

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
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SC 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 III

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Board:
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ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-16, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 38 of White Tract
Phase 1. Permit ID. OSWW010863v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-16 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

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M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

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January 17, 2024

RECEIVED

JAN 17 2024

**Clerk, Board of Health
and Environmental Control**

24-RPR-16

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Our Mission We use our legal expertise to protect land, water and communities across South Carolina.

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ROA 0989

**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 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 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,



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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:

Jason Goff

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,

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

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Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-17, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 39 of White Tract
Phase 1. Permit ID. OSWW010864v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-17 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
4100 Leeds Avenue
North Charleston, SC 29405

Via Electronic Mail Delivery

Jospeh A. Giordano, Esquire
Email: giordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /
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Staff Attorneys
Lauren Megill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

Clerk, Board of Health
and Environmental Control

24-RPR-17

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Our Mission We use our legal expertise to protect land, water and communities across South Carolina.

Board of Directors - Allen Grumbine, Esq., Chairperson, Amy Fabri, Rajan Govindan, Marilyn Hemingway, Elizabeth Igleheart,
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Board Member Emeriti - Frances Close, John Mark Dean, Robert Schofield

ROA 1008

**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 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 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.

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>
To: leslie@scelp.org <leslie@scelp.org>
Cc: Vaughan, David R. <vaughadr@dhec.sc.gov>, Whitehead, Christopher <whitehCP@dhec.sc.gov>, Churdar, Bradley <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,

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

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Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-18, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 40 of White Tract
Phase 1. Permit ID. OSWW010865v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

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The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-18 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
4100 Leeds Avenue
North Charleston, SC 29405

Via Electronic Mail Delivery

Jospeh A. Giordano, Esquire
Email: giordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 | (843) 527-0078 |
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Leslie S. Lenhardt | leslie@scelp.org

Staff Attorneys
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Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

**Clerk, Board of Health
and Environmental Control**

24-RFR-18

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Our Mission We use our legal expertise to protect land, water and communities across South Carolina.

Board of Directors - Allen Grumbine, Esq., Chairperson, Amy Fabri, Rajan Govindan, Marilyn Hemingway, Elizabeth Igheheart, Tom Kester, Bess Lochocki, Esq., Clarkson McDow, Esq., Walton McLeod, Esq., Gerald Schulze, Greg VanDerwerker
Board Member Emeriti - Frances Close, John Mark Dean, Robert Schofield

**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 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>
To: leslie@scelp.org <leslie@scelp.org>
Cc: Vaughan, David R. <vaughadr@dhec.sc.gov>, Whitehead, Christopher <whitehCP@dhec.sc.gov>, Churdar, Bradley <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,

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

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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

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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



Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-19, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 41 of White Tract
Phase 1. Permit ID. OSWW010869v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-19 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
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Via Electronic Mail Delivery

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SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /
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Leslie S. Lenhardt | leslie@scelp.org

Staff Attorneys
Lauren McGill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

Clerk, Board of Health
and Environmental Control

24-RPR-19

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Board of Directors - Allen Grumbine, Esq., Chairperson, Amy Fabri, Rajan Govindan, Marilyn Hemingway, Elizabeth Igleheart, Tom Kester, Bess Lochocki, Esq., Clarkson McDow, Esq., Walton McLeod, Esq., Gerald Schulze, Greg VanDerwerker
Board Member Emeriti - Frances Close, John Mark Dean, Robert Schofield

ROA 1046

**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.

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: 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

Information collected on this form is subject to public scrutiny or release and the Freedom of Information Act.

