South Carolina

CERTIFICATE OF SERVICE

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

Robin Coleman

Robin E. Coleman
Judicial Aide to Judge Deborah Brooks Durden

December 18, 2024
Columbia, South Carolina



**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Coastal Conservation
League,

Petitioner,

v.

South Carolina Department of Health and
Environmental Control and Pulte Homes,
LLC,

Respondents.

Docket No. 24-ALJ-07-0088-CC to
24-ALJ-07-131-CC

**ORDER DENYING
PETITIONER'S MOTION
FOR RECONSIDERATION
AND FOR STAY**

This matter is before the Administrative Law Court (ALC or Court) pursuant to the motion of counsel for Petitioner, South Carolina Coastal Conservation League (Petitioner), seeking reconsideration of and stay for this Court's Order issued on December 18, 2024. On January 13, 2025, counsel for Respondent Pulte Homes, LLC (Respondent) filed a response to the Motion. In its response, Respondent states that the Motion for Reconsideration was filed twelve days after the December 18, 2024 Order, and thus this Court has no authority to rule on the motion. However, Petitioner filed its Motion on December 30, 2024, ten days after this Court's December 18, 2024 Order. Therefore the Motion is timely.

In its Motion, Petitioner merely reiterates the arguments made at the hearing, which were carefully considered and ruled upon by this Court. This motion does not seek to correct manifest errors of law or fact or to present newly discovered evidence. Therefore, the Motion for Reconsideration is denied.

Petitioner next moves for a stay of this Court's order pending its planned appeal of the order. Petitioner argues that its due process rights would be violated if it cannot conclude the judicial review of this court's order prior to construction activities occurring under the terms of the challenged permits. This argument misapprehends the requirements of due process. The Fourteenth Amendment to the United States Constitution provides, "nor shall any State deprive any person of life, liberty, or property, without due process of law ...". "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." Morrissey v. Brewer, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484,



494 (1972). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. S.C. Dep't of Soc. Servs. v. Wilson, 352 S.C. 445, 452, 574 S.E.2d 730, 733–34 (2002). That hearing occurred in the contested case before this court. Petitioner cites no authority for its argument that due process requires that appeals of a lower court decision must be concluded before the status quo is altered. The appropriate framework to decide the motion for stay is provided in the rules and caselaw that directly address motions for supersedeas or a stay of an order.

SCALC Rule 29(E) provides:

An administrative law judge who issues a final order subject to judicial review may in the order stay its effect. At any time prior to the filing of a petition for judicial review, and upon the motion of any party, with notice to all parties, the administrative law judge may stay the final order upon appropriate terms.

The authority to stay the order is derived from S.C. Code Ann. § 1-23-380(2) (Supp. 2024), which states, “The agency may grant, or the reviewing court may order, a stay upon appropriate terms, upon the filing of a petition under Rule 65 of the South Carolina Rules of Civil Procedure.”

SCRCF Rule 65 provides for the procedures, notice and security required for a court to issue a restraining order or temporary injunction. Therefore, the Court looks to the law concerning preliminary injunctions to determine the elements that must be established to qualify for such relief.

A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law.

Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010).

Here, the Court has carefully considered all of Petitioner’s legal arguments and positions in this case and carefully ruled upon each of them. In doing so, the Court has not found enough merit in Petitioner’s positions or argument to conclude that there is any likelihood of success of the merits in an appeal of this matter. Therefore, Petitioner cannot establish an essential element required for this Court to grant a stay of the December 18, 2024 Order pending appeal.

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Motion for Reconsideration is **DENIED**.

IT IS FURTHER ORDERED that Petitioner's Motion for Stay is **DENIED**.

AND IT IS SO ORDERED.

A handwritten signature in black ink, reading "Deborah Brooks Durden". The signature is written in a cursive, flowing style.

Deborah Brooks Durden, Judge
S.C. Administrative Law Court

January 21, 2025
Columbia, South Carolina

CERTIFICATE OF SERVICE

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

Robin Coleman

Robin E. Coleman
Judicial Aide to Judge Deborah Brooks Durden

January 21, 2025
Columbia, South Carolina



FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022-CP-10-05192

SOUTH CAROLINA COASTAL
CONSERVATION LEAGUE AND
CHARLESTON WATERKEEPERS

DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL

Plaintiff(s)

Defendant(s)

Submitted by: COURT

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other Appeal Dismissed

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See below (formal order to follow) ☐ Statement of Judgment by the Court:

THIS MATTER CAME BEFORE THE COURT on February 26, 2025 at 2:03 p.m. for a WebEx hearing on cross motions for summary judgment. Plaintiff was represented by Lesilie Lenhardt, Esq., and Defendant was represented by Brad Churdar, Esq. and Joseph Giordano, Esq. Having considered the argument of counsel and fully reviewed all filings, the Court finds as follows:

There are two issues in this case. First, Plaintiff seeks an order of the Court requiring the Department of Environmental Service (hereinafter "DES"), the successor regulatory body to DHEC, to inspect sites in eight (8) counties covered under the Coastal Management Plan (hereinafter CMP) prior to installation of any septic system with a capacity of less than 1,500 gallons to ensure that the site is suitable for installation of the system. Second, Plaintiff seeks notice going forward of the filing of any application for installation of septic systems in those same eight (8) counties.

At the outset, this jurist agrees whole heartedly with Plaintiff's underlying argument concerning the human and environmental dangers associated with installing multiple septic systems on small parcels of land. That developers are essentially skirting the intentions of the

CMP by building tract developments without running lines to the nearest sewer system is a genuine problem that cries out to be addressed legislatively.

Section 48-39-50 required DHEC to develop and recommend a program for adoption by the General Assembly and Governor. Section 48-39-80 requires DHEC to develop a system whereby they review and certify that septic systems which are installed in the eight (8) affected counties do not contravene the requirements of the CMP. The program which was ultimately adopted contemplated a means by which only septic systems with a capacity in excess of 1,500 gallons per day are inspected prior to approval. Any system with a lesser capacity is still subject to permitting requirements; however, inspection by DES is not required, and does not take place, prior to approval of the permit by DES.

Plaintiff points to the language in Section 48-39-80 which requires DES to review all state and federal permits and certify that any given permit does not contravene the CMP. Plaintiff asserts that, by exempting septic systems with a capacity of less than 1,500 gallons from inspection prior to approval, DES is in violation of the mandatory provisions of this section. Plaintiff references a great deal of persuasive scholarly work, articles, and prior instances in its brief which demonstrate that DES should inspect all sites in the eight (8) counties prior to approval of any septic permit. Plaintiff also cites to the underlying policy of the Pollution Control Act and Federal Coastal Management Act as requiring that South Carolina, through DES, do the minimum necessary to protect coastal waters.

Defendant emphasizes that Section 48-39-80 merely required DHEC to “develop a system whereby [DES] shall have the authority to review” such septic permits, and “authority to review” is permissive, precatory language as opposed to mandatory. Defendant emphasizes that the regulations developed under Sections 48-39-50 and 80 were ultimately approved by the General Assembly and Governor. Accordingly, Defendant argues this Court may not substitute its judgment for that of the legislature and executive. Defendant also notes that amendment to the CMP may be accomplished after review and approval of the General Assembly under Section 48-39-80(e). They also cite as persuasive authority the December 18, 2024 Order of Judge Deborah Durden in cases 24-ALJ-07-0088 to 131-CC; Plaintiff correctly notes that Judge Durden’s Order is currently under appeal. Essentially Defendant asserts that they have the discretionary authority to review all permit applications, but the law does not require DES to exercise that authority.

Although sympathetic to Plaintiff’s requested relief on this first issue, this Court concurs with the reasoning of Judge Durden. This Court may not substitute its judgment for that of the General Assembly when it has spoken unequivocally. “Shall have authority to review” is permissive language and does not create an affirmative obligation to review every septic permit in the Coastal Management Zone. DHEC has previously determined that septic systems with a capacity of less than 1,500 gallons do not pose a sufficient risk to the coastal environment or our citizens, and the General Assembly has essentially ratified that decision by adopting DHEC’s recommendations pursuant to Section 48-39-50.

Turning to Plaintiff's second point, the Court finds for Plaintiff. Section 48-6-30(B) states: "To the maximum extent possible, [DES] shall use a uniform system of public notice of permit applications, opportunity for public comment, and public hearings." (emphasis supplied) All applications for septic system permits throughout the state are submitted to Defendant electronically. At the hearing, the Court requested that counsel for Defendant investigate and provide the Court with an affidavit detailing the feasibility and burden on Defendant of posting these applications on DES's website when they are received but prior to approval. The Court subsequently received an affidavit from Marissa Maria, the Project Leader at DES's Office of Technology. Her affidavit essentially states that posting applications online as they are received would be extremely simple and the cost would be negligible.

Furthermore, Plaintiff raises a valid argument that, unless Plaintiff's timing is absolutely perfect, Plaintiff is significantly hampered in its effort to learn of an application in order for Plaintiff to still have sufficient time to intervene. Under 44-1-60, an interested party has only thirty (30) days to contest the issuance of a permit. Currently, Plaintiff has to file a FOIA request to even learn that a septic permit application has been made, and Defendant has a full forty (40) days to respond to such a request. Furthermore, DES will not provide any FOIA information unless a permit application has already been made, and the person or entity filing the FOIA request has to possess the background information about that very application in order for DES to even process the FOIA request. As a practical matter, DES's current process places Plaintiff in a classic Catch-22. Plaintiff is entitled under FOIA to the specific information concerning permit applications, but Plaintiff cannot obtain that information via FOIA unless it provides that very information about a specific application. And, even if they ultimately obtain that information, the thirty (30) day period to contest the application may have already run.

Accordingly, the Court finds for Plaintiff on this issue. First, the law requires public notice "to the maximum extent possible." Second, the posting of public information already subject to any FOIA request on DES's website is just so darn easy and inexpensive to do. Third, as a practical matter and with all due respect to Joseph Heller, Catch-22s, procedural or otherwise, are disfavored under the law and are an anathema to the very concept of due process.

The Court notes that Plaintiff is only seeking timely access to information about septic applications, and this Order should not be read as requiring a public hearing or any other relief with respect to any application.

The Court requests that counsel for Defendant prepare a formal order on the first issue and that counsel for Plaintiff prepare a formal order as to the notice issue.

It is so ordered.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be eAnrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/ Frank R. Addy, Jr.

Circuit Court Judge

2159

Judge Code

April 27, 2025

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Leslie Lenhardt, Esq.

Brad Churdar, Esq.; Joseph Giordano, Esq.

ATTORNEY(S) FOR THE APPELLANT(S)

ATTORNEY(S) FOR THE RESPONDENT(S)

CLERK OF COURT

Court Reporter: WebEx recording. Contact South Carolina Court Administration at (803) 734-1800 to request a transcript of the proceedings.

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: South Carolina Coastal Conservation League , plaintiff, et al VS
Department Of Health And Environmental Control South Carolin
Case Number: 2022CP1005192
Type: Order/Form 4

So Ordered

S/ Frank R. Addy, Jr.

Electronically signed on 2025-04-28 17:20:14 page 5 of 5

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

South Carolina Coastal Conservation
League and Charleston Waterkeeper,

Plaintiffs,

v.

South Carolina Department of Health and
Environmental Control,

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No. 2022-CP-10-05192

**ORDER GRANTING PARTIAL
SUMMARY JUDGMENT**

Appearances

Counsel for Plaintiffs

Counsel for Defendant South Carolina

Department of Health and Environmental Control

Court Reporter:

Date of Hearing:

Leslie S. Lenhardt, Esq.

Bradley D. Churdar, Esq.

Joseph Giordano, Esq.

WebEx (Video recording only)

February 26, 2025

BACKGROUND AND PROCEDURAL HISTORY

THIS ACTION WAS BROUGHT by the South Carolina Coastal Conservation League (the League) and Charleston Waterkeeper pursuant to the Uniform Declaratory Judgments Act, S.C. Code Section 15-53-10, *et seq.* Plaintiffs seek declaratory and injunctive relief to remedy what they assert is the South Carolina Department of Health and Environmental Controls¹ (“Department”) “failure to properly review individual on-site wastewater systems (also known as septic tanks or septic systems) for consistency with the state’s Coastal Management Program, and Defendant’s additional failure to publicly notice septic applications and permits, challenging

¹ Since the time Plaintiffs filed their Summons and Complaint, the General Assembly split the South Carolina Department of Health and Environmental Control into two separate state agencies. The South Carolina Department of Environmental Services is now the agency responsible for issuing septic permits.

DHEC's decision to issue a private recreational dock permit." (Complaint, p. 1).

On April 28, 2023, the League and Charleston Waterkeepers filed a *Motion for Preliminary Injunction*. On September 8, 2023, the Court conducted a hearing on the Plaintiff's *Motion for Preliminary Injunction* against the Department.

On January 4, 2024, this Court issued an Order denying the Plaintiff's *Motion for Preliminary Injunction* stating in pertinent part that "'it is beyond this Court's power 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 powers² must yield in the face of an unambiguously worded statute [such as CMP V-5].' Santee Cooper Resort, Inc., v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1998)."

On July 19, 2024, the Plaintiffs filed a *Motion for Summary Judgment*. On July 31, the Department filed a *Cross Motion for Summary Judgment*. On November 11, 2024, the Department filed a *Reply to Plaintiff's Motion for Summary Judgment*. Both Summary Judgment Motions came before this Court for a motion hearing on February 26, 2025. This Court grant's Summary Judgment in favor of the Department regarding the 1,500-gallon-or-less-septic-system issue.

SUMMARY JUDGMENT STANDARD

Rule 56(c), SCRCP is the standard to determine whether summary judgment is proper in this case. Summary judgment is proper "when there are no genuine issues of material fact and the

² "An action for an injunction is equitable." LeFurgy v. Long Cove Club Owners Ass'n, Inc., 313 S.C. 555, 557, 443 S.E.2d 577, 578 (Ct. App. 1994) (citing Blanks v. Rawson, 296 S.C. 110, 370 S.E.2d 890 (Ct. App. 1988)).

moving party is entitled to a judgment as a matter of law.” Holmes v. E. Cooper Cmty. Hosp., Inc., 408 S.C. 138, 153–54, 758 S.E.2d 483, 492 (2014) (citations omitted); Rule 56(c), SCRCPP. To determine whether any triable issues of fact exist, the trial court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party. Grimsley v. S.C. Law Enf’t Div., 415 S.C. 33, 40, 780 S.E.2d 897, 900 (2015) (internal quotations and citation omitted). However, a party cannot create an inference that is not reasonable or an issue of fact that is not genuine in order to survive a motion for summary judgment. See Id. “A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Reg’l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). A party may not rest upon the mere allegations or denials of its pleadings but must come forward with affidavits or other supporting documents demonstrating the existence of a genuine issue for trial. Rule 56(e), SCRCPP.

ISSUE FOR DETERMINATION

The issue for determination by this Court is whether the Department’s Coastal Zone Management Program Document requires a Coastal Zone Consistency Certification for on-site wastewater systems designed for peak flows less than 1,500 gallons per day.³

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

Plaintiffs assert in their *Complaint* that S.C. Code Ann. § 48-39-80(B)(11) imposes on the Department’s Bureau of Coastal Management (“BCM” or “Bureau of Coastal Management”) a mandatory statutory duty to review presumably every septic tank permit issued for consistency

³ This Court will address the Plaintiff’s due process argument regarding the sufficiency of the Department’s public notice procedure by separate Order.

with the Coastal Management Program. (*Complaint*, pp. 20-21, paragraphs 63-70). Plaintiffs' interpretation of S.C. Code Ann. § 48-39-80(B)(11) is flawed. This statute 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.”

This Court finds that the Department did in fact “consider all lands and waters in the coastal zone for planning purposes” and further finds that the Department determined that requiring a CZC Certification for all septic tank permits and “small” onsite wastewater systems was unnecessary to establish adequate environmental protections. Instead, the Department established a 1500-gallon-per-day minimum threshold for CZC Certifications. *See* Table 1 at CMP V-5.

Plaintiffs argue that when S.C. Code Ann. § 48-39-80(B)(11) says “the department shall have the authority to review all state and federal permit applications in the coastal zone,” the Bureau of Coastal Management can only properly exercise this authority by making a CZC Certification decision for every single septic permit. (*Complaint*, p. 20, paragraph 69). In other words, the Plaintiffs argue that the Department's establishment of a 1500-gallon-per-day minimum threshold before requiring a CZC Certification is an illegitimate exercise of authority. This is an unreasonable and unworkable statutory interpretation that fails to account for 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. Regs. 61-56.

