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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Appellate Case No.: 2025-000379

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

South Carolina Coastal Conservation League

v.

Appellant,

South Carolina Department of Environmental Services
and Pulte Homes, LLC

Respondents.

RECORD ON APPEAL
VOLUME IV

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

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-42, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 64 of White Tract Phase 1. Permit ID. OSWW010900v.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-42 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**

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January 17, 2024

RECEIVED

JAN 17 2024

Clerk, Board of Health
and Environmental Control

24-RFR-42

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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**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 OSWW010900 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 OSWW010900 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.

GROUNDNS 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,



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Attorneys for Petitioner

January 17, 2024



**PERMIT TO CONSTRUCT
Onsite Wastewater System**

Permit ID: OSWW010900 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: **Lot:** 64
GDP: 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-64

(Project Number)

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

Reviewed By:

Date: October 24, 2023

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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

FW: Pulte - White Tract Phase 1

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

Leslie,

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

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



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

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

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

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 1496

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-43, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 65 of White Tract Phase 1. Permit ID. OSWW010901v.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-43 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
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Caleb Rodgers
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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

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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-43

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 OSWW010901 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 OSWW010901 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 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: OSWW010901 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: **Lot:** 65
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-65

(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 23, 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>](mailto:vaughadr@dhec.sc.gov)

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

To: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)

Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 1515

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-44, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 66 of White Tract Phase 1. Permit ID. OSWW010903v.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-44 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

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Via Electronic Mail Delivery

Jospeh A. Giordano, Esquire
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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

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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-44

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

**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 OSWW010903 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 OSWW010903 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.

GROUNDNS 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: OSWW010903 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: 66		(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-66

(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 23, 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

Repair area zone of saturation depth is zero inches, requiring a different installation configuration than the primary septic area. See repair section sheet SP66-2 of engineered plan for details.

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>](mailto:vaughadr@dhec.sc.gov)
Sent: Tuesday, January 2, 2024 2:54 PM
To: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 1534

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

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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 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-45, Pulte Homes Company, LLC**
Issuance of a permit to construct an onsite wastewater system at lot 67 of White Tract Phase 1. Permit ID. OSWW010904v.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-45 upon all parties and counsel of record as indicated below.

Via Electronic Mail Delivery

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
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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

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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-45

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 1540

**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 OSWW010904 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 OSWW010904 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 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: OSWW010904 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: Lot: 67
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-67

(Project Number)

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

Reviewed By:

Date: October 18, 2023

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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

FW: Pulte - White Tract Phase 1

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

Leslie,

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

Let me know if you would like to discuss.

Regards,

Sara V. Martinez

Chief Counsel for Environmental Affairs

S.C. Dept. of Health & Environmental Control

2600 Bull Street

Columbia, SC 29201

office: (803) 898-0288

cell: (803) 465-2822

connect: www.scdhec.gov



From: [Vaughan, David R. <vaughadr@dhec.sc.gov>](mailto:vaughadr@dhec.sc.gov)
Sent: Tuesday, January 2, 2024 2:54 PM
To: [Martinez, Sara <martinsv@dhec.sc.gov>](mailto:martinsv@dhec.sc.gov)
Subject: Fw: Pulte - White Tract Phase 1

Hi Sara,

ROA 1553

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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resquest for notification white tract septic tanks.pdf 120 KB

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

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

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

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

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

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

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

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

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

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

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

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

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

**BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
STAFF RESPONSE TO REQUEST FOR REVIEW**

Docket Nos.