ROA 1057

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>
To: leslie@scelp.org <leslie@scelp.org>
Cc: Vaughan, David R. <vaughadr@dhec.sc.gov>, Whitehead, Christopher <whitehCP@dhec.sc.gov>, Churdar, Bradley <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,

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

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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

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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



Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-20, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 42 of White Tract
Phase 1. Permit ID. OSWW010870v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-20 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
4100 Leeds Avenue
North Charleston, SC 29405

Via Electronic Mail Delivery

Jospeh A. Giordano, Esquire
Email: giordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /
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Leslie S. Lenhardt | leslie@scelp.org

Staff Attorneys
Lauren Megill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

Clerk, Board of Health
and Environmental Control

24-RFR-20

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Our Mission We use our legal expertise to protect land, water and communities across South Carolina.

**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.

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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 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.

Jason Goff

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

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 67.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 24.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



Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-21, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 43 of White Tract
Phase 1. Permit ID. OSWW010871v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-21 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
4100 Leeds Avenue
North Charleston, SC 29405

Via Electronic Mail Delivery

Jospeh A. Giordano, Esquire
Email: giordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /
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Senior Managing Attorneys
Benjamin D. Cunningham | ben@scelp.org
Leslie S. Lenhardt | leslie@scelp.org

Staff Attorneys
Lauren Megill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

Our Mission We use our legal expertise to protect land, water and communities across South Carolina.

January 17, 2024

RECEIVED

JAN 17 2024

**Clerk, Board of Health
and Environmental Control**

24-RFR-21

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Board of Directors - Allen Grumbine, Esq., Chairperson, Amy Fabri, Rajan Govindan, Marilyn Hemmingway, Elizabeth Igleheart, Tom Kester, Bess Lochocki, Esq., Clarkson McDow, Esq., Walton McLeod, Esq., Gerald Schulze, Greg VanDerwerker
Board Member Emeriti - Frances Close, John Mark Dean, Robert Schofield

**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

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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).

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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

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 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:

Jason Goff

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

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

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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

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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



Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-22, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 44 of White Tract
Phase 1. Permit ID. OSWW010872v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-22 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
4100 Leeds Avenue
North Charleston, SC 29405

Via Electronic Mail Delivery

Jospeh A. Giordano, Esquire
Email: giordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /
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Senior Managing Attorneys
Benjamin D. Cunningham | ben@scelp.org
Leslie S. Lenhardt | leslie@scelp.org

Staff Attorneys
Lauren Megill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

Clerk, Board of Health
and Environmental Control

24-RIR-22

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

**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.

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.

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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: 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:

Jason Goff

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>
To: leslie@scelp.org <leslie@scelp.org>
Cc: Vaughan, David R. <vaughadr@dhec.sc.gov>, Whitehead, Christopher <whitehCP@dhec.sc.gov>, Churdar, Bradley <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,

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 30.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



Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-23, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 45 of White Tract
Phase 1. Permit ID. OSWW010873v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-23 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
4100 Leeds Avenue
North Charleston, SC 29405

Via Electronic Mail Delivery

Jospeh A. Giordano, Esquire
Email: giordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /
www.scelp.org

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Benjamin D. Cunningham | ben@scelp.org
Leslie S. Lenhardt | leslie@scelp.org

Staff Attorneys
Lauren Megill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

Clerk, Board of Health
and Environmental Control

24-RFR-23

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Our Mission We use our legal expertise to protect land, water and communities across South Carolina.

Board of Directors - Allen Grumbine, Esq., Chairperson, Amy Fabri, Rajan Govindan, Marilyn Hemingway, Elizabeth Igleheart,
Tom Kester, Bess Lochocki, Esq., Clarkson McDow, Esq., Walton McLeod, Esq., Gerald Schulze, Greg VanDerwerker
Board Member Emeriti - Frances Close, John Mark Dean, Robert Schofield

ROA 1122

**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 OSWW010873 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 OSWW010873 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: 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:

Jason Goff

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>
To: leslie@scelp.org <leslie@scelp.org>
Cc: Vaughan, David R. <vaughadr@dhec.sc.gov>, Whitehead, Christopher <whitehCP@dhec.sc.gov>, Churdar, Bradley <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,