Plaintiffs assert in their *Complaint* that “[t]he CMP contains a provision that ‘DHEC retains regulatory authority over septic tanks with flow rate of 1500 gallons per day or greater

(Section 44-1-40, S.C. Code of Laws).’ CMP III-62; *see also* CMP V-5. However, nothing in the statute authorizes such a limitation on DHEC’s certification review. Nor can the CMP override the plain language of the statute.” (*Complaint*, p. 8, paragraph 23). This argument is without merit. Plainly there is no conflict between S.C. Code Ann. § 48-39-80(B)(11) and CMP V-5 (Table 1). The Program Document is simply “filling up the details” of the statutory mandate. “While 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, 503 S.E.2d 723 (1998) (citing Heyward v. South Carolina Tax Comm’n, 240 S.C. 347, 126 S.E.2d 15 (1962)). The Supreme Court went on to hold in *McNickel’s* that “[a]n administrative regulation is valid as long as it is reasonably related to the purpose of the enabling legislation. *Id.* (citing Hunter & Walden Co. v. South Carolina State Licensing Bd. for Contractors, 272 S.C. 211, 251 S.E.2d 186 (1978)). *McNickel’s* went further to hold that “[a]lthough a regulation has the force of law, it must fall when it alters or adds to a statute. *Id.* (citing Society of Professional Journalists v. Sexton, 283 S.C. 563, 324 S.E.2d 313 (1984)). That is not the case here. The Plaintiffs cannot prevail merely by asserting that the “1500-gallons-per-day” minimum threshold for requiring a CZC Certification is an invalid exercise of regulatory authority. As Judge McCoy correctly stated in her January 4, 2024 Order denying the Plaintiffs’ *Motion for Preliminary Injunction*:

“‘[I]t is beyond this Court’s power 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’).”

The Plaintiffs’ concern is a matter for the General Assembly, not for this Court.

CONCLUSION

Upon hearing all of the arguments of counsel for all parties to this action, the Court finds that the Department is entitled to summary judgment. The Department did in fact comply with their statutory mandate per S.C. Code Ann. § 48-39-80(B)(11) (i.e., “[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” and “*consider* all lands and waters in the coastal zone for planning purposes.” *Emphasis added*). Manifestly, the Department considered the environmental implications of septic tanks and “small” onsite wastewater systems and concluded that 1500 gallons per day (or less) is the point when a CZC Certification should not be required. Plaintiffs’ disagreement with this minimum threshold is not proof of the Department’s noncompliance with S.C. Code Ann. § 48-39-80. Accordingly, the Department is not required to issue a CZC Certification for septic permit applications for 1,500 gallons or less per day.

IT IS SO ORDERED.

Frank R. Addy, Jr.
Presiding Circuit Judge

May 30, 2025
Greenwood, South Carolina



Charleston Common Pleas

Case Caption: South Carolina Coastal Conservation League , plaintiff, et al VS
Department Of Health And Environmental Control South Carolin

Case Number: 2022CP1005192

Type: Order/Other

So Ordered

S/ Frank R. Addy, Jr.

Electronically signed on 2025-05-30 11:25:28 page 7 of 7

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
South Carolina Coastal Conservation	)	
League and Charleston Waterkeeper,	)	
	)	Case No. 2022-CP-10-05192
Plaintiffs,	)	
	)	
vs.	)	ORDER GRANTING PARTIAL
	)	SUMMARY JUDGMENT
	)	
South Carolina Department of Health and	)	
Environmental Control,	)	
	)	
Defendant.	)	
	)	

Appearances

Counsel for Plaintiffs
Counsel for Defendant South Carolina
Department of Health and Environmental Control
Court Reporter:
Date of Hearing:

Leslie S. Lenhardt, Esq.
Bradley D. Churdar, Esq.
Joseph Giordano, Esq.
WebEx (Video Recording Only)
February 26, 2025

BACKGROUND AND PROCEDURAL HISTORY

THIS ACTION WAS BROUGHT by the Plaintiffs, South Carolina Coastal Conservation League (“the League”) and Charleston Waterkeeper, (“Waterkeeper”) pursuant to the Uniform Declaratory Judgments Act, S.C. Code Section 15-53-10, et seq. Plaintiffs seek declaratory and injunctive relief to remedy what they assert is, for purposes of this motion for summary judgment, a violation of their constitutional due process rights due to South Carolina Department of Environmental Services’ (“DES” or “the Department”) failure to publicly notice septic tank applications and permit decisions. On July 19, 2024, the Plaintiffs filed a motion for summary judgment. On July 31, the Department filed its cross motion for summary judgment. Both motions were before this Court for a motion hearing on February 26, 2025. Based on the following, this

Court finds in favor of the Plaintiffs on their due process claims and holds DES must publicly notice all septic tank applications in those counties.

To avoid diseases such as dysentery, cholera, infectious hepatitis, typhoid and paratyphoid, which are transmitted through fecal contamination, it is important for the protection of community health to have safe treatment and disposal of domestic wastewater. S.C. Code Ann. Regs. 61-56 (100). One means of rendering wastewater ecologically safe is the utilization of onsite wastewater systems. Generally, these systems are made up of a tank and a drainfield. Primary treatment of the waste occurs in the tank, in which bacteria digest organic materials, and secondary treatment occurs in the drainfield, in which the partially treated effluent is purified via the soil acting as a biological filter. Proper functioning of septic systems is highly dependent upon unsaturated soil within the drainfield, adequate soil type and characteristics, sufficient distance between drainfield and water tables, and the size of the drainfield. Any of these factors can malfunction for a variety of reasons; there are estimates in the record that between (10) and thirty (30) percent of septic systems fail to work properly in an average year.

The environmental dangers abound with installing multiple septic systems on small parcels of land. In the current development market outside of municipal sewer services, developers are relying on individual “small” onsite wastewater treatment systems, those generating less than 1,500 gallons per day (gpd) of wastewater, often for high density, small acreage (sometimes as small as 0.15 acres) parcels. This means that developed land is comprising significant portions of the septic drainfields for these projects. These developmental pressures are substantially increasing.

However, it is without dispute that the Defendant does not provide members of the public with notice of any kind when an application for an individual septic tank is submitted, nor does

DES provide any notice of the issuance of septic tank permit applications.

STANDARD OF REVIEW

In declaratory judgment cases, “[a] declaratory judgment action is neither legal nor equitable, and therefore, the standard of review is determined by the nature of the underlying issue.” *Crossmann Communities of North Carolina, Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 46, 717 S.E.2d 589, 592 (2011). “The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the nonmoving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC. “Summary judgment is appropriate when there is no genuine issue of material fact, and it is clear the moving party is entitled to a judgment as a matter of law.” *Hancock v. Mid-South Management Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 802 (2009).

ISSUE FOR DETERMINATION

The issue for determination by this Court is whether DES must publicly notice all small septic tank permit applications submitted in order to comply with constitutional due process?

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

Plaintiffs allege the Defendants’ lack of public notice of small septic tank applications violates their constitutional due process rights and are seeking notice going forward of any applications for installation of individual septic systems generating less than 1,500 gpd. DES concedes in its Answer that it does not place applications, or issued permits, for individual septic tanks on public notice. Despite this, the Defendant also agrees that administrative agencies such as SCDES are required to meet minimum standards of due process. *Stono River Env’t Prot. Ass’n v. S.C. Dep’t Health & Env’t. Control*, 305 S.C. 90, 93-94 (1991) (citing S.C. Const. Art. 1, § 3; *Smith & Smith*,

Inc. v. S.C. Public Service Comm’n, 271 S.C. 405 (1978). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22; see also *Kurschner v. City of Camden Plan. Comm’n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); see also *Stono River*, 305 S.C. 90, 93-94 (1991) (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

Further, S.C. Code Ann. § 48-6-30(B) states: “[t]o the maximum extent possible, [DES] shall use a uniform system of public notice of permit applications, opportunity for public comment, and public hearings.” [emphasis supplied] The purpose of this provision “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. S.C. Dep’t Health & Env’t. Control*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

The quandary for affected persons arises when an applicant submits one small individual septic tank application, or most often more than one, the issuance of which would impact one of Plaintiffs’ members. In order to have the opportunity to provide comment to the Department on the likely negative impacts to that member, they first must be aware that the application is pending to start with.

Under S.C. Code Ann. § 49-3-60, an affected party has only thirty (30) days to contest the issuance of a permit. Currently, Plaintiffs must file a request under the Freedom of Information Act (“FOIA”), S.C. Code Ann. §30-4-10, to even discover that a permit application has been submitted and DES has more than forty (40) days to produce documents pursuant to a request. S.C. Code Ann. §30-4-30. Furthermore, DES will not produce any information pursuant to FOIA unless a permit application has already been submitted and the person requesting such information has to possess the background information about that very application before DES will even process the FOIA request. Therefore, the probability that the time frame for appeal will have run before an affected person learns of the application, much less the permitting decision, is high. This Court agrees that, unless Plaintiffs’ timing is absolutely perfect, Plaintiffs are significantly hampered in their efforts to learn of a pending application in order for their members to have sufficient time to take any action. DES’ current process places Plaintiffs in a classic Catch-22. Plaintiffs are entitled under FOIA to the specific information concerning permit applications, yet Plaintiffs cannot obtain that information via FOIA unless they provide that very information to DES. Moreover, even if Plaintiffs ultimately obtain that information, the thirty (30) day period to contest a permit decision will almost certainly have already run. Put simply, requesting to be an affected person is essentially meaningless in this context unless the public knows that someone has actually applied for a septic permit—which, as explained, is effectively impossible to know without public notice. Accordingly, the Court finds for the Plaintiffs on this issue.

Here, the lack of public notice substantially prejudices the Plaintiffs because they receive no notice of an agency decision and thereby cannot timely challenge that decision, which clearly violates Constitutional due process. The failure to provide public notice for applications or permits creates a system whereby the public cannot engage in the decision-making processes that impact

their rights. In short, affected persons are kept completely in the dark about the state's permitting of septic systems in ecologically sensitive areas that have the potential to harm the quality of their communities and surrounding environment.

Further, there is evidence to show that public notice of these applications is feasible. At the hearing, the Court requested that counsel for DES investigate and provide the Court with affidavits detailing the feasibility and burden on DES of posting these applications on DES' website when they are received but prior to approval. DES submitted an affidavit from Marissa Maria, ePermitting Project leader at DES' Office of Technology. Her affidavit states that it is feasible for DES to electronically publish notice for all applications for septic tanks generating less than 1,500 gallons per day and that it could be done using the Department's existing ePermitting program and at a "negligible cost."

CONCLUSION

To summarize, due process protections require DES to place all septic tank applications on public notice so that affected persons are afforded notice and an opportunity to comment.¹ First, the law clearly requires public notice "to the maximum extent possible." S.C. Code Ann. §48-6-30(B). Second, the posting of notice of these applications is both easy and inexpensive to do. Third, as a practical matter and with all due respect to Joseph Heller, Catch-22s, procedural or otherwise, are disfavored under the law and are anathema to the very concept of due process.

¹ In the Form-4 which was drafted by the Court, the Court ordered public notice for only the eight (8) coastal counties. In the email accompanying the proposed order, Plaintiffs point out that their complaint requested statewide notice, and the affidavit referenced above did not limit notice to the eight (8) coastal counties. Accordingly, the Court is granting the statewide relief originally requested in Plaintiffs' complaint.

IT IS SO ORDERED.

s/ *Frank R. Addy, Jr.*

Frank R. Addy, Jr.
Presiding Circuit Judge

July 14, 2025
Greenwood, South Carolina



Charleston Common Pleas

Case Caption: South Carolina Coastal Conservation League , plaintiff, et al VS
Department Of Health And Environmental Control South Carolin

Case Number: 2022CP1005192

Type: Order/Other

So Ordered

S/ Frank R. Addy, Jr.

Electronically signed on 2025-07-14 16:18:25 page 8 of 8

**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010845 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010845 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

Requestor

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Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal

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DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “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.” The purpose of this act “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. SCDHEC*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010845 v1.0

County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: **Lot:** 24
GPD: 480

Site: Seewee Rd & Bulls Island
Rd , Awendaw, SC

Program Code: ALTERNATIVE
System Code: 611 ENGINEERED SYS <150
TM #: 644-00-00-023 & 644-00-00-025 (P
Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

9/12/2023

(Plan Date)

21-421-SD-24

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Tee Thompson

Date: October 05, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

- *No parking, driving, building or paving over the area of septic system before or after installation.*
- *Do not cut, fill, bulldoze, scrape or change the grade of the natural soils in the septic system area.*
- *Signed and sealed "As-built" drawing and certification must be provide before the system is placed into operation.*
- *The Engineers responsibility is to oversee the construction and installation of this system.*
- *All applicable setbacks set forth in Regulation 61-56 apply & other applicable regulations.*
- *The Permit is based on Engineering Details (obtain plans from Engineer).*
- *Do not install under wet soil conditions. Minimum 9" cover over system after installation. 75' setback from all private wells. 100' setback from public wells.*
- *The applicant must obtain and meet other permitting requirements/conditions as required.*
- *This system is designed for specific quantities of domestic wastewater ONLY.*
- *The system must be installed by a SC DHEC Licensed Tier 3 Septic Tank Contractor.*

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0048

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

Office: (803) 896-0574

Mobile: (803) 491-8432

Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



request for notification white tract septic tanks.pdf 120 KB

OSWW Permit to Construct (Engineer Designed) lot 41.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 42.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 43.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 44.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 45.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 46.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 47.pdf 138 KB

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OSWW Permit to Construct (Engineer Designed) lot 66.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 67.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 24.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 25.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 26.pdf 171 KB

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OSWW Permit to Construct (Engineer Designed) lot 38.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 39.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 40.pdf 137 KB

**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010846 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010846 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

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- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “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.” The purpose of this act “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. SCDHEC*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010846 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract Phase 1

Block: **Lot:** 25

GPD: 480

Site: Seewee Rd & Bulls Island

Rd , Awendaw, SC

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

9/12/2023

(Plan Date)

21-421-SD-G3

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Tee Thompson

Date: October 05, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

- *This system is designed for specific quantities of domestic wastewater ONLY.*
- *Do not cut, fill, bulldoze, scrape or change the grade of the natural soils in the septic system area.*
- *All applicable setbacks set forth in Regulation 61-56 apply.*
- *The Permit is based on Engineering Details (obtain plans from Engineer).*
- *No parking, driving, building or paving over the area of septic system before or after installation.*
- *Minimum 9" cover over system after installation. 75' setback from all private wells. 100' setback from public wells.*
- *The Engineers responsibility is to oversee the construction and installation of this system.*
- *The applicant must obtain and meet other permitting requirements/conditions as required.*
- *All applicable setbacks set forth in Regulation 61-56 apply & other applicable regulations.*
- *Signed and sealed "As-built" drawing and certification must be provide before the system is placed into operation.*
- *The system must be installed by a SC DHEC Licensed Tier 3 Septic Tank Contractor.*

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0064

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

Office: (803) 896-0574

Mobile: (803) 491-8432

Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



resquest for notification white tract septic tanks.pdf 120 KB

OSWW Permit to Construct (Engineer Designed) lot 41.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 42.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 43.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 44.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 45.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 46.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 47.pdf 138 KB

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OSWW Permit to Construct (Engineer Designed) lot 66.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 67.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 24.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 25.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 26.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 27.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 28.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 29.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 30.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 31.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 32.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 33.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 34.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 35.pdf 138 KB

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OSWW Permit to Construct (Engineer Designed) lot 37.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 38.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 39.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 40.pdf 137 KB

**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010848 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010848 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

Requestor

Requestor is a non-profit 501(c)(3) membership corporation organized and existing under the laws of the State of South Carolina, and headquartered in Charleston, South Carolina. The League has over 4,000 members residing in South Carolina, and works to protect coastal landscapes, abundant wildlife, clean water, and quality of life for South Carolina’s citizens and its members through various forms of advocacy and education. Requestor and its members have a strong interest in advocating for protection of the environment and preserving the state’s coastal resources for their use and enjoyment. Requestor’s members live near, recreate on, fish from, and regularly use the waters and wetlands in and around Bulls Bay in Awendaw, near Cape Romain National Wildlife Refuge. These members intend to live on, recreate on, fish from, and use these water resources in the future. These individuals use and enjoy our state’s coastal waters for purposes of commerce, recreation, conservation, education, and aesthetic enjoyment, including but not limited to shellfish harvesting, fishing, boating, birdwatching, and sightseeing. Further, these individuals have been and will continue to be harmed by pollution into waterways caused by septic systems, adversely impacting their ability to make such uses.