24-RFR-02, 24-RFR-03, 24-RFR-04, 24-RFR-05, 24-RFR-06, 24-RFR-07, 24-RFR-08, 24-RFR-09,
24-RFR-10, 24-RFR-11, 24-RFR-12, 24-RFR-13, 24-RFR-14, 24-RFR-15, 24-RFR-16, 24-RFR-17,
24-RFR-18, 24-RFR-19, 24-RFR-20, 24-RFR-21, 24-RFR-22, 24-RFR-23, 24-RFR-24, 24-RFR-25,
24-RFR-26, 24-RFR-27, 24-RFR-28, 24-RFR-29, 24-RFR-30, 24-RFR-31, 24-RFR-32, 24-RFR-33,
24-RFR-34, 24-RFR-35, 24-RFR-36, 24-RFR-37, 24-RFR-38, 24-RFR-39, 24-RFR-40, 24-RFR-41,
24-RFR-42, 24-RFR-43, 24-RFR-44, and 24-RFR-45

Requestor:

Coastal Conservation League

RECEIVED

Summary of Staff Decision submitted by:

David R. Vaughan, Director of the BEHS Division of Onsite Wastewater

FEB 05 2024

Clerk, Board of Health
and Environmental Control

SUMMARY:

These Requests for Review (“RFRs”) challenge forty-four permits to construct onsite wastewater systems (“Permits”) issued by the South Carolina Department of Health and Environmental Control (“Department”) to Pulte Homes, LLC (“Applicant”) for the construction of specialized onsite wastewater systems with peak flow less than 1500 gallons per day (“OSWW systems”) to serve residences to be located on lots located in the subdivision known as White Tract Phase 1 in Awendaw, South Carolina in Charleston County, Tax Map #s 644-00-00-023 & 644-00-00-025.

The RFRs allege the issuance of the Permits is contrary to statutory and regulatory provisions, because the Department did not conduct a coastal zone consistency review of the applications and did not place the applications on public notice. The RFRs do not argue that the issuance of the Permits was otherwise inappropriate or that the Department did not properly follow S.C. Code Ann. Regs. 61-56, which sets forth the applicable onsite wastewater permitting requirements.

As explained herein, the Permits are not subject to a coastal zone consistency review pursuant to the Department’s established regulations and policies for reviewing projects in the coastal zone. The Department thoroughly evaluated the applications and issued the Permits after confirming they comply with all regulatory requirements based on the consulting professional engineer’s system design, certification, and supporting documentation.

RELEVANT CHRONOLOGY:

- **September 2023** – The Department received the applications, plans, and supporting documentation for specialized onsite wastewater systems. The designs, certifications, and other supporting documentation for the applications were supplied by a licensed professional engineer with CPR Engineering Solutions, LLC, and a licensed professional soil classifier.
- **September through December 2023** – The Department reviewed the applications to ensure they met all statutory and regulatory requirements.

- **December 21, 2023, and January 2, 2024** – The Department issued the Permits to the Applicant.
- **January 2, 2024** – The Department provided notice of the permit issuances to Requestor’s counsel.
- **January 17, 2024** – Requestor’s counsel filed the RFRs.

RELEVANT LAW:

- *S.C. Pollution Control Act*, S.C. Code Ann. §§ 48-1-10 *et seq.* charges the Department with overseeing the permitting, construction, and operation of onsite wastewater systems.
- S.C. Code Ann. Regs. 61-56, *Onsite Wastewater Systems* (“R. 61-56”) sets forth the applicable onsite wastewater permitting requirements, which ensure wastewater can be rendered ecologically safe and public health can be protected.
- *Coastal Tidelands and Wetlands Act*, S.C. Code Ann. §§ 48-39-10 *et seq.* directs the Department to develop a comprehensive coastal management program and to establish regulations and policies for reviewing projects within the coastal zone. Specifically, “the Department shall have the **authority** to review all state and federal permit applications in the coastal zone and to certify that these do not contravene the management plan.” (emphasis added). Of note, the Department is not **required** to review all permits.
- The *South Carolina Coastal Zone Management Program* (“CZMP”) document identifies the specific state agency permits that are subject to review and certification for coastal zone consistency. It requires a coastal zone consistency review of permits for wastewater treatment systems and septic tanks that handle **more than 1,500 gallons per day** or handle **other than domestic waste**.