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

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

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OSWW Permit to Construct (Engineer Designed) lot 36.pdf 138 KB

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



Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-24, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 46 of White Tract
Phase 1. Permit ID. OSWW010874v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-24 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
4100 Leeds Avenue
North Charleston, SC 29405

Via Electronic Mail Delivery

Jospeh A. Giordano, Esquire
Email: giordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /
www.scelp.org

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Benjamin D. Cunningham | ben@scelp.org
Leslie S. Lenhardt | leslie@scelp.org

Staff Attorneys
Lauren Megill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

Clerk, Board of Health
and Environmental Control

24-RIR-24

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Our Mission We use our legal expertise to protect land, water and communities across South Carolina.

**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;

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

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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Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-25, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 47 of White Tract
Phase 1. Permit ID. OSWW010875v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-47 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
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Via Electronic Mail Delivery

Jospeh A. Giordano, Esquire
Email: giordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /
www.scelp.org

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Leslie S. Lenhardt | leslie@scelp.org

Staff Attorneys
Lauren Megill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

Clerk, Board of Health
and Environmental Control

24-RPR-25

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

**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 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.

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>
To: leslie@scelp.org <leslie@scelp.org>
Cc: Vaughan, David R. <vaughadr@dhec.sc.gov>, Whitehead, Christopher <whitehCP@dhec.sc.gov>, Churdar, Bradley <churdabd@dhec.sc.gov>
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
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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,

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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Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-26, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 48 of White Tract
Phase 1. Permit ID. OSWW010877v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-26 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
4100 Leeds Avenue
North Charleston, SC 29405

Via Electronic Mail Delivery

Jospeh A. Giordano, Esquire
Email: giordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /
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Senior Managing Attorneys
Benjamin D. Cunningham | ben@scelp.org
Leslie S. Lenhardt | leslie@scelp.org

Staff Attorneys
Lauren Megill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

**Clerk, Board of Health
and Environmental Control**

24-RIR-26

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

**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.

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: 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>
To: leslie@scelp.org <leslie@scelp.org>
Cc: Vaughan, David R. <vaughadr@dhec.sc.gov>, Whitehead, Christopher <whitehCP@dhec.sc.gov>, Churdar, Bradley <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,

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

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Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-27, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 49 of White Tract
Phase 1. Permit ID. OSWW010879v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

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Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-27 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
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Email: giordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /
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Leslie S. Lenhardt | leslie@scelp.org

Staff Attorneys
Lauren Megill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

Clerk, Board of Health
and Environmental Control

24-RFR-27

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

**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.

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: 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:

Jason Goff

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

Information collected on this form is subject to public scrutiny or release and the Freedom of Information Act.

ROA 1209

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>
To: leslie@scelp.org <leslie@scelp.org>
Cc: Vaughan, David R. <vaughadr@dhec.sc.gov>, Whitehead, Christopher <whitehCP@dhec.sc.gov>, Churdar, Bradley <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,

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



Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-28, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 50 of White Tract
Phase 1. Permit ID. OSWW010880v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-28 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
4100 Leeds Avenue
North Charleston, SC 29405

Via Electronic Mail Delivery

Jospeh A. Giordano, Esquire
Email: giordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /
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January 17, 2024

RECEIVED

JAN 17 2024

Clerk, Board of Health
and Environmental Control

24-RFR-28

VIA EMAIL

Denise Crawford, Clerk
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Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

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Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Our Mission We use our legal expertise to protect land, water and communities across South Carolina.