Malfunctioning septic systems harm Requestor’s members in part because septic discharges

contain untreated human waste, pathogens, and other pollutants that are known to present public health risks and endanger both human and environmental health. If DHEC continues to permit septic systems without regard to the water table, soil characteristics, geography, or water quality classifications and designations, especially in high densities, Requestor's members are persons for whom aesthetic and recreational values of the area have been and will continue to be lessened.

The White Tract

Respondent Pulte Homes, LLC ("Pulte") is upon information and belief the owner of approximately 233.45 acres of wetlands and forested land in Awendaw, which is known as and will be referred to herein as the White Tract. On information and belief, Respondent Pulte plans 204 single-family homes, all serviced by individual septic systems, with lots ranging in size from 0.325 acres to 0.934 acres. The property extends to the Intracoastal Waterway and lies within one mile of Cape Romain National Wildlife Refuge, which is composed almost entirely of barrier islands, salt marsh, and coastal waters.

GROUND'S FOR REVIEW

I. DHEC failed to conduct a review of the Permit for Consistency with the Coastal Management Program.

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas"¹ where OCRM has direct permitting

¹ "Critical area" includes coastal waters, tidelands, beaches, and the beach/dune system. S.C. Code Ann. § 48-39-10(J).

authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to “[d]evelop a system whereby [OCRM] 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.” S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

Yet, as the situation exists today, the Department has been issuing, and seemingly will continue to issue, septic system permits for individual dwellings within large residential developments that are sited in close proximity to the State’s coastal waterways, without regard for the density or cumulative impacts of such systems in a localized geographic area, which are included in the policies of the CMP.

The historic use of clustered residential septic systems near coastal waterways has a well-documented history of long-term impacts to water quality. The CMP document itself states that “[i]ndividual systems such as wells and septic tanks are adequate where development is limited, *but can have major environmental impacts in densely populated areas.*” CMP III-60 (emphasis added). Further, the CMP document directs the Department’s Office of Ocean and Coastal Resource Management (“OCRM”) to authorize septic installations in the coastal zone only for “*low density* residential developments *when they are designed properly and soils are adequate[.]*” CMP III-16 (emphases added). Despite this, the Department continues to permit the installation of thousands of densely-placed septic systems, all while skirting coastal zone consistency review.

Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal

zone—OCRM would be required to consider the “long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area.” CMP III-14.

DHEC has failed to incorporate the specialized knowledge of coastal processes, functions and values which its Office of Ocean and Coastal Resource Management (“OCRM”) possesses, into its permitting of coastal septic systems. Issues relating to cumulative impacts, sea level rise, and climate change, are kept entirely on the sidelines when reviewing permit applications for septic systems in areas subject to these dynamic and unique circumstances. This disconnect between DHEC’s coastal authority and its septic permitting reflects a serious flaw in DHEC’s failure to conduct Coastal Zone Consistency review for septic permitting. Consequently, while high density coastal septic systems implicate a whole host of issues and concerns that are not present with systems in other parts of the state, all septic permitting is governed by the same set of regulations. In other words, while placement of a septic system near a wetland or water of the state, and particularly in conjunction with dozens of permits on small lots, certainly warrants a closer look than the typical septic system, that review is not occurring.

The CMP guidelines for all projects in the Coastal Zone require DHEC-OCRM to consider:

- 1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for OCRM in implementation of its management program these being:
 - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

- 2) “the extent to which the project will have adverse impacts on the ‘critical areas’ (beach/dune system, coastal waters, tidelands);
- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

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To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010848 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract Phase 1

Block: **Lot:** 26

GPD: 480

Site: Seewee Rd & Bulls Island

Rd , Awendaw, SC

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

9/12/2023

(Plan Date)

21-421-SD-26

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Tee Thompson

Date: October 05, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

- *Do not install under wet soil conditions. Minimum 9" cover over system after installation. 75' setback from all private wells. 100' setback from public wells.*
- *The Permit is based on Engineering Details (obtain plans from Engineer).*
- *Do not cut, fill, bulldoze, scrape or change the grade of the natural soils in the septic system area.*
- *No parking, driving, building or paving over the area of septic system before or after installation.*
- *All applicable setbacks set forth in Regulation 61-56 apply & other applicable regulations.*
- *Signed and sealed "As-built" drawing and certification must be provide before the system is placed into operation.*
- *All applicable setbacks set forth in Regulation 61-56 apply.*
- *The applicant must obtain and meet other permitting requirements/conditions as required.*
- *The system must be installed by a SC DHEC Licensed Tier 3 Septic Tank Contractor.*
- *The Engineers responsibility is to oversee the construction and installation of this system.*
- *This system is designed for specific quantities of domestic wastewater ONLY.*

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0080

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Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

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Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



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**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010850 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010850 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

Requestor

Requestor is a non-profit 501(c)(3) membership corporation organized and existing under the laws of the State of South Carolina, and headquartered in Charleston, South Carolina. The League has over 4,000 members residing in South Carolina, and works to protect coastal landscapes, abundant wildlife, clean water, and quality of life for South Carolina’s citizens and its members through various forms of advocacy and education. Requestor and its members have a strong interest in advocating for protection of the environment and preserving the state’s coastal resources for their use and enjoyment. Requestor’s members live near, recreate on, fish from, and regularly use the waters and wetlands in and around Bulls Bay in Awendaw, near Cape Romain National Wildlife Refuge. These members intend to live on, recreate on, fish from, and use these water resources in the future. These individuals use and enjoy our state’s coastal waters for purposes of commerce, recreation, conservation, education, and aesthetic enjoyment, including but not limited to shellfish harvesting, fishing, boating, birdwatching, and sightseeing. Further, these individuals have been and will continue to be harmed by pollution into waterways caused by septic systems, adversely impacting their ability to make such uses.

Malfunctioning septic systems harm Requestor’s members in part because septic discharges

contain untreated human waste, pathogens, and other pollutants that are known to present public health risks and endanger both human and environmental health. If DHEC continues to permit septic systems without regard to the water table, soil characteristics, geography, or water quality classifications and designations, especially in high densities, Requestor's members are persons for whom aesthetic and recreational values of the area have been and will continue to be lessened.

The White Tract

Respondent Pulte Homes, LLC ("Pulte") is upon information and belief the owner of approximately 233.45 acres of wetlands and forested land in Awendaw, which is known as and will be referred to herein as the White Tract. On information and belief, Respondent Pulte plans 204 single-family homes, all serviced by individual septic systems, with lots ranging in size from 0.325 acres to 0.934 acres. The property extends to the Intracoastal Waterway and lies within one mile of Cape Romain National Wildlife Refuge, which is composed almost entirely of barrier islands, salt marsh, and coastal waters.

GROUND'S FOR REVIEW

I. DHEC failed to conduct a review of the Permit for Consistency with the Coastal Management Program.

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas"¹ where OCRM has direct permitting

¹ "Critical area" includes coastal waters, tidelands, beaches, and the beach/dune system. S.C. Code Ann. § 48-39-10(J).

authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to “[d]evelop a system whereby [OCRM] 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.” S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

Yet, as the situation exists today, the Department has been issuing, and seemingly will continue to issue, septic system permits for individual dwellings within large residential developments that are sited in close proximity to the State’s coastal waterways, without regard for the density or cumulative impacts of such systems in a localized geographic area, which are included in the policies of the CMP.

The historic use of clustered residential septic systems near coastal waterways has a well-documented history of long-term impacts to water quality. The CMP document itself states that “[i]ndividual systems such as wells and septic tanks are adequate where development is limited, *but can have major environmental impacts in densely populated areas.*” CMP III-60 (emphasis added). Further, the CMP document directs the Department’s Office of Ocean and Coastal Resource Management (“OCRM”) to authorize septic installations in the coastal zone only for “*low density* residential developments *when they are designed properly* and *soils are adequate*[.]” CMP III-16 (emphases added). Despite this, the Department continues to permit the installation of thousands of densely-placed septic systems, all while skirting coastal zone consistency review.

Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal

zone—OCRM would be required to consider the “long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area.” CMP III-14.

DHEC has failed to incorporate the specialized knowledge of coastal processes, functions and values which its Office of Ocean and Coastal Resource Management (“OCRM”) possesses, into its permitting of coastal septic systems. Issues relating to cumulative impacts, sea level rise, and climate change, are kept entirely on the sidelines when reviewing permit applications for septic systems in areas subject to these dynamic and unique circumstances. This disconnect between DHEC’s coastal authority and its septic permitting reflects a serious flaw in DHEC’s failure to conduct Coastal Zone Consistency review for septic permitting. Consequently, while high density coastal septic systems implicate a whole host of issues and concerns that are not present with systems in other parts of the state, all septic permitting is governed by the same set of regulations. In other words, while placement of a septic system near a wetland or water of the state, and particularly in conjunction with dozens of permits on small lots, certainly warrants a closer look than the typical septic system, that review is not occurring.

The CMP guidelines for all projects in the Coastal Zone require DHEC-OCRM to consider:

- 1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for OCRM in implementation of its management program these being:
 - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

- 2) “the extent to which the project will have adverse impacts on the ‘critical areas’ (beach/dune system, coastal waters, tidelands);
- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “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.” The purpose of this act “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. SCDHEC*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010850 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract Phase 1

Block: **Lot:** 27

GPD: 480

Site: Seewee Rd & Bulls Island

Rd, Awendaw, SC

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

9/12/2023

(Plan Date)

21-421-SD

(Project Number)

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Reviewed By:

Tee Thompson

Date: October 05, 2023

DHEC 1781 (01/2014)
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from the Issuance Date

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To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
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Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0096

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Sincerely,

David R. Vaughan

Director

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**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010852 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010852 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

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Requestor is a non-profit 501(c)(3) membership corporation organized and existing under the laws of the State of South Carolina, and headquartered in Charleston, South Carolina. The League has over 4,000 members residing in South Carolina, and works to protect coastal landscapes, abundant wildlife, clean water, and quality of life for South Carolina’s citizens and its members through various forms of advocacy and education. Requestor and its members have a strong interest in advocating for protection of the environment and preserving the state’s coastal resources for their use and enjoyment. Requestor’s members live near, recreate on, fish from, and regularly use the waters and wetlands in and around Bulls Bay in Awendaw, near Cape Romain National Wildlife Refuge. These members intend to live on, recreate on, fish from, and use these water resources in the future. These individuals use and enjoy our state’s coastal waters for purposes of commerce, recreation, conservation, education, and aesthetic enjoyment, including but not limited to shellfish harvesting, fishing, boating, birdwatching, and sightseeing. Further, these individuals have been and will continue to be harmed by pollution into waterways caused by septic systems, adversely impacting their ability to make such uses.

Malfunctioning septic systems harm Requestor’s members in part because septic discharges

contain untreated human waste, pathogens, and other pollutants that are known to present public health risks and endanger both human and environmental health. If DHEC continues to permit septic systems without regard to the water table, soil characteristics, geography, or water quality classifications and designations, especially in high densities, Requestor's members are persons for whom aesthetic and recreational values of the area have been and will continue to be lessened.

The White Tract

Respondent Pulte Homes, LLC ("Pulte") is upon information and belief the owner of approximately 233.45 acres of wetlands and forested land in Awendaw, which is known as and will be referred to herein as the White Tract. On information and belief, Respondent Pulte plans 204 single-family homes, all serviced by individual septic systems, with lots ranging in size from 0.325 acres to 0.934 acres. The property extends to the Intracoastal Waterway and lies within one mile of Cape Romain National Wildlife Refuge, which is composed almost entirely of barrier islands, salt marsh, and coastal waters.

GROUND'S FOR REVIEW

I. DHEC failed to conduct a review of the Permit for Consistency with the Coastal Management Program.

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas"¹ where OCRM has direct permitting

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authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to “[d]evelop a system whereby [OCRM] 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.” S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

Yet, as the situation exists today, the Department has been issuing, and seemingly will continue to issue, septic system permits for individual dwellings within large residential developments that are sited in close proximity to the State’s coastal waterways, without regard for the density or cumulative impacts of such systems in a localized geographic area, which are included in the policies of the CMP.

The historic use of clustered residential septic systems near coastal waterways has a well-documented history of long-term impacts to water quality. The CMP document itself states that “[i]ndividual systems such as wells and septic tanks are adequate where development is limited, *but can have major environmental impacts in densely populated areas.*” CMP III-60 (emphasis added). Further, the CMP document directs the Department’s Office of Ocean and Coastal Resource Management (“OCRM”) to authorize septic installations in the coastal zone only for “*low density* residential developments *when they are designed properly* and *soils are adequate*[.]” CMP III-16 (emphases added). Despite this, the Department continues to permit the installation of thousands of densely-placed septic systems, all while skirting coastal zone consistency review.

Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal

zone—OCRM would be required to consider the “long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area.” CMP III-14.

DHEC has failed to incorporate the specialized knowledge of coastal processes, functions and values which its Office of Ocean and Coastal Resource Management (“OCRM”) possesses, into its permitting of coastal septic systems. Issues relating to cumulative impacts, sea level rise, and climate change, are kept entirely on the sidelines when reviewing permit applications for septic systems in areas subject to these dynamic and unique circumstances. This disconnect between DHEC’s coastal authority and its septic permitting reflects a serious flaw in DHEC’s failure to conduct Coastal Zone Consistency review for septic permitting. Consequently, while high density coastal septic systems implicate a whole host of issues and concerns that are not present with systems in other parts of the state, all septic permitting is governed by the same set of regulations. In other words, while placement of a septic system near a wetland or water of the state, and particularly in conjunction with dozens of permits on small lots, certainly warrants a closer look than the typical septic system, that review is not occurring.

The CMP guidelines for all projects in the Coastal Zone require DHEC-OCRM to consider:

- 1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for OCRM in implementation of its management program these being:
 - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

- 2) “the extent to which the project will have adverse impacts on the ‘critical areas’ (beach/dune system, coastal waters, tidelands);
- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “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.” The purpose of this act “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. SCDHEC*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010852 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract Phase 1

Block: **Lot:** 28

GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-28

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: October 24, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0112

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

Office: (803) 896-0574

Mobile: (803) 491-8432

Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



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DHEC has failed to incorporate the specialized knowledge of coastal processes, functions and values which its Office of Ocean and Coastal Resource Management (“OCRM”) possesses, into its permitting of coastal septic systems. Issues relating to cumulative impacts, sea level rise, and climate change, are kept entirely on the sidelines when reviewing permit applications for septic systems in areas subject to these dynamic and unique circumstances. This disconnect between DHEC’s coastal authority and its septic permitting reflects a serious flaw in DHEC’s failure to conduct Coastal Zone Consistency review for septic permitting. Consequently, while high density coastal septic systems implicate a whole host of issues and concerns that are not present with systems in other parts of the state, all septic permitting is governed by the same set of regulations. In other words, while placement of a septic system near a wetland or water of the state, and particularly in conjunction with dozens of permits on small lots, certainly warrants a closer look than the typical septic system, that review is not occurring.

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 - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

- 2) “the extent to which the project will have adverse impacts on the ‘critical areas’ (beach/dune system, coastal waters, tidelands);
- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

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S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

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Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
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510 Live Oak Drive
Mount Pleasant, SC 29464
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leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010853 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract Phase 1

Block: **Lot:** 29

GPD: 480

Site: Seewee Rd & Bulls Island

Rd , Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/23

(Plan Date)

21-421-SD-29

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: October 18, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0128

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

Office: (803) 896-0574

Mobile: (803) 491-8432

Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



resquest for notification white tract septic tanks.pdf 120 KB

OSWW Permit to Construct (Engineer Designed) lot 41.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 42.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 43.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 44.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 45.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 46.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 47.pdf 138 KB

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OSWW Permit to Construct (Engineer Designed) lot 67.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 24.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 25.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 26.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 27.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 28.pdf 138 KB

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OSWW Permit to Construct (Engineer Designed) lot 38.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 39.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 40.pdf 137 KB

**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010855 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010855 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

Requestor

Requestor is a non-profit 501(c)(3) membership corporation organized and existing under the laws of the State of South Carolina, and headquartered in Charleston, South Carolina. The League has over 4,000 members residing in South Carolina, and works to protect coastal landscapes, abundant wildlife, clean water, and quality of life for South Carolina’s citizens and its members through various forms of advocacy and education. Requestor and its members have a strong interest in advocating for protection of the environment and preserving the state’s coastal resources for their use and enjoyment. Requestor’s members live near, recreate on, fish from, and regularly use the waters and wetlands in and around Bulls Bay in Awendaw, near Cape Romain National Wildlife Refuge. These members intend to live on, recreate on, fish from, and use these water resources in the future. These individuals use and enjoy our state’s coastal waters for purposes of commerce, recreation, conservation, education, and aesthetic enjoyment, including but not limited to shellfish harvesting, fishing, boating, birdwatching, and sightseeing. Further, these individuals have been and will continue to be harmed by pollution into waterways caused by septic systems, adversely impacting their ability to make such uses.