STAFF RESPONSE:

The Department’s onsite wastewater program permits the construction and operation of onsite wastewater systems in accordance with R. 61-56. This regulation establishes a comprehensive framework of system standards, permit procedures, minimum conditions, and other requirements. The RFRs allege, without basis, that the Department permits septic systems without regard to the water table, soil characteristics, geography, or water quality. Quite the opposite, R. 61-56 includes a range of size and material specifications, minimum site conditions, setbacks, and other provisions followed by the Department which are designed to protect the environment and public health from potential wastewater discharges. Contrary to the assertions in the RFR and as a matter of law, a coastal zone consistency review is **not** required for an onsite wastewater system that handles less than 1,500 gallons per day and handles domestic waste only.

Of note, the Requestor brought a civil action in the Charleston County Court of Common Pleas based on nearly identical grounds to those cited in the RFRs. In that action, the Requestor and the Charleston Waterkeeper seek declaratory judgment and injunctive relief, contrary to established law, that the Department is required to conduct a coastal zone consistency review for each permit for an individual onsite wastewater system. The civil action also alleges the Department’s failure to provide a public notice for each septic tank application forecloses the public of a meaningful opportunity to be heard and for subsequent judicial review. Requestor and the Charleston Waterkeeper sought a preliminary injunction from the Court to “prohibit[] the Department from permitting individual ‘small’ onsite wastewater systems

that are part of an LCP or within 200 feet of a Water of the State in the coastal zone during the pendency of this action.” The court denied the injunctive relief sought finding that the statutes are unambiguously worded and it is beyond the Court's power to effect a change in the statutes enacted by the Legislature. The civil action remains pending as the Court has not yet fully adjudicated the case.

Without waiving any jurisdictional issues, the Department responds to the specific allegations of the RFRs as follows:

I. The Permits are not subject to review for consistency with the CZMP, because the law establishes that such review is not required for onsite wastewater systems handling less than 1500 gallons per day. Requestor's disagreement with this minimum threshold does not establish noncompliance with the CZMP.

Section 48-39-80 of the Coastal Tidelands and Wetlands Act directs the Department to develop a comprehensive coastal management program and to establish regulations and policies for reviewing projects both within the Department's direct critical area authority and within the Department's indirect authority in the coastal zone. Section 48-39-80(B)(11) specifically states that “the department shall have the **authority** to review all state and federal permit applications in the coastal zone, and to certify that these do not contravene the management plan.” The expression of this authority is refined in Chapter V of the CZMP document, which identifies specific state agency permits that are subject to review and certification. The CZMP was enacted in accordance with statutory procedures and is “valid and enforceable” as written. *Spectre, LLC v. S.C. Dep't of Health & Env't Control*, 386 S.C. 357, 370-71, 373 (2010).

The RFRs blatantly ignore the minimum threshold for requiring a coastal zone consistency certification set forth in the legally valid and enforceable CZMP Document, which list of permits subject to review does include permits for all wastewater treatment systems or septic tanks but only those that handle more than 1,500 gallons per day or handle effluent other than domestic waste. In other words, smaller systems for the treatment of domestic wastewater are exempt from coastal zone consistency review based upon the approved CZMP document. This exemption has long been in place and has been upheld as properly accounting for factors, including the Department's lack of direct control or authority over sewage treatment and disposal, the sheer number of septic tank permits issued within the coastal zone, and the design of R. 61-56 “to insure that state water quality standards in adjacent water bodies must be maintained.” *N. Beaufort Cnty. Comm. v. S.C. Dep't of Health & Env't Control*, No. 96-ALJ-07-0117-CC (S.C. Admin. L. Ct., Oct. 28, 1996) (Kittrell, J.).