Board of Directors - Allen Grumbine, Esq., Chairperson, Amy Fabri, Rajan Govindan, Marilyn Hemingway, Elizabeth Igleheart,
Tom Kester, Bess Lochocki, Esq., Clarkson McDow, Esq., Walton McLeod, Esq., Gerald Schulze, Greg VanDerwerker
Board Member Emeriti - Frances Close, John Mark Dean, Robert Schofield

ROA 1217

**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

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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: 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 1230

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 51.pdf 137 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



Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-29, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 51 of White Tract
Phase 1. Permit ID. OSWW010882v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-29 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
4100 Leeds Avenue
North Charleston, SC 29405

Via Electronic Mail Delivery

Jospeh A. Giordano, Esquire
Email: gjordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /
www.scelp.org

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Senior Managing Attorneys
Benjamin D. Cunningham | ben@scelp.org
Leslie S. Lenhardt | leslie@scelp.org

Staff Attorneys
Lauren McGill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

Our Mission We use our legal expertise to protect land, water and communities across South Carolina.

January 17, 2024

RECEIVED

JAN 17 2024

Clerk, Board of Health
and Environmental Control

24-RFR-29

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Board of Directors - Allen Grunbaine, Esq., Chairperson, Amy Fabri, Rajan Govindan, Marilyn Hemingway, Elizabeth Iggleheart, Tom Kester, Bess Lochocki, Esq., Clarkson McDow, Esq., Walton McLeod, Esq., Gerald Schulze, Greg VanDerwerker
Board Member Emeriti - Frances Close, John Mark Dean, Robert Schofield

**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.

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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:

Jason Goff

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

Information collected on this form is subject to public scrutiny or release and the Freedom of Information Act.

ROA 1247

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>
To: leslie@scelp.org <leslie@scelp.org>
Cc: Vaughan, David R. <vaughadr@dhec.sc.gov>, Whitehead, Christopher <whitehCP@dhec.sc.gov>, Churdar, Bradley <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,

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

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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

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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



Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-30, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 52 of White Tract
Phase 1. Permit ID. OSWW010884v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-30 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
4100 Leeds Avenue
North Charleston, SC 29405

Via Electronic Mail Delivery

Jospeh A. Giordano, Esquire
Email: giordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /

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Benjamin D. Cunningham | ben@scelp.org
Leslie S. Lenhardt | leslie@scelp.org

Staff Attorneys
Lauren McGill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

Clerk, Board of Health
and Environmental Control

24-REF-30

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Board of Directors - Allen Grumbine, Esq., Chairperson, Amy Fabri, Rajan Govindan, Marilyn Hemingway, Elizabeth Igleheart, Tom Kester, Bess Lochocki, Esq., Clarkson McDow, Esq., Walton McLeod, Esq., Gerald Schulze, Greg VanDerwerker
Board Member Emeriti - Frances Close, John Mark Dean, Robert Schofield

ROA 1255

Our Mission We use our legal expertise to protect land, water and communities across South Carolina.

**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

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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 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>
To: leslie@scelp.org <leslie@scelp.org>
Cc: Vaughan, David R. <vaughadr@dhec.sc.gov>, Whitehead, Christopher <whitehCP@dhec.sc.gov>, Churdar, Bradley <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,

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

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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

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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



Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-31, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 53 of White Tract
Phase 1. Permit ID. OSWW010886v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-31 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
4100 Leeds Avenue
North Charleston, SC 29405

Via Electronic Mail Delivery

Jospeh A. Giordano, Esquire
Email: giordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 | (843) 527-0078 |
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Leslie S. Lenhardt | leslie@scelp.org

Staff Attorneys
Lauren Megill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

Clerk, Board of Health
and Environmental Control

24-RFR-31

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Our Mission We use our legal expertise to protect land, water and communities across South Carolina.