Malfunctioning septic systems harm Requestor’s members in part because septic discharges

contain untreated human waste, pathogens, and other pollutants that are known to present public health risks and endanger both human and environmental health. If DHEC continues to permit septic systems without regard to the water table, soil characteristics, geography, or water quality classifications and designations, especially in high densities, Requestor's members are persons for whom aesthetic and recreational values of the area have been and will continue to be lessened.

The White Tract

Respondent Pulte Homes, LLC ("Pulte") is upon information and belief the owner of approximately 233.45 acres of wetlands and forested land in Awendaw, which is known as and will be referred to herein as the White Tract. On information and belief, Respondent Pulte plans 204 single-family homes, all serviced by individual septic systems, with lots ranging in size from 0.325 acres to 0.934 acres. The property extends to the Intracoastal Waterway and lies within one mile of Cape Romain National Wildlife Refuge, which is composed almost entirely of barrier islands, salt marsh, and coastal waters.

GROUND'S FOR REVIEW

I. DHEC failed to conduct a review of the Permit for Consistency with the Coastal Management Program.

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas"¹ where OCRM has direct permitting

¹ "Critical area" includes coastal waters, tidelands, beaches, and the beach/dune system. S.C. Code Ann. § 48-39-10(J).

authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to “[d]evelop a system whereby [OCRM] 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.” S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

Yet, as the situation exists today, the Department has been issuing, and seemingly will continue to issue, septic system permits for individual dwellings within large residential developments that are sited in close proximity to the State’s coastal waterways, without regard for the density or cumulative impacts of such systems in a localized geographic area, which are included in the policies of the CMP.

The historic use of clustered residential septic systems near coastal waterways has a well-documented history of long-term impacts to water quality. The CMP document itself states that “[i]ndividual systems such as wells and septic tanks are adequate where development is limited, *but can have major environmental impacts in densely populated areas.*” CMP III-60 (emphasis added). Further, the CMP document directs the Department’s Office of Ocean and Coastal Resource Management (“OCRM”) to authorize septic installations in the coastal zone only for “*low density* residential developments *when they are designed properly* and *soils are adequate*[.]” CMP III-16 (emphases added). Despite this, the Department continues to permit the installation of thousands of densely-placed septic systems, all while skirting coastal zone consistency review.

Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal

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WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010855 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract Phase 1

Block: **Lot:** 30

GPD: 480

Site: Seewee Rd & Bulls Island

Rd , Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-30

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: November 14, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0144

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

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Mobile: (803) 491-8432

Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



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**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010856 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010856 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

Requestor

Requestor is a non-profit 501(c)(3) membership corporation organized and existing under the laws of the State of South Carolina, and headquartered in Charleston, South Carolina. The League has over 4,000 members residing in South Carolina, and works to protect coastal landscapes, abundant wildlife, clean water, and quality of life for South Carolina’s citizens and its members through various forms of advocacy and education. Requestor and its members have a strong interest in advocating for protection of the environment and preserving the state’s coastal resources for their use and enjoyment. Requestor’s members live near, recreate on, fish from, and regularly use the waters and wetlands in and around Bulls Bay in Awendaw, near Cape Romain National Wildlife Refuge. These members intend to live on, recreate on, fish from, and use these water resources in the future. These individuals use and enjoy our state’s coastal waters for purposes of commerce, recreation, conservation, education, and aesthetic enjoyment, including but not limited to shellfish harvesting, fishing, boating, birdwatching, and sightseeing. Further, these individuals have been and will continue to be harmed by pollution into waterways caused by septic systems, adversely impacting their ability to make such uses.

Malfunctioning septic systems harm Requestor’s members in part because septic discharges

contain untreated human waste, pathogens, and other pollutants that are known to present public health risks and endanger both human and environmental health. If DHEC continues to permit septic systems without regard to the water table, soil characteristics, geography, or water quality classifications and designations, especially in high densities, Requestor's members are persons for whom aesthetic and recreational values of the area have been and will continue to be lessened.

The White Tract

Respondent Pulte Homes, LLC ("Pulte") is upon information and belief the owner of approximately 233.45 acres of wetlands and forested land in Awendaw, which is known as and will be referred to herein as the White Tract. On information and belief, Respondent Pulte plans 204 single-family homes, all serviced by individual septic systems, with lots ranging in size from 0.325 acres to 0.934 acres. The property extends to the Intracoastal Waterway and lies within one mile of Cape Romain National Wildlife Refuge, which is composed almost entirely of barrier islands, salt marsh, and coastal waters.

GROUND'S FOR REVIEW

I. DHEC failed to conduct a review of the Permit for Consistency with the Coastal Management Program.

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas"¹ where OCRM has direct permitting

¹ "Critical area" includes coastal waters, tidelands, beaches, and the beach/dune system. S.C. Code Ann. § 48-39-10(J).

authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to “[d]evelop a system whereby [OCRM] 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.” S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

Yet, as the situation exists today, the Department has been issuing, and seemingly will continue to issue, septic system permits for individual dwellings within large residential developments that are sited in close proximity to the State’s coastal waterways, without regard for the density or cumulative impacts of such systems in a localized geographic area, which are included in the policies of the CMP.

The historic use of clustered residential septic systems near coastal waterways has a well-documented history of long-term impacts to water quality. The CMP document itself states that “[i]ndividual systems such as wells and septic tanks are adequate where development is limited, *but can have major environmental impacts in densely populated areas.*” CMP III-60 (emphasis added). Further, the CMP document directs the Department’s Office of Ocean and Coastal Resource Management (“OCRM”) to authorize septic installations in the coastal zone only for “*low density* residential developments *when they are designed properly* and *soils are adequate*[.]” CMP III-16 (emphases added). Despite this, the Department continues to permit the installation of thousands of densely-placed septic systems, all while skirting coastal zone consistency review.

Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal

zone—OCRM would be required to consider the “long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area.” CMP III-14.

DHEC has failed to incorporate the specialized knowledge of coastal processes, functions and values which its Office of Ocean and Coastal Resource Management (“OCRM”) possesses, into its permitting of coastal septic systems. Issues relating to cumulative impacts, sea level rise, and climate change, are kept entirely on the sidelines when reviewing permit applications for septic systems in areas subject to these dynamic and unique circumstances. This disconnect between DHEC’s coastal authority and its septic permitting reflects a serious flaw in DHEC’s failure to conduct Coastal Zone Consistency review for septic permitting. Consequently, while high density coastal septic systems implicate a whole host of issues and concerns that are not present with systems in other parts of the state, all septic permitting is governed by the same set of regulations. In other words, while placement of a septic system near a wetland or water of the state, and particularly in conjunction with dozens of permits on small lots, certainly warrants a closer look than the typical septic system, that review is not occurring.

The CMP guidelines for all projects in the Coastal Zone require DHEC-OCRM to consider:

- 1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for OCRM in implementation of its management program these being:
 - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

- 2) “the extent to which the project will have adverse impacts on the ‘critical areas’ (beach/dune system, coastal waters, tidelands);
- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “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.” The purpose of this act “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. SCDHEC*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010856 v1.0

County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract, Phase 1
Block: NA **Lot:** 31
GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE
System Code: 611 ENGINEERED SYS <1500GPD PUMP
TM #: 644-00-00-023 & 644-00-00-025
(Parent Parcels to be Subdivided)
Water Supply: Municipal

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SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-31

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: November 27, 2023

DHEC 1781 (01/2014)
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from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
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From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
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Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

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office: (803) 898-0288

cell: (803) 465-2822

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From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0160

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OSWW Permit to Construct (Engineer Designed) lot 40.pdf 137 KB

**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010857 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010857 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

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Malfunctioning septic systems harm Requestor’s members in part because septic discharges

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authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to “[d]evelop a system whereby [OCRM] 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.” S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

Yet, as the situation exists today, the Department has been issuing, and seemingly will continue to issue, septic system permits for individual dwellings within large residential developments that are sited in close proximity to the State’s coastal waterways, without regard for the density or cumulative impacts of such systems in a localized geographic area, which are included in the policies of the CMP.

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The CMP guidelines for all projects in the Coastal Zone require DHEC-OCRM to consider:

- 1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for OCRM in implementation of its management program these being:
 - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

- 2) “the extent to which the project will have adverse impacts on the ‘critical areas’ (beach/dune system, coastal waters, tidelands);
- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “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.” The purpose of this act “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. SCDHEC*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010857 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract, Phase 1

Block: **Lot:** 32

GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-32

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: November 27, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0176

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

Office: (803) 896-0574

Mobile: (803) 491-8432

Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



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- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “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.” The purpose of this act “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. SCDHEC*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
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Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010858 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract, Phase 1

Block: NA **Lot:** 33

GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-33

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: November 27, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0192

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

Office: (803) 896-0574

Mobile: (803) 491-8432

Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



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OSWW Permit to Construct (Engineer Designed) lot 41.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 42.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 43.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 44.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 45.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 46.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 47.pdf 138 KB

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OSWW Permit to Construct (Engineer Designed) lot 67.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 24.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 25.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 26.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 27.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 28.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 29.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 30.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 31.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 32.pdf 137 KB

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OSWW Permit to Construct (Engineer Designed) lot 34.pdf 138 KB

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OSWW Permit to Construct (Engineer Designed) lot 38.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 39.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 40.pdf 137 KB

**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010859 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010859 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

Requestor

Requestor is a non-profit 501(c)(3) membership corporation organized and existing under the laws of the State of South Carolina, and headquartered in Charleston, South Carolina. The League has over 4,000 members residing in South Carolina, and works to protect coastal landscapes, abundant wildlife, clean water, and quality of life for South Carolina’s citizens and its members through various forms of advocacy and education. Requestor and its members have a strong interest in advocating for protection of the environment and preserving the state’s coastal resources for their use and enjoyment. Requestor’s members live near, recreate on, fish from, and regularly use the waters and wetlands in and around Bulls Bay in Awendaw, near Cape Romain National Wildlife Refuge. These members intend to live on, recreate on, fish from, and use these water resources in the future. These individuals use and enjoy our state’s coastal waters for purposes of commerce, recreation, conservation, education, and aesthetic enjoyment, including but not limited to shellfish harvesting, fishing, boating, birdwatching, and sightseeing. Further, these individuals have been and will continue to be harmed by pollution into waterways caused by septic systems, adversely impacting their ability to make such uses.

Malfunctioning septic systems harm Requestor’s members in part because septic discharges

contain untreated human waste, pathogens, and other pollutants that are known to present public health risks and endanger both human and environmental health. If DHEC continues to permit septic systems without regard to the water table, soil characteristics, geography, or water quality classifications and designations, especially in high densities, Requestor's members are persons for whom aesthetic and recreational values of the area have been and will continue to be lessened.

The White Tract

Respondent Pulte Homes, LLC ("Pulte") is upon information and belief the owner of approximately 233.45 acres of wetlands and forested land in Awendaw, which is known as and will be referred to herein as the White Tract. On information and belief, Respondent Pulte plans 204 single-family homes, all serviced by individual septic systems, with lots ranging in size from 0.325 acres to 0.934 acres. The property extends to the Intracoastal Waterway and lies within one mile of Cape Romain National Wildlife Refuge, which is composed almost entirely of barrier islands, salt marsh, and coastal waters.

GROUND'S FOR REVIEW

I. DHEC failed to conduct a review of the Permit for Consistency with the Coastal Management Program.

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas"¹ where OCRM has direct permitting

¹ "Critical area" includes coastal waters, tidelands, beaches, and the beach/dune system. S.C. Code Ann. § 48-39-10(J).

authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to “[d]evelop a system whereby [OCRM] 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.” S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

Yet, as the situation exists today, the Department has been issuing, and seemingly will continue to issue, septic system permits for individual dwellings within large residential developments that are sited in close proximity to the State’s coastal waterways, without regard for the density or cumulative impacts of such systems in a localized geographic area, which are included in the policies of the CMP.

The historic use of clustered residential septic systems near coastal waterways has a well-documented history of long-term impacts to water quality. The CMP document itself states that “[i]ndividual systems such as wells and septic tanks are adequate where development is limited, *but can have major environmental impacts in densely populated areas.*” CMP III-60 (emphasis added). Further, the CMP document directs the Department’s Office of Ocean and Coastal Resource Management (“OCRM”) to authorize septic installations in the coastal zone only for “*low density* residential developments *when they are designed properly* and *soils are adequate*[.]” CMP III-16 (emphases added). Despite this, the Department continues to permit the installation of thousands of densely-placed septic systems, all while skirting coastal zone consistency review.

Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal

zone—OCRM would be required to consider the “long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area.” CMP III-14.

DHEC has failed to incorporate the specialized knowledge of coastal processes, functions and values which its Office of Ocean and Coastal Resource Management (“OCRM”) possesses, into its permitting of coastal septic systems. Issues relating to cumulative impacts, sea level rise, and climate change, are kept entirely on the sidelines when reviewing permit applications for septic systems in areas subject to these dynamic and unique circumstances. This disconnect between DHEC’s coastal authority and its septic permitting reflects a serious flaw in DHEC’s failure to conduct Coastal Zone Consistency review for septic permitting. Consequently, while high density coastal septic systems implicate a whole host of issues and concerns that are not present with systems in other parts of the state, all septic permitting is governed by the same set of regulations. In other words, while placement of a septic system near a wetland or water of the state, and particularly in conjunction with dozens of permits on small lots, certainly warrants a closer look than the typical septic system, that review is not occurring.

The CMP guidelines for all projects in the Coastal Zone require DHEC-OCRM to consider:

- 1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for OCRM in implementation of its management program these being:
 - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

- 2) “the extent to which the project will have adverse impacts on the ‘critical areas’ (beach/dune system, coastal waters, tidelands);
- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

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S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

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completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

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To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010859 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract, Phase 1

Block: NA **Lot:** 34

GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-34

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: November 27, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0208

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

Office: (803) 896-0574

Mobile: (803) 491-8432

Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



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**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010860 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010860 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

Requestor

Requestor is a non-profit 501(c)(3) membership corporation organized and existing under the laws of the State of South Carolina, and headquartered in Charleston, South Carolina. The League has over 4,000 members residing in South Carolina, and works to protect coastal landscapes, abundant wildlife, clean water, and quality of life for South Carolina’s citizens and its members through various forms of advocacy and education. Requestor and its members have a strong interest in advocating for protection of the environment and preserving the state’s coastal resources for their use and enjoyment. Requestor’s members live near, recreate on, fish from, and regularly use the waters and wetlands in and around Bulls Bay in Awendaw, near Cape Romain National Wildlife Refuge. These members intend to live on, recreate on, fish from, and use these water resources in the future. These individuals use and enjoy our state’s coastal waters for purposes of commerce, recreation, conservation, education, and aesthetic enjoyment, including but not limited to shellfish harvesting, fishing, boating, birdwatching, and sightseeing. Further, these individuals have been and will continue to be harmed by pollution into waterways caused by septic systems, adversely impacting their ability to make such uses.

Malfunctioning septic systems harm Requestor’s members in part because septic discharges

contain untreated human waste, pathogens, and other pollutants that are known to present public health risks and endanger both human and environmental health. If DHEC continues to permit septic systems without regard to the water table, soil characteristics, geography, or water quality classifications and designations, especially in high densities, Requestor's members are persons for whom aesthetic and recreational values of the area have been and will continue to be lessened.

The White Tract

Respondent Pulte Homes, LLC ("Pulte") is upon information and belief the owner of approximately 233.45 acres of wetlands and forested land in Awendaw, which is known as and will be referred to herein as the White Tract. On information and belief, Respondent Pulte plans 204 single-family homes, all serviced by individual septic systems, with lots ranging in size from 0.325 acres to 0.934 acres. The property extends to the Intracoastal Waterway and lies within one mile of Cape Romain National Wildlife Refuge, which is composed almost entirely of barrier islands, salt marsh, and coastal waters.

GROUND'S FOR REVIEW

I. DHEC failed to conduct a review of the Permit for Consistency with the Coastal Management Program.

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas"¹ where OCRM has direct permitting

¹ "Critical area" includes coastal waters, tidelands, beaches, and the beach/dune system. S.C. Code Ann. § 48-39-10(J).

authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to “[d]evelop a system whereby [OCRM] 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.” S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

Yet, as the situation exists today, the Department has been issuing, and seemingly will continue to issue, septic system permits for individual dwellings within large residential developments that are sited in close proximity to the State’s coastal waterways, without regard for the density or cumulative impacts of such systems in a localized geographic area, which are included in the policies of the CMP.