The RFRs argue that the Coastal Tidelands and Wetlands Act directs DHEC to “take into account ‘all lands and waters in the coastal zone,’ which encompasses all eight coastal counties” and 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.” The RFRs wrongfully assume the Department did not consider the environmental consequences of a minimum threshold in developing the CZMP because the Department elected not to require a coastal zone consistency certification for *all* septic tank permits and “small” onsite wastewater systems, but rather only for those that exceed 1500 gallons per day. On the contrary, the Department did in fact “[d]evelop a system whereby the department shall have the authority to review all state and federal permit applications in the coastal zone, and to certify that these do not

contravene the management plan” in compliance with S.C. Code Ann. § 48-39-80(B)(11). This statutory mandate requires the Department to “*consider* all lands and waters in the coastal zone for planning purposes.” S.C. Code Ann. § 48-39-80(B). (Emphasis added). Manifestly, the Department considered the environmental implications of septic tanks and “small” onsite wastewater systems and concluded that 1500 gallons per day (or less) is the point when a coastal zone consistency certification is *not* required. Plaintiffs’ disagreement with this minimum threshold is not proof of the Department’s noncompliance with S.C. Code Ann. § 48-39-80.

II. State law does not require the Department to issue public notices for each septic tank permit application. The Department meets minimum standards of due process with respect to these applications through other statutes designed to provide transparency and public participation in the Department’s decision making processes.

The RFRs allege the Department’s failure to issue a formal public notice for the Permits violates constitutional rights to due process. To substantiate this claim, the RFRs unreasonably equate a lack of formal public notice procedure for each septic application with an inability to receive notice of a septic tank permitting decision or the inability to timely challenge that decision. This is unfair given that there are multiple state statutes applicable to and followed by the Department, which promote transparency and public participation in the decision-making process. In addition to making a request for septic tank records such as applications or permitting decisions via the Department’s freedom of information office, any member of the public may request notice of permitting decisions through the straight-forward process established in Section 44-1-60(E)(1). These statutory provisions offer a meaningful opportunity for the public to be heard and for subsequent judicial review of permitting decisions. An example of these statutes in practice is found here where the Requestor brought these RFRs after requesting and receiving notice of the permitting decisions and electing to pursue the statutory procedure for review of these decisions.

REQUESTED ACTION:

Department staff respectfully requests the Board deny the Request for Final Review Conference, or in the event the matter is heard, that the Board uphold the issuance of the Permits.

Respectfully submitted,

David R. Vaughan

David R. Vaughan, Director
BEHS Division of Onsite Wastewater

Sara V. Martinez

Sara V. Martinez
Chief Counsel for Environmental Affairs

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Coastal Conservation League,	)	Docket No. 22-ALJ-07-___-CC
)	
)	
Petitioner,)	
v.)	
)	
South Carolina Department of Health and	)	REQUEST FOR CONTESTED
Environmental Control and	)	CASE HEARING
Pulte Homes LLC,)	
)	
Respondents.)	
_____)	

TO: THE ADMINISTRATIVE LAW COURT AND THE RESPONDENTS:

The Coastal Conservation League ("Petitioner"), pursuant to S.C. Code Ann. § 44-1-60 and Rule 11 of the Rules of Procedure for the Administrative Law Court, hereby requests a contested case hearing to review the decision of the Respondent South Carolina Department of Health and Environmental Control ("DHEC") to issue Permit No. OSWW010845 v1.0 to Construct Onsite Wastewater System (the "Permit") to Respondent Pulte Homes LLC ("Pulte").

I. Background

Pulte Homes LLC, the permittee, is the purported owner of approximately 233.45 acres known as the "White Tract," located in Awendaw, South Carolina, proximate to the Intracoastal Waterway and within one mile of Cape Romain National Wildlife Refuge. The Permit, along with 43 other septic tank permits, facilitates the development of 204 single-family homes, all serviced by individual septic systems, on lots ranging from 0.325 to 0.934 acres.