Board of Directors - Allen Grumbine, Esq., Chairperson, Amy Fabri, Rajan Govindan, Marilyn Hemingway, Elizabeth Igleheart, Tom Kester, Bess Lochocki, Esq., Clarkson McDow, Esq., Walton McLeod, Esq., Gerald Schulze, Greg VanDerwerker
Board Member Emeriti - Frances Close, John Mark Dean, Robert Schofield

ROA 1274

**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 OSWW010886 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 OSWW010886 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: OSWW010886 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: **Lot:** 53
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-53

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

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

OSWW Permit to Construct (Engineer Designed) lot 48.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 49.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 50.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 51.pdf 137 KB

OSWW Permit to Construct (Engineer Designed) lot 52.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 53.pdf 138 KB

OSWW Permit to Construct (Engineer Designed) lot 54.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

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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



Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-32, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 54 of White Tract
Phase 1. Permit ID. OSWW010887v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-32 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
4100 Leeds Avenue
North Charleston, SC 29405

Via Electronic Mail Delivery

Jospeh A. Giordano, Esquire
Email: giordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /
www.scelp.org

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Senior Managing Attorneys
Benjamin D. Cunningham | ben@scelp.org
Leslie S. Lenhardt | leslie@scelp.org

Staff Attorneys
Lauren Megill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

Clerk, Board of Health
and Environmental Control

24-RFR-32

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Board of Directors - Allen Grumbine, Esq., Chairperson, Amy Fabri, Rajan Govindan, Marilyn Hemingway, Elizabeth Igleheart, Tom Kester, Bess Lochocki, Esq., Clarkson McDow, Esq., Walton McLeod, Esq., Gerald Schulze, Greg VanDerwerker
Board Member Emeriti - Frances Close, John Mark Dean, Robert Schofield

ROA 1293

**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 OSWW010887 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 OSWW010887 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 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: OSWW010887 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: **Lot:** 54
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-54

(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 26, 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 the repair area, see engineer submittal sheet SP54-2 for repair area section.

FW: Pulte - White Tract Phase 1

From: Martinez, Sara <martinsv@dhec.sc.gov>
To: leslie@scelp.org <leslie@scelp.org>
Cc: Vaughan, David R. <vaughadr@dhec.sc.gov>, Whitehead, Christopher <whitehCP@dhec.sc.gov>, Churdar, Bradley <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,

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

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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



Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-33, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 55 of White Tract
Phase 1. Permit ID. OSWW010888v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-33 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
4100 Leeds Avenue
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Via Electronic Mail Delivery

Joseph A. Giordano, Esquire
Email: giordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /

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Lauren Megill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

Clerk, Board of Health
and Environmental Control

24-RPR-33

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Our Mission We use our legal expertise to protect land, water and communities across South Carolina.

Board of Directors - Allen Grumbine, Esq., Chairperson, Amy Fabri, Rajan Govindan, Marilyn Hemingway, Elizabeth Igleheart,
Tom Kester, Bess Lochocki, Esq., Clarkson McDow, Esq., Walton McLeod, Esq., Gerald Schulze, Greg VanDerwerker
Board Member Emeriti - Frances Close, John Mark Dean, Robert Schofield

ROA 1312

**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 OSWW010888 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 OSWW010888 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: OSWW010888 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: **Lot:** 55
GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

Program Code: ALTERNATIVE
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(Parent Parcels to be Subdivided)
Water Supply: Municipal

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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

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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-55

(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 26, 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
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SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-34, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 56 of White Tract
Phase 1. Permit ID. OSWW010889v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-34 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
4100 Leeds Avenue
North Charleston, SC 29405

Via Electronic Mail Delivery

Jospeh A. Giordano, Esquire
Email: gjordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /
www.scelp.org

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Leslie S. Lenhardt | leslie@scelp.org

Staff Attorneys
Lauren McGill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

Clerk, Board of Health
and Environmental Control

24-RFR-34

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Our Mission We use our legal expertise to protect land, water and communities across South Carolina.