The historic use of clustered residential septic systems near coastal waterways has a well-documented history of long-term impacts to water quality. The CMP document itself states that “[i]ndividual systems such as wells and septic tanks are adequate where development is limited, *but can have major environmental impacts in densely populated areas.*” CMP III-60 (emphasis added). Further, the CMP document directs the Department’s Office of Ocean and Coastal Resource Management (“OCRM”) to authorize septic installations in the coastal zone only for “*low density* residential developments *when they are designed properly* and *soils are adequate*[.]” CMP III-16 (emphases added). Despite this, the Department continues to permit the installation of thousands of densely-placed septic systems, all while skirting coastal zone consistency review.

Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal

zone—OCRM would be required to consider the “long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area.” CMP III-14.

DHEC has failed to incorporate the specialized knowledge of coastal processes, functions and values which its Office of Ocean and Coastal Resource Management (“OCRM”) possesses, into its permitting of coastal septic systems. Issues relating to cumulative impacts, sea level rise, and climate change, are kept entirely on the sidelines when reviewing permit applications for septic systems in areas subject to these dynamic and unique circumstances. This disconnect between DHEC’s coastal authority and its septic permitting reflects a serious flaw in DHEC’s failure to conduct Coastal Zone Consistency review for septic permitting. Consequently, while high density coastal septic systems implicate a whole host of issues and concerns that are not present with systems in other parts of the state, all septic permitting is governed by the same set of regulations. In other words, while placement of a septic system near a wetland or water of the state, and particularly in conjunction with dozens of permits on small lots, certainly warrants a closer look than the typical septic system, that review is not occurring.

The CMP guidelines for all projects in the Coastal Zone require DHEC-OCRM to consider:

- 1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for OCRM in implementation of its management program these being:
 - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

- 2) “the extent to which the project will have adverse impacts on the ‘critical areas’ (beach/dune system, coastal waters, tidelands);
- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “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.” The purpose of this act “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. SCDHEC*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010860 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract, Phase 1

Block: NA **Lot:** 35

GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-35

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: November 27, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

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Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
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Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0224

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

Office: (803) 896-0574

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**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010861 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010861 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

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Requestor is a non-profit 501(c)(3) membership corporation organized and existing under the laws of the State of South Carolina, and headquartered in Charleston, South Carolina. The League has over 4,000 members residing in South Carolina, and works to protect coastal landscapes, abundant wildlife, clean water, and quality of life for South Carolina’s citizens and its members through various forms of advocacy and education. Requestor and its members have a strong interest in advocating for protection of the environment and preserving the state’s coastal resources for their use and enjoyment. Requestor’s members live near, recreate on, fish from, and regularly use the waters and wetlands in and around Bulls Bay in Awendaw, near Cape Romain National Wildlife Refuge. These members intend to live on, recreate on, fish from, and use these water resources in the future. These individuals use and enjoy our state’s coastal waters for purposes of commerce, recreation, conservation, education, and aesthetic enjoyment, including but not limited to shellfish harvesting, fishing, boating, birdwatching, and sightseeing. Further, these individuals have been and will continue to be harmed by pollution into waterways caused by septic systems, adversely impacting their ability to make such uses.

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Respondent Pulte Homes, LLC ("Pulte") is upon information and belief the owner of approximately 233.45 acres of wetlands and forested land in Awendaw, which is known as and will be referred to herein as the White Tract. On information and belief, Respondent Pulte plans 204 single-family homes, all serviced by individual septic systems, with lots ranging in size from 0.325 acres to 0.934 acres. The property extends to the Intracoastal Waterway and lies within one mile of Cape Romain National Wildlife Refuge, which is composed almost entirely of barrier islands, salt marsh, and coastal waters.

GROUND'S FOR REVIEW

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authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to “[d]evelop a system whereby [OCRM] 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.” S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

Yet, as the situation exists today, the Department has been issuing, and seemingly will continue to issue, septic system permits for individual dwellings within large residential developments that are sited in close proximity to the State’s coastal waterways, without regard for the density or cumulative impacts of such systems in a localized geographic area, which are included in the policies of the CMP.

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The CMP guidelines for all projects in the Coastal Zone require DHEC-OCRM to consider:

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 - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

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- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
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DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “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.” The purpose of this act “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. SCDHEC*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010861 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract, Phase 1

Block: NA **Lot:** 36

GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-36

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: November 27, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0240

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

Office: (803) 896-0574

Mobile: (803) 491-8432

Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



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OSWW Permit to Construct (Engineer Designed) lot 41.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 42.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 43.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 44.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 45.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 46.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 47.pdf 138 KB

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OSWW Permit to Construct (Engineer Designed) lot 66.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 67.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 24.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 25.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 26.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 27.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 28.pdf 138 KB

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OSWW Permit to Construct (Engineer Designed) lot 39.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 40.pdf 137 KB

**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010862 v1.0

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- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “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.” The purpose of this act “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. SCDHEC*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
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510 Live Oak Drive
Mount Pleasant, SC 29464
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leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010862 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract, Phase 1

Block: NA **Lot:** 37

GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-37

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: November 27, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0256

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

Office: (803) 896-0574

Mobile: (803) 491-8432

Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



resquest for notification white tract septic tanks.pdf 120 KB

OSWW Permit to Construct (Engineer Designed) lot 41.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 42.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 43.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 44.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 45.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 46.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 47.pdf 138 KB

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OSWW Permit to Construct (Engineer Designed) lot 66.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 67.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 24.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 25.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 26.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 27.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 28.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 29.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 30.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 31.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 32.pdf 137 KB

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OSWW Permit to Construct (Engineer Designed) lot 38.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 39.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 40.pdf 137 KB

**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010863 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010863 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

Requestor

Requestor is a non-profit 501(c)(3) membership corporation organized and existing under the laws of the State of South Carolina, and headquartered in Charleston, South Carolina. The League has over 4,000 members residing in South Carolina, and works to protect coastal landscapes, abundant wildlife, clean water, and quality of life for South Carolina’s citizens and its members through various forms of advocacy and education. Requestor and its members have a strong interest in advocating for protection of the environment and preserving the state’s coastal resources for their use and enjoyment. Requestor’s members live near, recreate on, fish from, and regularly use the waters and wetlands in and around Bulls Bay in Awendaw, near Cape Romain National Wildlife Refuge. These members intend to live on, recreate on, fish from, and use these water resources in the future. These individuals use and enjoy our state’s coastal waters for purposes of commerce, recreation, conservation, education, and aesthetic enjoyment, including but not limited to shellfish harvesting, fishing, boating, birdwatching, and sightseeing. Further, these individuals have been and will continue to be harmed by pollution into waterways caused by septic systems, adversely impacting their ability to make such uses.

Malfunctioning septic systems harm Requestor’s members in part because septic discharges

contain untreated human waste, pathogens, and other pollutants that are known to present public health risks and endanger both human and environmental health. If DHEC continues to permit septic systems without regard to the water table, soil characteristics, geography, or water quality classifications and designations, especially in high densities, Requestor's members are persons for whom aesthetic and recreational values of the area have been and will continue to be lessened.

The White Tract

Respondent Pulte Homes, LLC ("Pulte") is upon information and belief the owner of approximately 233.45 acres of wetlands and forested land in Awendaw, which is known as and will be referred to herein as the White Tract. On information and belief, Respondent Pulte plans 204 single-family homes, all serviced by individual septic systems, with lots ranging in size from 0.325 acres to 0.934 acres. The property extends to the Intracoastal Waterway and lies within one mile of Cape Romain National Wildlife Refuge, which is composed almost entirely of barrier islands, salt marsh, and coastal waters.

GROUND'S FOR REVIEW

I. DHEC failed to conduct a review of the Permit for Consistency with the Coastal Management Program.

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas"¹ where OCRM has direct permitting

¹ "Critical area" includes coastal waters, tidelands, beaches, and the beach/dune system. S.C. Code Ann. § 48-39-10(J).

authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to “[d]evelop a system whereby [OCRM] 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.” S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

Yet, as the situation exists today, the Department has been issuing, and seemingly will continue to issue, septic system permits for individual dwellings within large residential developments that are sited in close proximity to the State’s coastal waterways, without regard for the density or cumulative impacts of such systems in a localized geographic area, which are included in the policies of the CMP.

The historic use of clustered residential septic systems near coastal waterways has a well-documented history of long-term impacts to water quality. The CMP document itself states that “[i]ndividual systems such as wells and septic tanks are adequate where development is limited, *but can have major environmental impacts in densely populated areas.*” CMP III-60 (emphasis added). Further, the CMP document directs the Department’s Office of Ocean and Coastal Resource Management (“OCRM”) to authorize septic installations in the coastal zone only for “*low density* residential developments *when they are designed properly* and *soils are adequate*[.]” CMP III-16 (emphases added). Despite this, the Department continues to permit the installation of thousands of densely-placed septic systems, all while skirting coastal zone consistency review.

Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal

zone—OCRM would be required to consider the “long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area.” CMP III-14.

DHEC has failed to incorporate the specialized knowledge of coastal processes, functions and values which its Office of Ocean and Coastal Resource Management (“OCRM”) possesses, into its permitting of coastal septic systems. Issues relating to cumulative impacts, sea level rise, and climate change, are kept entirely on the sidelines when reviewing permit applications for septic systems in areas subject to these dynamic and unique circumstances. This disconnect between DHEC’s coastal authority and its septic permitting reflects a serious flaw in DHEC’s failure to conduct Coastal Zone Consistency review for septic permitting. Consequently, while high density coastal septic systems implicate a whole host of issues and concerns that are not present with systems in other parts of the state, all septic permitting is governed by the same set of regulations. In other words, while placement of a septic system near a wetland or water of the state, and particularly in conjunction with dozens of permits on small lots, certainly warrants a closer look than the typical septic system, that review is not occurring.

The CMP guidelines for all projects in the Coastal Zone require DHEC-OCRM to consider:

- 1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for OCRM in implementation of its management program these being:
 - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

- 2) “the extent to which the project will have adverse impacts on the ‘critical areas’ (beach/dune system, coastal waters, tidelands);
- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

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S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

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completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

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Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010863 v1.0

County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract, Phase 1
Block: NA **Lot:** 38
GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE
System Code: 611 ENGINEERED SYS <1500GPD PUMP
TM #: 644-00-00-023 & 644-00-00-025
(Parent Parcels to be Subdivided)
Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-38

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: November 27, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0272

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

Office: (803) 896-0574

Mobile: (803) 491-8432

Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



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**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010864 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010864 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

Requestor

Requestor is a non-profit 501(c)(3) membership corporation organized and existing under the laws of the State of South Carolina, and headquartered in Charleston, South Carolina. The League has over 4,000 members residing in South Carolina, and works to protect coastal landscapes, abundant wildlife, clean water, and quality of life for South Carolina’s citizens and its members through various forms of advocacy and education. Requestor and its members have a strong interest in advocating for protection of the environment and preserving the state’s coastal resources for their use and enjoyment. Requestor’s members live near, recreate on, fish from, and regularly use the waters and wetlands in and around Bulls Bay in Awendaw, near Cape Romain National Wildlife Refuge. These members intend to live on, recreate on, fish from, and use these water resources in the future. These individuals use and enjoy our state’s coastal waters for purposes of commerce, recreation, conservation, education, and aesthetic enjoyment, including but not limited to shellfish harvesting, fishing, boating, birdwatching, and sightseeing. Further, these individuals have been and will continue to be harmed by pollution into waterways caused by septic systems, adversely impacting their ability to make such uses.

Malfunctioning septic systems harm Requestor’s members in part because septic discharges

contain untreated human waste, pathogens, and other pollutants that are known to present public health risks and endanger both human and environmental health. If DHEC continues to permit septic systems without regard to the water table, soil characteristics, geography, or water quality classifications and designations, especially in high densities, Requestor's members are persons for whom aesthetic and recreational values of the area have been and will continue to be lessened.

The White Tract

Respondent Pulte Homes, LLC ("Pulte") is upon information and belief the owner of approximately 233.45 acres of wetlands and forested land in Awendaw, which is known as and will be referred to herein as the White Tract. On information and belief, Respondent Pulte plans 204 single-family homes, all serviced by individual septic systems, with lots ranging in size from 0.325 acres to 0.934 acres. The property extends to the Intracoastal Waterway and lies within one mile of Cape Romain National Wildlife Refuge, which is composed almost entirely of barrier islands, salt marsh, and coastal waters.

GROUND'S FOR REVIEW

I. DHEC failed to conduct a review of the Permit for Consistency with the Coastal Management Program.

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas"¹ where OCRM has direct permitting

¹ "Critical area" includes coastal waters, tidelands, beaches, and the beach/dune system. S.C. Code Ann. § 48-39-10(J).

authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to “[d]evelop a system whereby [OCRM] 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.” S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

Yet, as the situation exists today, the Department has been issuing, and seemingly will continue to issue, septic system permits for individual dwellings within large residential developments that are sited in close proximity to the State’s coastal waterways, without regard for the density or cumulative impacts of such systems in a localized geographic area, which are included in the policies of the CMP.

The historic use of clustered residential septic systems near coastal waterways has a well-documented history of long-term impacts to water quality. The CMP document itself states that “[i]ndividual systems such as wells and septic tanks are adequate where development is limited, *but can have major environmental impacts in densely populated areas.*” CMP III-60 (emphasis added). Further, the CMP document directs the Department’s Office of Ocean and Coastal Resource Management (“OCRM”) to authorize septic installations in the coastal zone only for “*low density* residential developments *when they are designed properly* and *soils are adequate*[.]” CMP III-16 (emphases added). Despite this, the Department continues to permit the installation of thousands of densely-placed septic systems, all while skirting coastal zone consistency review.

Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal

zone—OCRM would be required to consider the “long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area.” CMP III-14.

DHEC has failed to incorporate the specialized knowledge of coastal processes, functions and values which its Office of Ocean and Coastal Resource Management (“OCRM”) possesses, into its permitting of coastal septic systems. Issues relating to cumulative impacts, sea level rise, and climate change, are kept entirely on the sidelines when reviewing permit applications for septic systems in areas subject to these dynamic and unique circumstances. This disconnect between DHEC’s coastal authority and its septic permitting reflects a serious flaw in DHEC’s failure to conduct Coastal Zone Consistency review for septic permitting. Consequently, while high density coastal septic systems implicate a whole host of issues and concerns that are not present with systems in other parts of the state, all septic permitting is governed by the same set of regulations. In other words, while placement of a septic system near a wetland or water of the state, and particularly in conjunction with dozens of permits on small lots, certainly warrants a closer look than the typical septic system, that review is not occurring.

The CMP guidelines for all projects in the Coastal Zone require DHEC-OCRM to consider:

- 1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for OCRM in implementation of its management program these being:
 - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

- 2) “the extent to which the project will have adverse impacts on the ‘critical areas’ (beach/dune system, coastal waters, tidelands);
- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “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.” The purpose of this act “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. SCDHEC*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010864 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract Phase 1

Block: **Lot:** 39

GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-39

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: October 18, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

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To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
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Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0288

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Coastal Conservation League,

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Permit ID OSWW010864 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010864 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

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Requestor is a non-profit 501(c)(3) membership corporation organized and existing under the laws of the State of South Carolina, and headquartered in Charleston, South Carolina. The League has over 4,000 members residing in South Carolina, and works to protect coastal landscapes, abundant wildlife, clean water, and quality of life for South Carolina’s citizens and its members through various forms of advocacy and education. Requestor and its members have a strong interest in advocating for protection of the environment and preserving the state’s coastal resources for their use and enjoyment. Requestor’s members live near, recreate on, fish from, and regularly use the waters and wetlands in and around Bulls Bay in Awendaw, near Cape Romain National Wildlife Refuge. These members intend to live on, recreate on, fish from, and use these water resources in the future. These individuals use and enjoy our state’s coastal waters for purposes of commerce, recreation, conservation, education, and aesthetic enjoyment, including but not limited to shellfish harvesting, fishing, boating, birdwatching, and sightseeing. Further, these individuals have been and will continue to be harmed by pollution into waterways caused by septic systems, adversely impacting their ability to make such uses.

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contain untreated human waste, pathogens, and other pollutants that are known to present public health risks and endanger both human and environmental health. If DHEC continues to permit septic systems without regard to the water table, soil characteristics, geography, or water quality classifications and designations, especially in high densities, Requestor's members are persons for whom aesthetic and recreational values of the area have been and will continue to be lessened.

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Respondent Pulte Homes, LLC ("Pulte") is upon information and belief the owner of approximately 233.45 acres of wetlands and forested land in Awendaw, which is known as and will be referred to herein as the White Tract. On information and belief, Respondent Pulte plans 204 single-family homes, all serviced by individual septic systems, with lots ranging in size from 0.325 acres to 0.934 acres. The property extends to the Intracoastal Waterway and lies within one mile of Cape Romain National Wildlife Refuge, which is composed almost entirely of barrier islands, salt marsh, and coastal waters.