The Petitioner submits that the issuance of the Permit contravenes several statutory and regulatory mandates, chiefly failing to conduct the requisite Coastal Zone Consistency review as mandated by the Coastal Tidelands and Wetlands Act of 1977 (the "Act"), S.C. Code Ann. § 48-39-80, thereby violating not only specific provisions of the Act but also the broader policies of the Coastal Management Program.

II. The League's Interests and Involvement

The Coastal Conservation League, a non-profit organization dedicated to protecting South Carolina's coastal resources, asserts a significant interest in this matter. The League's over 4,000 members, who reside, recreate, and rely on the waters and wetlands around Bulls Bay and Cape Romain National Wildlife Refuge, are directly impacted by the potential for pollution and environmental degradation posed by the improperly reviewed and issued permits.

III. Grounds for Reversal

A. The Denial Does Not Comply with 48-39-10(B)

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" where OCRM has direct permitting 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.

B. 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.

C. 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)).

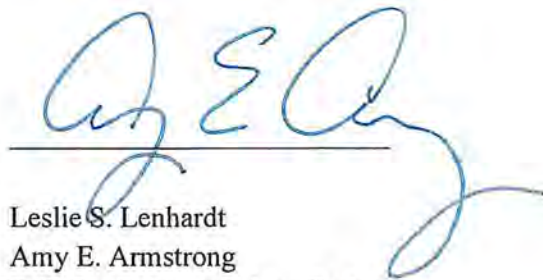
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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, the Coastal Conservation League respectfully requests that this Court conduct a contested case hearing on the Permit and reverse the Department of Health and Environmental Control's decision to issue the Permit to Pulte Homes LLC, thereby upholding the statutory and regulatory protections intended to safeguard South Carolina's coastal resources.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Leslie S. Lenhardt', is written over a horizontal line.

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

Mount Pleasant, South Carolina
April 5, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010845 v1.0

County: Charleston

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

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

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

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

9/12/2023

(Plan Date)

21-421-SD-24

(Project Number)

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

Reviewed By:

Tee Thompson

Date: October 05, 2023

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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

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



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

March 6, 2024

Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1424 7853 72

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 and US Mail

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Email: mshahid@maynardnexsen.com
Cheryl D. Shoun, Esquire
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Via Electronic Mail

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

RE: Docket No. 24-RFR-02, Pulte Homes Company, LLC
Issuance of a permit to construct an onsite wastewater system at lot 24 of White Tract
Phase 1. Permit ID. OSWW010845v.1.0, Charleston County

Counsel of Record:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review
Conference on the above-referenced matter.



CONTESTED CASE GUIDANCE

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



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

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Coastal Conservation League,	)	Docket No. 22-ALJ-07-___-CC
)	
)	
Petitioner,)	
v.)	
)	
South Carolina Department of Health and	)	REQUEST FOR CONTESTED
Environmental Control and	)	CASE HEARING
Pulte Homes LLC,)	
)	
Respondents.)	
_____)	

TO: THE ADMINISTRATIVE LAW COURT AND THE RESPONDENTS:

The Coastal Conservation League ("Petitioner"), pursuant to S.C. Code Ann. § 44-1-60 and Rule 11 of the Rules of Procedure for the Administrative Law Court, hereby requests a contested case hearing to review the decision of the Respondent South Carolina Department of Health and Environmental Control ("DHEC") to issue Permit No. OSWW010846 v1.0 to Construct Onsite Wastewater System (the "Permit") to Respondent Pulte Homes LLC ("Pulte").

I. Background

Pulte Homes LLC, the permittee, is the purported owner of approximately 233.45 acres known as the "White Tract," located in Awendaw, South Carolina, proximate to the Intracoastal Waterway and within one mile of Cape Romain National Wildlife Refuge. The Permit, along with 43 other septic tank permits, facilitates the development of 204 single-family homes, all serviced by individual septic systems, on lots ranging from 0.325 to 0.934 acres.