Board of Directors - Allen Grunbine, Esq., Chairperson, Amy Fabri, Rajan Govindan, Marilyn Hemingway, Elizabeth Igleheart,
Tom Kester, Bess Lochocki, Esq., Clarkson McDow, Esq., Walton McLeod, Esq., Gerald Schulze, Greg VanDerwerker
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ROA 1331

**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 OSWW010889 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 OSWW010889 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: OSWW010889 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: **Lot:** 56
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-56

(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 26, 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>
To: leslie@scelp.org <leslie@scelp.org>
Cc: Vaughan, David R. <vaughadr@dhec.sc.gov>, Whitehead, Christopher <whitehCP@dhec.sc.gov>,
Churdar, Bradley <churdabd@dhec.sc.gov>
Subject: FW: Pulte - White Tract Phase 1
Date: Tuesday, January 02, 2024 5:55 PM
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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

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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

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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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Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-35, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 57 of White Tract
Phase 1. Permit ID. OSWW010890v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-35 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
4100 Leeds Avenue
North Charleston, SC 29405

Via Electronic Mail Delivery

Jospeh A. Giordano, Esquire
Email: giordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /
www.scelp.org

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Staff Attorneys
Lauren Megill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

Clerk, Board of Health
and Environmental Control

24-RFR-35

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Our Mission We use our legal expertise to protect land, water and communities across South Carolina.

Board of Directors - Allen Grumbine, Esq., Chairperson, Amy Fabri, Rajan Govindan, Marilyn Hemingway, Elizabeth Igleheart, Tom Kester, Bess Lochocki, Esq., Clarkson McDow, Esq., Walton McLeod, Esq., Gerald Schulze, Greg VanDerwerker
Board Member Emeriti - Frances Close, John Mark Dean, Robert Schofield

ROA 1350

**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 OSWW010890 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 OSWW010890 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: OSWW010890 v1.0

County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: **Lot:** 57
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-57

(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:

Jason Goff

Date: October 26, 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>
To: leslie@scelp.org <leslie@scelp.org>
Cc: Vaughan, David R. <vaughadr@dhec.sc.gov>, Whitehead, Christopher <whitehCP@dhec.sc.gov>, Churdar, Bradley <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,

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

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Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-36, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 58 of White Tract
Phase 1. Permit ID. OSWW010891v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

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The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-36 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
4100 Leeds Avenue
North Charleston, SC 29405

Via Electronic Mail Delivery

Joseph A. Giordano, Esquire
Email: giordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /
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Leslie S. Lenhardt | leslie@scelp.org

Staff Attorneys
Lauren Megill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

**Clerk, Board of Health
and Environmental Control**

24-RFIR-36

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Our Mission We use our legal expertise to protect land, water and communities across South Carolina.

Board of Directors - Allen Grumbine, Esq., Chairperson, Amy Fabri, Rajan Govindan, Marilyn Hemmingway, Elizabeth Igleheart,
Tom Kester, Bess Lochocki, Esq., Clarkson McDow, Esq., Walton McLeod, Esq., Gerald Schulze, Greg VanDerwerker
Board Member Emeriti - Frances Close, John Mark Dean, Robert Schofield

ROA 1369

**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 OSWW010891 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 OSWW010891 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 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: OSWW010891 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: **Lot:** 58
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-58

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

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

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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

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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



Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-37, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 59 of White Tract
Phase 1. Permit ID. OSWW010892v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-37 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
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Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /
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Leslie S. Lenhardt | leslie@scelp.org

Staff Attorneys
Lauren Megill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

**Clerk, Board of Health
and Environmental Control**

24-RF12-37

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Our Mission We use our legal expertise to protect land, water and communities across South Carolina.

Board of Directors - Allen Grumbine, Esq., Chairperson, Amy Fabri, Rajan Govindan, Marilyn Hemingway, Elizabeth Igleheart,
Tom Kester, Bess Lochocki, Esq., Clarkson McDow, Esq., Walton McLeod, Esq., Gerald Schulze, Greg VanDerwerker
Board Member Emeriti - Frances Close, John Mark Dean, Robert Schofield

ROA 1388

**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 OSWW010892 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 OSWW010892 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: OSWW010892 v1.0

County: Charleston

Name: Pulte Home Company LLC

Site: Seewee Rd & Bulls Island

Program Code: ALTERNATIVE

Type Facility: Residential

Rd, Awendaw

System Code: 611 ENGINEERED SYS <1500GPD PUMP

Subdivision: White Tract Phase 1

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

Block: **Lot:** 59

(Parent Parcels to be Subdivided)

GPD: 480

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-59

(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:

Jason Goff

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

Information collected on this form is subject to public scrutiny or release and the Freedom of Information Act.