GROUND'S FOR REVIEW

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authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to “[d]evelop a system whereby [OCRM] 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.” S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

Yet, as the situation exists today, the Department has been issuing, and seemingly will continue to issue, septic system permits for individual dwellings within large residential developments that are sited in close proximity to the State’s coastal waterways, without regard for the density or cumulative impacts of such systems in a localized geographic area, which are included in the policies of the CMP.

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Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal

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DHEC has failed to incorporate the specialized knowledge of coastal processes, functions and values which its Office of Ocean and Coastal Resource Management (“OCRM”) possesses, into its permitting of coastal septic systems. Issues relating to cumulative impacts, sea level rise, and climate change, are kept entirely on the sidelines when reviewing permit applications for septic systems in areas subject to these dynamic and unique circumstances. This disconnect between DHEC’s coastal authority and its septic permitting reflects a serious flaw in DHEC’s failure to conduct Coastal Zone Consistency review for septic permitting. Consequently, while high density coastal septic systems implicate a whole host of issues and concerns that are not present with systems in other parts of the state, all septic permitting is governed by the same set of regulations. In other words, while placement of a septic system near a wetland or water of the state, and particularly in conjunction with dozens of permits on small lots, certainly warrants a closer look than the typical septic system, that review is not occurring.

The CMP guidelines for all projects in the Coastal Zone require DHEC-OCRM to consider:

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 - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

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- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
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DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “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.” The purpose of this act “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. SCDHEC*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010865 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract Phase 1

Block: **Lot:** 40

GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-40

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: November 01, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0304

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

Office: (803) 896-0574

Mobile: (803) 491-8432

Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



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OSWW Permit to Construct (Engineer Designed) lot 41.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 42.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 43.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 44.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 45.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 46.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 47.pdf 138 KB

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OSWW Permit to Construct (Engineer Designed) lot 66.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 67.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 24.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 25.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 26.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 27.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 28.pdf 138 KB

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OSWW Permit to Construct (Engineer Designed) lot 38.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 39.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 40.pdf 137 KB

**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010869 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010869 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

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- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “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.” The purpose of this act “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. SCDHEC*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
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510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010869 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract, Phase 1

Block: NA **Lot:** 41

GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-41

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: November 27, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0320

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

Office: (803) 896-0574

Mobile: (803) 491-8432

Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



request for notification white tract septic tanks.pdf 120 KB

OSWW Permit to Construct (Engineer Designed) lot 41.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 42.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 43.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 44.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 45.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 46.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 47.pdf 138 KB

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OSWW Permit to Construct (Engineer Designed) lot 65.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 66.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 67.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 24.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 25.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 26.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 27.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 28.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 29.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 30.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 31.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 32.pdf 137 KB

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OSWW Permit to Construct (Engineer Designed) lot 38.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 39.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 40.pdf 137 KB

**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010870 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010870 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

Requestor

Requestor is a non-profit 501(c)(3) membership corporation organized and existing under the laws of the State of South Carolina, and headquartered in Charleston, South Carolina. The League has over 4,000 members residing in South Carolina, and works to protect coastal landscapes, abundant wildlife, clean water, and quality of life for South Carolina’s citizens and its members through various forms of advocacy and education. Requestor and its members have a strong interest in advocating for protection of the environment and preserving the state’s coastal resources for their use and enjoyment. Requestor’s members live near, recreate on, fish from, and regularly use the waters and wetlands in and around Bulls Bay in Awendaw, near Cape Romain National Wildlife Refuge. These members intend to live on, recreate on, fish from, and use these water resources in the future. These individuals use and enjoy our state’s coastal waters for purposes of commerce, recreation, conservation, education, and aesthetic enjoyment, including but not limited to shellfish harvesting, fishing, boating, birdwatching, and sightseeing. Further, these individuals have been and will continue to be harmed by pollution into waterways caused by septic systems, adversely impacting their ability to make such uses.

Malfunctioning septic systems harm Requestor’s members in part because septic discharges

contain untreated human waste, pathogens, and other pollutants that are known to present public health risks and endanger both human and environmental health. If DHEC continues to permit septic systems without regard to the water table, soil characteristics, geography, or water quality classifications and designations, especially in high densities, Requestor's members are persons for whom aesthetic and recreational values of the area have been and will continue to be lessened.

The White Tract

Respondent Pulte Homes, LLC ("Pulte") is upon information and belief the owner of approximately 233.45 acres of wetlands and forested land in Awendaw, which is known as and will be referred to herein as the White Tract. On information and belief, Respondent Pulte plans 204 single-family homes, all serviced by individual septic systems, with lots ranging in size from 0.325 acres to 0.934 acres. The property extends to the Intracoastal Waterway and lies within one mile of Cape Romain National Wildlife Refuge, which is composed almost entirely of barrier islands, salt marsh, and coastal waters.

GROUND'S FOR REVIEW

I. DHEC failed to conduct a review of the Permit for Consistency with the Coastal Management Program.

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas"¹ where OCRM has direct permitting

¹ "Critical area" includes coastal waters, tidelands, beaches, and the beach/dune system. S.C. Code Ann. § 48-39-10(J).

authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to “[d]evelop a system whereby [OCRM] 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.” S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

Yet, as the situation exists today, the Department has been issuing, and seemingly will continue to issue, septic system permits for individual dwellings within large residential developments that are sited in close proximity to the State’s coastal waterways, without regard for the density or cumulative impacts of such systems in a localized geographic area, which are included in the policies of the CMP.

The historic use of clustered residential septic systems near coastal waterways has a well-documented history of long-term impacts to water quality. The CMP document itself states that “[i]ndividual systems such as wells and septic tanks are adequate where development is limited, *but can have major environmental impacts in densely populated areas.*” CMP III-60 (emphasis added). Further, the CMP document directs the Department’s Office of Ocean and Coastal Resource Management (“OCRM”) to authorize septic installations in the coastal zone only for “*low density* residential developments *when they are designed properly and soils are adequate[.]*” CMP III-16 (emphases added). Despite this, the Department continues to permit the installation of thousands of densely-placed septic systems, all while skirting coastal zone consistency review.

Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal

zone—OCRM would be required to consider the “long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area.” CMP III-14.

DHEC has failed to incorporate the specialized knowledge of coastal processes, functions and values which its Office of Ocean and Coastal Resource Management (“OCRM”) possesses, into its permitting of coastal septic systems. Issues relating to cumulative impacts, sea level rise, and climate change, are kept entirely on the sidelines when reviewing permit applications for septic systems in areas subject to these dynamic and unique circumstances. This disconnect between DHEC’s coastal authority and its septic permitting reflects a serious flaw in DHEC’s failure to conduct Coastal Zone Consistency review for septic permitting. Consequently, while high density coastal septic systems implicate a whole host of issues and concerns that are not present with systems in other parts of the state, all septic permitting is governed by the same set of regulations. In other words, while placement of a septic system near a wetland or water of the state, and particularly in conjunction with dozens of permits on small lots, certainly warrants a closer look than the typical septic system, that review is not occurring.

The CMP guidelines for all projects in the Coastal Zone require DHEC-OCRM to consider:

- 1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for OCRM in implementation of its management program these being:
 - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

- 2) “the extent to which the project will have adverse impacts on the ‘critical areas’ (beach/dune system, coastal waters, tidelands);
- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

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S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

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To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010870 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract, Phase 1

Block: NA **Lot:** 42

GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-42

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: November 27, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0336

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

Office: (803) 896-0574

Mobile: (803) 491-8432

Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



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**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010871 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010871 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

Requestor

Requestor is a non-profit 501(c)(3) membership corporation organized and existing under the laws of the State of South Carolina, and headquartered in Charleston, South Carolina. The League has over 4,000 members residing in South Carolina, and works to protect coastal landscapes, abundant wildlife, clean water, and quality of life for South Carolina’s citizens and its members through various forms of advocacy and education. Requestor and its members have a strong interest in advocating for protection of the environment and preserving the state’s coastal resources for their use and enjoyment. Requestor’s members live near, recreate on, fish from, and regularly use the waters and wetlands in and around Bulls Bay in Awendaw, near Cape Romain National Wildlife Refuge. These members intend to live on, recreate on, fish from, and use these water resources in the future. These individuals use and enjoy our state’s coastal waters for purposes of commerce, recreation, conservation, education, and aesthetic enjoyment, including but not limited to shellfish harvesting, fishing, boating, birdwatching, and sightseeing. Further, these individuals have been and will continue to be harmed by pollution into waterways caused by septic systems, adversely impacting their ability to make such uses.

Malfunctioning septic systems harm Requestor’s members in part because septic discharges

contain untreated human waste, pathogens, and other pollutants that are known to present public health risks and endanger both human and environmental health. If DHEC continues to permit septic systems without regard to the water table, soil characteristics, geography, or water quality classifications and designations, especially in high densities, Requestor's members are persons for whom aesthetic and recreational values of the area have been and will continue to be lessened.

The White Tract

Respondent Pulte Homes, LLC ("Pulte") is upon information and belief the owner of approximately 233.45 acres of wetlands and forested land in Awendaw, which is known as and will be referred to herein as the White Tract. On information and belief, Respondent Pulte plans 204 single-family homes, all serviced by individual septic systems, with lots ranging in size from 0.325 acres to 0.934 acres. The property extends to the Intracoastal Waterway and lies within one mile of Cape Romain National Wildlife Refuge, which is composed almost entirely of barrier islands, salt marsh, and coastal waters.

GROUND'S FOR REVIEW

I. DHEC failed to conduct a review of the Permit for Consistency with the Coastal Management Program.

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas"¹ where OCRM has direct permitting

¹ "Critical area" includes coastal waters, tidelands, beaches, and the beach/dune system. S.C. Code Ann. § 48-39-10(J).

authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to “[d]evelop a system whereby [OCRM] 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.” S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

Yet, as the situation exists today, the Department has been issuing, and seemingly will continue to issue, septic system permits for individual dwellings within large residential developments that are sited in close proximity to the State’s coastal waterways, without regard for the density or cumulative impacts of such systems in a localized geographic area, which are included in the policies of the CMP.

The historic use of clustered residential septic systems near coastal waterways has a well-documented history of long-term impacts to water quality. The CMP document itself states that “[i]ndividual systems such as wells and septic tanks are adequate where development is limited, *but can have major environmental impacts in densely populated areas.*” CMP III-60 (emphasis added). Further, the CMP document directs the Department’s Office of Ocean and Coastal Resource Management (“OCRM”) to authorize septic installations in the coastal zone only for “*low density* residential developments *when they are designed properly* and *soils are adequate*[.]” CMP III-16 (emphases added). Despite this, the Department continues to permit the installation of thousands of densely-placed septic systems, all while skirting coastal zone consistency review.

Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal

zone—OCRM would be required to consider the “long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area.” CMP III-14.

DHEC has failed to incorporate the specialized knowledge of coastal processes, functions and values which its Office of Ocean and Coastal Resource Management (“OCRM”) possesses, into its permitting of coastal septic systems. Issues relating to cumulative impacts, sea level rise, and climate change, are kept entirely on the sidelines when reviewing permit applications for septic systems in areas subject to these dynamic and unique circumstances. This disconnect between DHEC’s coastal authority and its septic permitting reflects a serious flaw in DHEC’s failure to conduct Coastal Zone Consistency review for septic permitting. Consequently, while high density coastal septic systems implicate a whole host of issues and concerns that are not present with systems in other parts of the state, all septic permitting is governed by the same set of regulations. In other words, while placement of a septic system near a wetland or water of the state, and particularly in conjunction with dozens of permits on small lots, certainly warrants a closer look than the typical septic system, that review is not occurring.

The CMP guidelines for all projects in the Coastal Zone require DHEC-OCRM to consider:

- 1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for OCRM in implementation of its management program these being:
 - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

- 2) “the extent to which the project will have adverse impacts on the ‘critical areas’ (beach/dune system, coastal waters, tidelands);
- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “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.” The purpose of this act “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. SCDHEC*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010871 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract, Phase 1

Block: NA **Lot:** 43

GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-43

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: November 28, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

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Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
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Leslie,

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Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0352

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

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The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

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**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010872 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010872 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

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Requestor is a non-profit 501(c)(3) membership corporation organized and existing under the laws of the State of South Carolina, and headquartered in Charleston, South Carolina. The League has over 4,000 members residing in South Carolina, and works to protect coastal landscapes, abundant wildlife, clean water, and quality of life for South Carolina’s citizens and its members through various forms of advocacy and education. Requestor and its members have a strong interest in advocating for protection of the environment and preserving the state’s coastal resources for their use and enjoyment. Requestor’s members live near, recreate on, fish from, and regularly use the waters and wetlands in and around Bulls Bay in Awendaw, near Cape Romain National Wildlife Refuge. These members intend to live on, recreate on, fish from, and use these water resources in the future. These individuals use and enjoy our state’s coastal waters for purposes of commerce, recreation, conservation, education, and aesthetic enjoyment, including but not limited to shellfish harvesting, fishing, boating, birdwatching, and sightseeing. Further, these individuals have been and will continue to be harmed by pollution into waterways caused by septic systems, adversely impacting their ability to make such uses.

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Respondent Pulte Homes, LLC ("Pulte") is upon information and belief the owner of approximately 233.45 acres of wetlands and forested land in Awendaw, which is known as and will be referred to herein as the White Tract. On information and belief, Respondent Pulte plans 204 single-family homes, all serviced by individual septic systems, with lots ranging in size from 0.325 acres to 0.934 acres. The property extends to the Intracoastal Waterway and lies within one mile of Cape Romain National Wildlife Refuge, which is composed almost entirely of barrier islands, salt marsh, and coastal waters.

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authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to “[d]evelop a system whereby [OCRM] 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.” S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

Yet, as the situation exists today, the Department has been issuing, and seemingly will continue to issue, septic system permits for individual dwellings within large residential developments that are sited in close proximity to the State’s coastal waterways, without regard for the density or cumulative impacts of such systems in a localized geographic area, which are included in the policies of the CMP.

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The CMP guidelines for all projects in the Coastal Zone require DHEC-OCRM to consider:

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 - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

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- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
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DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “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.” The purpose of this act “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. SCDHEC*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010872 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract, Phase 1

Block: NA **Lot:** 44

GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-44

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: January 2, 2024

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0368

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

Office: (803) 896-0574

Mobile: (803) 491-8432

Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



request for notification white tract septic tanks.pdf 120 KB

OSWW Permit to Construct (Engineer Designed) lot 41.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 42.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 43.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 44.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 45.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 46.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 47.pdf 138 KB

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OSWW Permit to Construct (Engineer Designed) lot 66.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 67.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 24.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 25.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 26.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 27.pdf 170 KB

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OSWW Permit to Construct (Engineer Designed) lot 38.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 39.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 40.pdf 137 KB

**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

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Permit ID OSWW010873 v1.0

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- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “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.” The purpose of this act “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. SCDHEC*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
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Mount Pleasant, SC 29464
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leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010873 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract, Phase 1

Block: **Lot:** 45

GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-45

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: January 2, 2024

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0384

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

Office: (803) 896-0574

Mobile: (803) 491-8432

Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



resquest for notification white tract septic tanks.pdf 120 KB

OSWW Permit to Construct (Engineer Designed) lot 41.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 42.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 43.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 44.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 45.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 46.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 47.pdf 138 KB

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OSWW Permit to Construct (Engineer Designed) lot 66.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 67.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 24.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 25.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 26.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 27.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 28.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 29.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 30.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 31.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 32.pdf 137 KB

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OSWW Permit to Construct (Engineer Designed) lot 38.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 39.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 40.pdf 137 KB

**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010874 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010874 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

Requestor

Requestor is a non-profit 501(c)(3) membership corporation organized and existing under the laws of the State of South Carolina, and headquartered in Charleston, South Carolina. The League has over 4,000 members residing in South Carolina, and works to protect coastal landscapes, abundant wildlife, clean water, and quality of life for South Carolina’s citizens and its members through various forms of advocacy and education. Requestor and its members have a strong interest in advocating for protection of the environment and preserving the state’s coastal resources for their use and enjoyment. Requestor’s members live near, recreate on, fish from, and regularly use the waters and wetlands in and around Bulls Bay in Awendaw, near Cape Romain National Wildlife Refuge. These members intend to live on, recreate on, fish from, and use these water resources in the future. These individuals use and enjoy our state’s coastal waters for purposes of commerce, recreation, conservation, education, and aesthetic enjoyment, including but not limited to shellfish harvesting, fishing, boating, birdwatching, and sightseeing. Further, these individuals have been and will continue to be harmed by pollution into waterways caused by septic systems, adversely impacting their ability to make such uses.