ROA 1399

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,

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

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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 39.pdf 138 KB

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



Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-38, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 60 of White Tract
Phase 1. Permit ID. OSWW010893v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-38 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
4100 Leeds Avenue
North Charleston, SC 29405

Via Electronic Mail Delivery

Jospeh A. Giordano, Esquire
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Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /
www.scelp.org

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Senior Managing Attorneys
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Leslie S. Lenhardt | leslie@scelp.org

Staff Attorneys
Lauren Megill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

Clerk, Board of Health
and Environmental Control

24-RFR 38

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Our Mission We use our legal expertise to protect land, water and communities across South Carolina.

Board of Directors - Allen Grumbine, Esq., Chairperson, Amy Fabri, Rajan Govindan, Marilyn Hemingway, Elizabeth Igleheart,
Tom Kester, Bess Lochocki, Esq., Clarkson McDow, Esq., Walton McLeod, Esq., Gerald Schulze, Greg VanDerwerker
Board Member Emeriti - Frances Close, John Mark Deau, Robert Schofield

ROA 1407

**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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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 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: OSWW010893 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: **Lot:** 60
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-60

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

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

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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

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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



Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-39, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 61 of White Tract
Phase 1. Permit ID. OSWW010894v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-39 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
4100 Leeds Avenue
North Charleston, SC 29405

Via Electronic Mail Delivery

Jospeh A. Giordano, Esquire
Email: giordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /
www.scelp.org

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Senior Managing Attorneys
Benjamin D. Cunningham | ben@scelp.org
Leslie S. Lenhardt | leslie@scelp.org

Staff Attorneys
Lauren Megill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

**Clerk, Board of Health
and Environmental Control**

24-RFR-39

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Board of Directors - Allen Grumbine, Esq., Chairperson, Amy Fabri, Rajan Govindan, Marilyn Henningway, Elizabeth Igleheart,
Tom Kester, Bess Lochocki, Esq., Clarkson McDow, Esq., Walton McLeod, Esq., Gerald Schulze, Greg VanDerwerker
Board Member Emeriti - Frances Close, John Mark Dean, Robert Schofield

ROA 1426

**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 OSWW010894 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 OSWW010894 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.

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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).

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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

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 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: OSWW010894 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: **Lot:** 61
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-61

(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:

Jason Goff

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

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

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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

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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



Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-40, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 62 of White Tract
Phase 1. Permit ID. OSWW010895v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-40 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
4100 Leeds Avenue
North Charleston, SC 29405

Via Electronic Mail Delivery

Jospeh A. Giordano, Esquire
Email: giordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /
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Benjamin D. Cunningham | ben@scelp.org
Leslie S. Lenhardt | leslie@scelp.org

Staff Attorneys
Lauren Megill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

Clerk, Board of Health
and Environmental Control

24-RFR-40

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Our Mission We use our legal expertise to protect land, water and communities across South Carolina.

Board of Directors - Allen Grumbine, Esq., Chairperson, Amy Fabri, Rajan Govindan, Marilyn Hemingway, Elizabeth Igleheart, Tom Kester, Bess Lochocki, Esq., Clarkson McDow, Esq., Walton McLeod, Esq., Gerald Schulze, Greg VanDerwerker
Board Member Emeriti - Frances Close, John Mark Deau, Robert Schofield

ROA 1445

**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 OSWW010895 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 OSWW010895 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:

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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:

- 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: OSWW010895 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: **Lot:** 62
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-62

(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:

Jason Goff

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

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



Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye, II, P.E., Secretary

Board:
J.B. (Sonny) Kinney
Morris E. Brown, III, MD, FAAFP
William D. Richmond, MD

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Coastal Conservation League, Requestor
Leslie Lenhardt and Amy Armstrong, Attorneys for Requestor

Pulte Homes Company, LLC, Permittee

Joseph Giordano and Sara Martinez, Attorneys for the Department

FROM: M. Denise Crawford, Clerk of the Board *M. Denise Crawford*

RE: **Docket No. 24-RFR-41, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 63 of White Tract
Phase 1. Permit ID. OSWW010897v.1.0, Charleston County

DATE: January 22, 2024

A Request for Final Review of the above-referenced decision was filed on January 17, 2024. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference on this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference on this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

CERTIFICATE OF SERVICE

I, M. Denise Crawford, Clerk of the South Carolina Board of Health and Environmental Control and an employee of the South Carolina Department of Health Environmental Control, hereby certify that I have this 22nd day of January 2024 served the foregoing Acknowledgment of Request for Final Review and Notice of Procedures – Docket No. 24-RFR-41 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
Mount Pleasant, SC 29464

Via Electronic Mail Delivery

Pulte Homes Company, LLC
Justin Smith
Email: Justin.Smith@PulteGroup.com
Sid Dudley
Email: sidney.dudley@pultegroup.com
Grace Bodiford
Email: grace@onsitesepticengineering.com
Caleb Rodgers
Email: caleb@onsitesepticengineering.com
4100 Leeds Avenue
North Charleston, SC 29405

Via Electronic Mail Delivery

Jospeh A. Giordano, Esquire
Email: gjordaja@dhec.sc.gov
Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201



M. Denise Crawford, Clerk of the Board
S.C. Board of Health and Environmental Control

January 22, 2024
Columbia, South Carolina



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /
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Executive Director & General Counsel
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Senior Managing Attorneys
Benjamin D. Cunningham | ben@scelp.org
Leslie S. Lenhardt | leslie@scelp.org

Staff Attorneys
Lauren Megill Milton | lauren@scelp.org
Emily S. Poole | emily@scelp.org

January 17, 2024

RECEIVED

JAN 17 2024

**Clerk, Board of Health
and Environmental Control**

24-RFR-41

VIA EMAIL

Denise Crawford, Clerk
2600 Bull Street
Columbia, SC 29201

RE: Requests for Final Review Conference, Filing Fees
Pulte Homes, LLC Permits to Construct Onsite Wastewater Systems

Dear Ms. Crawford:

Please find attached for filing 44 Requests for Final Review. The Dropbox file sharing link is being provided in the transmittal email. The filing fees were sent to DHEC via FedEx. Thank you for your assistance with this matter.

Respectfully,

Leslie Lenhardt
Senior Managing Attorney

Attachments

cc: Sara Martinez, Esq.

Board of Directors - Allen Grumbine, Esq., Chairperson, Amy Fabri, Rajan Govindan, Marilyn Hemingway, Elizabeth Igleheart,
Tom Kester, Bess Lochocki, Esq., Clarkson McDow, Esq., Walton McLeod, Esq., Gerald Schulze, Greg VanDerwerker
Board Member Emeriti - Frances Close, John Mark Dean, Robert Schofield

ROA 1464

**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 OSWW010897 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 OSWW010897 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 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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S.C. Environmental Law Project
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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: OSWW010897 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: **Lot:** 63
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-63

(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: _____

Jason Goff

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>
To: leslie@scelp.org <leslie@scelp.org>
Cc: Vaughan, David R. <vaughadr@dhec.sc.gov>, Whitehead, Christopher <whitehCP@dhec.sc.gov>, Churdar, Bradley <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,

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

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