Malfunctioning septic systems harm Requestor’s members in part because septic discharges

contain untreated human waste, pathogens, and other pollutants that are known to present public health risks and endanger both human and environmental health. If DHEC continues to permit septic systems without regard to the water table, soil characteristics, geography, or water quality classifications and designations, especially in high densities, Requestor's members are persons for whom aesthetic and recreational values of the area have been and will continue to be lessened.

The White Tract

Respondent Pulte Homes, LLC ("Pulte") is upon information and belief the owner of approximately 233.45 acres of wetlands and forested land in Awendaw, which is known as and will be referred to herein as the White Tract. On information and belief, Respondent Pulte plans 204 single-family homes, all serviced by individual septic systems, with lots ranging in size from 0.325 acres to 0.934 acres. The property extends to the Intracoastal Waterway and lies within one mile of Cape Romain National Wildlife Refuge, which is composed almost entirely of barrier islands, salt marsh, and coastal waters.

GROUND'S FOR REVIEW

I. DHEC failed to conduct a review of the Permit for Consistency with the Coastal Management Program.

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas"¹ where OCRM has direct permitting

¹ "Critical area" includes coastal waters, tidelands, beaches, and the beach/dune system. S.C. Code Ann. § 48-39-10(J).

authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to “[d]evelop a system whereby [OCRM] 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.” S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

Yet, as the situation exists today, the Department has been issuing, and seemingly will continue to issue, septic system permits for individual dwellings within large residential developments that are sited in close proximity to the State’s coastal waterways, without regard for the density or cumulative impacts of such systems in a localized geographic area, which are included in the policies of the CMP.

The historic use of clustered residential septic systems near coastal waterways has a well-documented history of long-term impacts to water quality. The CMP document itself states that “[i]ndividual systems such as wells and septic tanks are adequate where development is limited, *but can have major environmental impacts in densely populated areas.*” CMP III-60 (emphasis added). Further, the CMP document directs the Department’s Office of Ocean and Coastal Resource Management (“OCRM”) to authorize septic installations in the coastal zone only for “*low density* residential developments *when they are designed properly and soils are adequate[.]*” CMP III-16 (emphases added). Despite this, the Department continues to permit the installation of thousands of densely-placed septic systems, all while skirting coastal zone consistency review.

Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal

zone—OCRM would be required to consider the “long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area.” CMP III-14.

DHEC has failed to incorporate the specialized knowledge of coastal processes, functions and values which its Office of Ocean and Coastal Resource Management (“OCRM”) possesses, into its permitting of coastal septic systems. Issues relating to cumulative impacts, sea level rise, and climate change, are kept entirely on the sidelines when reviewing permit applications for septic systems in areas subject to these dynamic and unique circumstances. This disconnect between DHEC’s coastal authority and its septic permitting reflects a serious flaw in DHEC’s failure to conduct Coastal Zone Consistency review for septic permitting. Consequently, while high density coastal septic systems implicate a whole host of issues and concerns that are not present with systems in other parts of the state, all septic permitting is governed by the same set of regulations. In other words, while placement of a septic system near a wetland or water of the state, and particularly in conjunction with dozens of permits on small lots, certainly warrants a closer look than the typical septic system, that review is not occurring.

The CMP guidelines for all projects in the Coastal Zone require DHEC-OCRM to consider:

- 1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for OCRM in implementation of its management program these being:
 - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

- 2) “the extent to which the project will have adverse impacts on the ‘critical areas’ (beach/dune system, coastal waters, tidelands);
- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

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S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

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To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010874 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract, Phase 1

Block: NA **Lot:** 46

GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-46

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: November 28, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0400

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

Office: (803) 896-0574

Mobile: (803) 491-8432

Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



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**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010875 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010875 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

Requestor

Requestor is a non-profit 501(c)(3) membership corporation organized and existing under the laws of the State of South Carolina, and headquartered in Charleston, South Carolina. The League has over 4,000 members residing in South Carolina, and works to protect coastal landscapes, abundant wildlife, clean water, and quality of life for South Carolina’s citizens and its members through various forms of advocacy and education. Requestor and its members have a strong interest in advocating for protection of the environment and preserving the state’s coastal resources for their use and enjoyment. Requestor’s members live near, recreate on, fish from, and regularly use the waters and wetlands in and around Bulls Bay in Awendaw, near Cape Romain National Wildlife Refuge. These members intend to live on, recreate on, fish from, and use these water resources in the future. These individuals use and enjoy our state’s coastal waters for purposes of commerce, recreation, conservation, education, and aesthetic enjoyment, including but not limited to shellfish harvesting, fishing, boating, birdwatching, and sightseeing. Further, these individuals have been and will continue to be harmed by pollution into waterways caused by septic systems, adversely impacting their ability to make such uses.

Malfunctioning septic systems harm Requestor’s members in part because septic discharges

contain untreated human waste, pathogens, and other pollutants that are known to present public health risks and endanger both human and environmental health. If DHEC continues to permit septic systems without regard to the water table, soil characteristics, geography, or water quality classifications and designations, especially in high densities, Requestor's members are persons for whom aesthetic and recreational values of the area have been and will continue to be lessened.

The White Tract

Respondent Pulte Homes, LLC ("Pulte") is upon information and belief the owner of approximately 233.45 acres of wetlands and forested land in Awendaw, which is known as and will be referred to herein as the White Tract. On information and belief, Respondent Pulte plans 204 single-family homes, all serviced by individual septic systems, with lots ranging in size from 0.325 acres to 0.934 acres. The property extends to the Intracoastal Waterway and lies within one mile of Cape Romain National Wildlife Refuge, which is composed almost entirely of barrier islands, salt marsh, and coastal waters.

GROUND'S FOR REVIEW

I. DHEC failed to conduct a review of the Permit for Consistency with the Coastal Management Program.

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas"¹ where OCRM has direct permitting

¹ "Critical area" includes coastal waters, tidelands, beaches, and the beach/dune system. S.C. Code Ann. § 48-39-10(J).

authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to “[d]evelop a system whereby [OCRM] 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.” S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

Yet, as the situation exists today, the Department has been issuing, and seemingly will continue to issue, septic system permits for individual dwellings within large residential developments that are sited in close proximity to the State’s coastal waterways, without regard for the density or cumulative impacts of such systems in a localized geographic area, which are included in the policies of the CMP.

The historic use of clustered residential septic systems near coastal waterways has a well-documented history of long-term impacts to water quality. The CMP document itself states that “[i]ndividual systems such as wells and septic tanks are adequate where development is limited, *but can have major environmental impacts in densely populated areas.*” CMP III-60 (emphasis added). Further, the CMP document directs the Department’s Office of Ocean and Coastal Resource Management (“OCRM”) to authorize septic installations in the coastal zone only for “*low density* residential developments *when they are designed properly and soils are adequate[.]*” CMP III-16 (emphases added). Despite this, the Department continues to permit the installation of thousands of densely-placed septic systems, all while skirting coastal zone consistency review.

Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal

zone—OCRM would be required to consider the “long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area.” CMP III-14.

DHEC has failed to incorporate the specialized knowledge of coastal processes, functions and values which its Office of Ocean and Coastal Resource Management (“OCRM”) possesses, into its permitting of coastal septic systems. Issues relating to cumulative impacts, sea level rise, and climate change, are kept entirely on the sidelines when reviewing permit applications for septic systems in areas subject to these dynamic and unique circumstances. This disconnect between DHEC’s coastal authority and its septic permitting reflects a serious flaw in DHEC’s failure to conduct Coastal Zone Consistency review for septic permitting. Consequently, while high density coastal septic systems implicate a whole host of issues and concerns that are not present with systems in other parts of the state, all septic permitting is governed by the same set of regulations. In other words, while placement of a septic system near a wetland or water of the state, and particularly in conjunction with dozens of permits on small lots, certainly warrants a closer look than the typical septic system, that review is not occurring.

The CMP guidelines for all projects in the Coastal Zone require DHEC-OCRM to consider:

- 1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for OCRM in implementation of its management program these being:
 - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

- 2) “the extent to which the project will have adverse impacts on the ‘critical areas’ (beach/dune system, coastal waters, tidelands);
- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “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.” The purpose of this act “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. SCDHEC*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010875 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract, Phase 1

Block: NA **Lot:** 47

GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-47

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: November 28, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

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Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
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Leslie,

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Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0416

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

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The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

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**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010877 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010877 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

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Requestor is a non-profit 501(c)(3) membership corporation organized and existing under the laws of the State of South Carolina, and headquartered in Charleston, South Carolina. The League has over 4,000 members residing in South Carolina, and works to protect coastal landscapes, abundant wildlife, clean water, and quality of life for South Carolina’s citizens and its members through various forms of advocacy and education. Requestor and its members have a strong interest in advocating for protection of the environment and preserving the state’s coastal resources for their use and enjoyment. Requestor’s members live near, recreate on, fish from, and regularly use the waters and wetlands in and around Bulls Bay in Awendaw, near Cape Romain National Wildlife Refuge. These members intend to live on, recreate on, fish from, and use these water resources in the future. These individuals use and enjoy our state’s coastal waters for purposes of commerce, recreation, conservation, education, and aesthetic enjoyment, including but not limited to shellfish harvesting, fishing, boating, birdwatching, and sightseeing. Further, these individuals have been and will continue to be harmed by pollution into waterways caused by septic systems, adversely impacting their ability to make such uses.

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contain untreated human waste, pathogens, and other pollutants that are known to present public health risks and endanger both human and environmental health. If DHEC continues to permit septic systems without regard to the water table, soil characteristics, geography, or water quality classifications and designations, especially in high densities, Requestor's members are persons for whom aesthetic and recreational values of the area have been and will continue to be lessened.

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Respondent Pulte Homes, LLC ("Pulte") is upon information and belief the owner of approximately 233.45 acres of wetlands and forested land in Awendaw, which is known as and will be referred to herein as the White Tract. On information and belief, Respondent Pulte plans 204 single-family homes, all serviced by individual septic systems, with lots ranging in size from 0.325 acres to 0.934 acres. The property extends to the Intracoastal Waterway and lies within one mile of Cape Romain National Wildlife Refuge, which is composed almost entirely of barrier islands, salt marsh, and coastal waters.

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authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to “[d]evelop a system whereby [OCRM] 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.” S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

Yet, as the situation exists today, the Department has been issuing, and seemingly will continue to issue, septic system permits for individual dwellings within large residential developments that are sited in close proximity to the State’s coastal waterways, without regard for the density or cumulative impacts of such systems in a localized geographic area, which are included in the policies of the CMP.

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Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal

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DHEC has failed to incorporate the specialized knowledge of coastal processes, functions and values which its Office of Ocean and Coastal Resource Management (“OCRM”) possesses, into its permitting of coastal septic systems. Issues relating to cumulative impacts, sea level rise, and climate change, are kept entirely on the sidelines when reviewing permit applications for septic systems in areas subject to these dynamic and unique circumstances. This disconnect between DHEC’s coastal authority and its septic permitting reflects a serious flaw in DHEC’s failure to conduct Coastal Zone Consistency review for septic permitting. Consequently, while high density coastal septic systems implicate a whole host of issues and concerns that are not present with systems in other parts of the state, all septic permitting is governed by the same set of regulations. In other words, while placement of a septic system near a wetland or water of the state, and particularly in conjunction with dozens of permits on small lots, certainly warrants a closer look than the typical septic system, that review is not occurring.

The CMP guidelines for all projects in the Coastal Zone require DHEC-OCRM to consider:

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 - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

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- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
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DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “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.” The purpose of this act “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. SCDHEC*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010877 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract, Phase 1

Block: NA **Lot:** 48

GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-48

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: November 28, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0432

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

Office: (803) 896-0574

Mobile: (803) 491-8432

Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



request for notification white tract septic tanks.pdf 120 KB

OSWW Permit to Construct (Engineer Designed) lot 41.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 42.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 43.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 44.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 45.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 46.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 47.pdf 138 KB

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OSWW Permit to Construct (Engineer Designed) lot 66.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 67.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 24.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 25.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 26.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 27.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 28.pdf 138 KB

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OSWW Permit to Construct (Engineer Designed) lot 38.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 39.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 40.pdf 137 KB

**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010879 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010879 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

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- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “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.” The purpose of this act “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. SCDHEC*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
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Mount Pleasant, SC 29464
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leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010879 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract Phase 1

Block: **Lot:** 49

GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-49

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: October 18, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0448

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

Office: (803) 896-0574

Mobile: (803) 491-8432

Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



request for notification white tract septic tanks.pdf 120 KB

OSWW Permit to Construct (Engineer Designed) lot 41.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 42.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 43.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 44.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 45.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 46.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 47.pdf 138 KB

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OSWW Permit to Construct (Engineer Designed) lot 49.pdf 138 KB

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OSWW Permit to Construct (Engineer Designed) lot 51.pdf 137 KB

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OSWW Permit to Construct (Engineer Designed) lot 66.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 67.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 24.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 25.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 26.pdf 171 KB

OSWW Permit to Construct (Engineer Designed) lot 27.pdf 170 KB

OSWW Permit to Construct (Engineer Designed) lot 28.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 29.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 30.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 31.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 32.pdf 137 KB

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OSWW Permit to Construct (Engineer Designed) lot 37.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 38.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 39.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 40.pdf 137 KB

**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010879 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010879 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

Requestor

Requestor is a non-profit 501(c)(3) membership corporation organized and existing under the laws of the State of South Carolina, and headquartered in Charleston, South Carolina. The League has over 4,000 members residing in South Carolina, and works to protect coastal landscapes, abundant wildlife, clean water, and quality of life for South Carolina’s citizens and its members through various forms of advocacy and education. Requestor and its members have a strong interest in advocating for protection of the environment and preserving the state’s coastal resources for their use and enjoyment. Requestor’s members live near, recreate on, fish from, and regularly use the waters and wetlands in and around Bulls Bay in Awendaw, near Cape Romain National Wildlife Refuge. These members intend to live on, recreate on, fish from, and use these water resources in the future. These individuals use and enjoy our state’s coastal waters for purposes of commerce, recreation, conservation, education, and aesthetic enjoyment, including but not limited to shellfish harvesting, fishing, boating, birdwatching, and sightseeing. Further, these individuals have been and will continue to be harmed by pollution into waterways caused by septic systems, adversely impacting their ability to make such uses.

Malfunctioning septic systems harm Requestor’s members in part because septic discharges

contain untreated human waste, pathogens, and other pollutants that are known to present public health risks and endanger both human and environmental health. If DHEC continues to permit septic systems without regard to the water table, soil characteristics, geography, or water quality classifications and designations, especially in high densities, Requestor's members are persons for whom aesthetic and recreational values of the area have been and will continue to be lessened.

The White Tract

Respondent Pulte Homes, LLC ("Pulte") is upon information and belief the owner of approximately 233.45 acres of wetlands and forested land in Awendaw, which is known as and will be referred to herein as the White Tract. On information and belief, Respondent Pulte plans 204 single-family homes, all serviced by individual septic systems, with lots ranging in size from 0.325 acres to 0.934 acres. The property extends to the Intracoastal Waterway and lies within one mile of Cape Romain National Wildlife Refuge, which is composed almost entirely of barrier islands, salt marsh, and coastal waters.

GROUND'S FOR REVIEW

I. DHEC failed to conduct a review of the Permit for Consistency with the Coastal Management Program.

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas"¹ where OCRM has direct permitting

¹ "Critical area" includes coastal waters, tidelands, beaches, and the beach/dune system. S.C. Code Ann. § 48-39-10(J).

authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to “[d]evelop a system whereby [OCRM] 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.” S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

Yet, as the situation exists today, the Department has been issuing, and seemingly will continue to issue, septic system permits for individual dwellings within large residential developments that are sited in close proximity to the State’s coastal waterways, without regard for the density or cumulative impacts of such systems in a localized geographic area, which are included in the policies of the CMP.

The historic use of clustered residential septic systems near coastal waterways has a well-documented history of long-term impacts to water quality. The CMP document itself states that “[i]ndividual systems such as wells and septic tanks are adequate where development is limited, *but can have major environmental impacts in densely populated areas.*” CMP III-60 (emphasis added). Further, the CMP document directs the Department’s Office of Ocean and Coastal Resource Management (“OCRM”) to authorize septic installations in the coastal zone only for “*low density* residential developments *when they are designed properly* and *soils are adequate*[.]” CMP III-16 (emphases added). Despite this, the Department continues to permit the installation of thousands of densely-placed septic systems, all while skirting coastal zone consistency review.

Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal

zone—OCRM would be required to consider the “long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area.” CMP III-14.

DHEC has failed to incorporate the specialized knowledge of coastal processes, functions and values which its Office of Ocean and Coastal Resource Management (“OCRM”) possesses, into its permitting of coastal septic systems. Issues relating to cumulative impacts, sea level rise, and climate change, are kept entirely on the sidelines when reviewing permit applications for septic systems in areas subject to these dynamic and unique circumstances. This disconnect between DHEC’s coastal authority and its septic permitting reflects a serious flaw in DHEC’s failure to conduct Coastal Zone Consistency review for septic permitting. Consequently, while high density coastal septic systems implicate a whole host of issues and concerns that are not present with systems in other parts of the state, all septic permitting is governed by the same set of regulations. In other words, while placement of a septic system near a wetland or water of the state, and particularly in conjunction with dozens of permits on small lots, certainly warrants a closer look than the typical septic system, that review is not occurring.

The CMP guidelines for all projects in the Coastal Zone require DHEC-OCRM to consider:

- 1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for OCRM in implementation of its management program these being:
 - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

- 2) “the extent to which the project will have adverse impacts on the ‘critical areas’ (beach/dune system, coastal waters, tidelands);
- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

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Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010880 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract Phase 1

Block: **Lot:** 50

GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-50

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: November 01, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

Due to shallower zone of saturation noted in repair area, see engineered submittal sheet SP50-2 for repair area configuration.

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0464

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

Office: (803) 896-0574

Mobile: (803) 491-8432

Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



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**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010882 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010882 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

Requestor

Requestor is a non-profit 501(c)(3) membership corporation organized and existing under the laws of the State of South Carolina, and headquartered in Charleston, South Carolina. The League has over 4,000 members residing in South Carolina, and works to protect coastal landscapes, abundant wildlife, clean water, and quality of life for South Carolina’s citizens and its members through various forms of advocacy and education. Requestor and its members have a strong interest in advocating for protection of the environment and preserving the state’s coastal resources for their use and enjoyment. Requestor’s members live near, recreate on, fish from, and regularly use the waters and wetlands in and around Bulls Bay in Awendaw, near Cape Romain National Wildlife Refuge. These members intend to live on, recreate on, fish from, and use these water resources in the future. These individuals use and enjoy our state’s coastal waters for purposes of commerce, recreation, conservation, education, and aesthetic enjoyment, including but not limited to shellfish harvesting, fishing, boating, birdwatching, and sightseeing. Further, these individuals have been and will continue to be harmed by pollution into waterways caused by septic systems, adversely impacting their ability to make such uses.

Malfunctioning septic systems harm Requestor’s members in part because septic discharges

contain untreated human waste, pathogens, and other pollutants that are known to present public health risks and endanger both human and environmental health. If DHEC continues to permit septic systems without regard to the water table, soil characteristics, geography, or water quality classifications and designations, especially in high densities, Requestor's members are persons for whom aesthetic and recreational values of the area have been and will continue to be lessened.

The White Tract

Respondent Pulte Homes, LLC ("Pulte") is upon information and belief the owner of approximately 233.45 acres of wetlands and forested land in Awendaw, which is known as and will be referred to herein as the White Tract. On information and belief, Respondent Pulte plans 204 single-family homes, all serviced by individual septic systems, with lots ranging in size from 0.325 acres to 0.934 acres. The property extends to the Intracoastal Waterway and lies within one mile of Cape Romain National Wildlife Refuge, which is composed almost entirely of barrier islands, salt marsh, and coastal waters.

GROUND'S FOR REVIEW

I. DHEC failed to conduct a review of the Permit for Consistency with the Coastal Management Program.

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas"¹ where OCRM has direct permitting

¹ "Critical area" includes coastal waters, tidelands, beaches, and the beach/dune system. S.C. Code Ann. § 48-39-10(J).

authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to “[d]evelop a system whereby [OCRM] 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.” S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

Yet, as the situation exists today, the Department has been issuing, and seemingly will continue to issue, septic system permits for individual dwellings within large residential developments that are sited in close proximity to the State’s coastal waterways, without regard for the density or cumulative impacts of such systems in a localized geographic area, which are included in the policies of the CMP.

The historic use of clustered residential septic systems near coastal waterways has a well-documented history of long-term impacts to water quality. The CMP document itself states that “[i]ndividual systems such as wells and septic tanks are adequate where development is limited, *but can have major environmental impacts in densely populated areas.*” CMP III-60 (emphasis added). Further, the CMP document directs the Department’s Office of Ocean and Coastal Resource Management (“OCRM”) to authorize septic installations in the coastal zone only for “*low density* residential developments *when they are designed properly* and *soils are adequate*[.]” CMP III-16 (emphases added). Despite this, the Department continues to permit the installation of thousands of densely-placed septic systems, all while skirting coastal zone consistency review.

Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal

zone—OCRM would be required to consider the “long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area.” CMP III-14.

DHEC has failed to incorporate the specialized knowledge of coastal processes, functions and values which its Office of Ocean and Coastal Resource Management (“OCRM”) possesses, into its permitting of coastal septic systems. Issues relating to cumulative impacts, sea level rise, and climate change, are kept entirely on the sidelines when reviewing permit applications for septic systems in areas subject to these dynamic and unique circumstances. This disconnect between DHEC’s coastal authority and its septic permitting reflects a serious flaw in DHEC’s failure to conduct Coastal Zone Consistency review for septic permitting. Consequently, while high density coastal septic systems implicate a whole host of issues and concerns that are not present with systems in other parts of the state, all septic permitting is governed by the same set of regulations. In other words, while placement of a septic system near a wetland or water of the state, and particularly in conjunction with dozens of permits on small lots, certainly warrants a closer look than the typical septic system, that review is not occurring.

The CMP guidelines for all projects in the Coastal Zone require DHEC-OCRM to consider:

- 1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for OCRM in implementation of its management program these being:
 - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

- 2) “the extent to which the project will have adverse impacts on the ‘critical areas’ (beach/dune system, coastal waters, tidelands);
- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “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.” The purpose of this act “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. SCDHEC*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010882 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract Phase 1

Block: **Lot:** 51

GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-51

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: November 01, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

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Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
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Leslie,

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Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0480

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

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**STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Coastal Conservation League,

Requestor,

v.

Department of Health and Environmental Control and Pulte Homes LLC,

Respondents.

Re: Permit to Construct Onsite Wastewater System
Permit ID OSWW010884 v1.0

Pursuant to S.C. Code Ann. § 44-1-60, the Coastal Conservation League (“Requestor” or “CCL”), requests that this Board of the Department of Health and Environmental Control conduct a Final Review Conference to review the staff’s decision to issue a Permit to Construct Onsite Wastewater System, Permit ID OSWW010884 v1.0 (“Permit”) to the Respondent, Pulte Homes LLC. A copy of the Permit is attached as **Exhibit 1**. This Permit was approved by the Department staff along with 43 other septic tank permits for the same tract of land owned, on information and belief, by Pulte Homes, LLC and which is otherwise known as the “White Tract.” The permits do not have an issued date, but according to DHEC counsel, they are considered to be issued on the date they are signed by the staff. See **Exhibit 2**, email from Sara Martinez. Requestor sought review pursuant to S.C. Code Ann. § 44-1-60 and did not receive notice of those permits until January 2, 2024. Exhibit 2. Therefore, this request is timely.

Requestor submits that the issuance of the Permit runs contrary to a number of statutory and regulatory provisions and should not have been issued. Importantly, DHEC failed to conduct the required Coastal Zone Consistency review of this application pursuant to the Coastal Tidelands and Wetlands Act of 1977, (the “Act”), S.C. Code Ann. § 48-39-80. It also runs contrary not only to the policies of the Coastal Management Program, but also to certain provisions of the Act. Further, the Department staff’s failure to place this and other septic applications on public notice results in a violation of the Requestor’s and its members’ constitutional rights to Due Process.

Requestor

Requestor is a non-profit 501(c)(3) membership corporation organized and existing under the laws of the State of South Carolina, and headquartered in Charleston, South Carolina. The League has over 4,000 members residing in South Carolina, and works to protect coastal landscapes, abundant wildlife, clean water, and quality of life for South Carolina’s citizens and its members through various forms of advocacy and education. Requestor and its members have a strong interest in advocating for protection of the environment and preserving the state’s coastal resources for their use and enjoyment. Requestor’s members live near, recreate on, fish from, and regularly use the waters and wetlands in and around Bulls Bay in Awendaw, near Cape Romain National Wildlife Refuge. These members intend to live on, recreate on, fish from, and use these water resources in the future. These individuals use and enjoy our state’s coastal waters for purposes of commerce, recreation, conservation, education, and aesthetic enjoyment, including but not limited to shellfish harvesting, fishing, boating, birdwatching, and sightseeing. Further, these individuals have been and will continue to be harmed by pollution into waterways caused by septic systems, adversely impacting their ability to make such uses.

Malfunctioning septic systems harm Requestor’s members in part because septic discharges

contain untreated human waste, pathogens, and other pollutants that are known to present public health risks and endanger both human and environmental health. If DHEC continues to permit septic systems without regard to the water table, soil characteristics, geography, or water quality classifications and designations, especially in high densities, Requestor's members are persons for whom aesthetic and recreational values of the area have been and will continue to be lessened.

The White Tract

Respondent Pulte Homes, LLC ("Pulte") is upon information and belief the owner of approximately 233.45 acres of wetlands and forested land in Awendaw, which is known as and will be referred to herein as the White Tract. On information and belief, Respondent Pulte plans 204 single-family homes, all serviced by individual septic systems, with lots ranging in size from 0.325 acres to 0.934 acres. The property extends to the Intracoastal Waterway and lies within one mile of Cape Romain National Wildlife Refuge, which is composed almost entirely of barrier islands, salt marsh, and coastal waters.

GROUND'S FOR REVIEW

I. DHEC failed to conduct a review of the Permit for Consistency with the Coastal Management Program.

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas"¹ where OCRM has direct permitting

¹ "Critical area" includes coastal waters, tidelands, beaches, and the beach/dune system. S.C. Code Ann. § 48-39-10(J).

authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to “[d]evelop a system whereby [OCRM] 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.” S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

Yet, as the situation exists today, the Department has been issuing, and seemingly will continue to issue, septic system permits for individual dwellings within large residential developments that are sited in close proximity to the State’s coastal waterways, without regard for the density or cumulative impacts of such systems in a localized geographic area, which are included in the policies of the CMP.

The historic use of clustered residential septic systems near coastal waterways has a well-documented history of long-term impacts to water quality. The CMP document itself states that “[i]ndividual systems such as wells and septic tanks are adequate where development is limited, *but can have major environmental impacts in densely populated areas.*” CMP III-60 (emphasis added). Further, the CMP document directs the Department’s Office of Ocean and Coastal Resource Management (“OCRM”) to authorize septic installations in the coastal zone only for “*low density* residential developments *when they are designed properly* and *soils are adequate*[.]” CMP III-16 (emphases added). Despite this, the Department continues to permit the installation of thousands of densely-placed septic systems, all while skirting coastal zone consistency review.

Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal

zone—OCRM would be required to consider the “long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area.” CMP III-14.

DHEC has failed to incorporate the specialized knowledge of coastal processes, functions and values which its Office of Ocean and Coastal Resource Management (“OCRM”) possesses, into its permitting of coastal septic systems. Issues relating to cumulative impacts, sea level rise, and climate change, are kept entirely on the sidelines when reviewing permit applications for septic systems in areas subject to these dynamic and unique circumstances. This disconnect between DHEC’s coastal authority and its septic permitting reflects a serious flaw in DHEC’s failure to conduct Coastal Zone Consistency review for septic permitting. Consequently, while high density coastal septic systems implicate a whole host of issues and concerns that are not present with systems in other parts of the state, all septic permitting is governed by the same set of regulations. In other words, while placement of a septic system near a wetland or water of the state, and particularly in conjunction with dozens of permits on small lots, certainly warrants a closer look than the typical septic system, that review is not occurring.

The CMP guidelines for all projects in the Coastal Zone require DHEC-OCRM to consider:

- 1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for OCRM in implementation of its management program these being:
 - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

- 2) “the extent to which the project will have adverse impacts on the ‘critical areas’ (beach/dune system, coastal waters, tidelands);
- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

DHEC staff’s failure to undertake Coastal Zone Consistency review, and its related failure to consider the appropriateness and the impacts of coastal forces on the proposed septic system, was arbitrary, capricious, and in error.

II. The Permit Violates the Specific Policies Contained Within the Coastal Tidelands and Wetlands Act.

The Act directs that “[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program **in accordance with the provisions of this chapter** and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with

due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;

(2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;

(3) To formulate a comprehensive tidelands protection program.

S.C. Code Ann. § 48-39-30(B), (1), (2), (3). These policies are enforceable and DHEC permitting decisions must comply not only with DHEC regulations and, where applicable, the CMP, but also with the policies of the Act itself.

The permit decision at issue violates these statutory policies because it was made without due consideration for the environment and outside a framework of coastal planning that will protect sensitive and fragile areas from inappropriate development. This is especially true because the permit, together with dozens of other similar permits, creates a collective risk on a fragile public trust resource. There is nothing in the permitting decision that shows DHEC took into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

III. DHEC’s Failure to Publicly Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept

completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env't Prot. Ass'n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm'n*, 271 S.C. 405 (1978)). The South Carolina 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 be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “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.” The purpose of this act “is intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. SCDHEC*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53).

To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. *See, e.g., Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice substantially prejudices Plaintiffs in that they receive no of notice of an agency decision, and thereby lack the means to timely challenge that decision.

Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, Requestor respectfully requests this Board conduct a final review conference on the Permit and vote to reverse the Department staff's decision.

Respectfully submitted,



Leslie S. Lenhardt
Amy E. Armstrong
S.C. Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464
(843) 527-0078
leslie@scelp.org

Attorneys for Petitioner

January 17, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010884 v1.0

County: Charleston

Name: Pulte Home Company LLC

Type Facility: Residential

Subdivision: White Tract Phase 1

Block: **Lot:** 52

GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE

System Code: 611 ENGINEERED SYS <1500GPD PUMP

TM #: 644-00-00-023 & 644-00-00-025

(Parent Parcels to be Subdivided)

Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

See applicable special instructions/conditions on the second page of this document.

PERMIT TO CONSTRUCT

The Permit To Construct is issued upon the system design, certification, and other supporting documentation as required by this standard and supplied by:

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-52

(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By:

Date: November 01, 2023

DHEC 1781 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years
from the Issuance Date

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
Require Site Reevaluation

SPECIAL INSTRUCTIONS/CONDITIONS

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Specialized Onsite Wastewater Systems for Peak Flows less than 1500 GPD.

Issuance of this Specialized Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property

FW: Pulte - White Tract Phase 1

From: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
To: [leslie@scelp.org <leslie@scelp.org>](mailto:leslie@scelp.org)
Cc: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov), [Whitehead, Christopher <whitehCP@dhec.sc.gov>](mailto:whitehCP@dhec.sc.gov), [Churdar, Bradley <churdabd@dhec.sc.gov>](mailto:churdabd@dhec.sc.gov)
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
Size: 8.7 MB

Leslie,

You originally submitted the attached request for notice of permits related to TMS No.6810000028 on 6/14/22 and have resubmitted it on multiple occasions since such time to include additional TMS #s 6440000023, 6440000026, and 6440000030. Pursuant to your request and as a courtesy in light of your client's pending litigation with the Department related to septic tanks in the coastal region, I am attaching permits to construct onsite wastewater systems issued for White Tract Phase 1, lots 24 through 67. The permits do not include an issuance date, but rather include the various dates on which the permits were signed by staff who completed a review of the permit. As noted in Mr. Vaughan's email below, the majority of the permits were sent to the applicant on 12/21/23 and the remaining two were sent to the applicant on 1/2/24.

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: Vaughan, David R. <vaughadr@dhec.sc.gov>

Sent: Tuesday, January 2, 2024 2:54 PM

To: Martinez, Sara <martinsv@dhec.sc.gov>

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 0496

Permits to Construct Onsite Wastewater Systems have been issued for Pulte Home Company LLC, White Tract Phase 1, lots 24 through 67.

The permits for lots 24-43 and 46-67 were put into effect on 12/21/2023.

The permits for lots 44 and 45 were put into effect on 01/02/2024.

Permit copies are attached.

Sincerely,

David R. Vaughan

Director

BEHS - Division of Onsite Wastewater

SC Department of Health and Environmental Control

Office: (803) 896-0574

Mobile: (803) 491-8432

Connect: www.scdhec.gov [Facebook](#) [LinkedIn](#)



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OSWW Permit to Construct (Engineer Designed) lot 42.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 43.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 44.pdf 137 KB

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