The Petitioner submits that the issuance of the Permit contravenes several statutory and regulatory mandates, chiefly failing to conduct the requisite Coastal Zone Consistency review as mandated by the Coastal Tidelands and Wetlands Act of 1977 (the "Act"), S.C. Code Ann. § 48-39-80, thereby violating not only specific provisions of the Act but also the broader policies of the Coastal Management Program.

II. The League's Interests and Involvement

The Coastal Conservation League, a non-profit organization dedicated to protecting South Carolina's coastal resources, asserts a significant interest in this matter. The League's over 4,000 members, who reside, recreate, and rely on the waters and wetlands around Bulls Bay and Cape Romain National Wildlife Refuge, are directly impacted by the potential for pollution and environmental degradation posed by the improperly reviewed and issued permits.

III. Grounds for Reversal

A. The Denial Does Not Comply with 48-39-10(B)

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" where OCRM has direct permitting 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.

B. 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.

C. 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)).

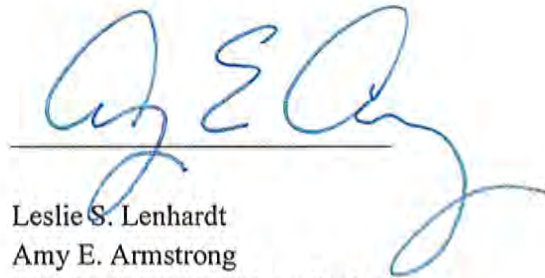
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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, the Coastal Conservation League respectfully requests that this Court conduct a contested case hearing on the Permit and reverse the Department of Health and Environmental Control's decision to issue the Permit to Pulte Homes LLC, thereby upholding the statutory and regulatory protections intended to safeguard South Carolina's coastal resources.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Leslie S. Lenhardt', is written over a horizontal line. The signature is stylized and cursive.

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

Mount Pleasant, South Carolina
April 5, 2024



**PERMIT TO CONSTRUCT
Onsite Wastewater System**

Permit ID: OSWW010846 v1.0
County: Charleston

Name: Pulte Home Company LLC	Site: Seewee Rd & Bulls Island Rd , Awendaw, SC	Program Code: ALTERNATIVE
Type Facility: Residential		System Code: 611 ENGINEERED SYS <1500GPD PUMP
Subdivision: White Tract Phase 1		TM #: 644-00-00-023 & 644-00-00-025 (Parent Parcels to be Subdivided)
Block: Lot: 25		Water Supply: Municipal
GPD: 480		

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

9/12/2023

(Plan Date)

21-421-SD-G3

(Project Number)

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

Reviewed By:

Tee Thompson

Date: October 05, 2023

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

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

ROA 1579

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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

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



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

March 6, 2024

Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1424 7925 54

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 Amy Armstrong, Esquire
 Email: amy@scelp.org
 South Carolina Environmental Law Project
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 Sara V. Martinez, Esquire
 Email: martinsv@dhec.sc.gov
 SCHEC – Office of General Counsel
 2600 Bull Street
 Columbia, SC 29201

RE: Docket No. 24-RFR-03, Pulte Homes Company, LLC
 Issuance of a permit to construct an onsite wastewater system at lot 25 of White Tract
 Phase 1. Permit ID. OSWW010845v.1.0, Charleston County

Counsel of Record:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.



CONTESTED CASE GUIDANCE

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



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

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Coastal Conservation League,	)	Docket No. 22-ALJ-07-___-CC
)	
)	
Petitioner,)	
v.)	
)	
South Carolina Department of Health and	)	REQUEST FOR CONTESTED
Environmental Control and	)	CASE HEARING
Pulte Homes LLC,)	
)	
Respondents.)	
_____)	

TO: THE ADMINISTRATIVE LAW COURT AND THE RESPONDENTS:

The Coastal Conservation League ("Petitioner"), pursuant to S.C. Code Ann. § 44-1-60 and Rule 11 of the Rules of Procedure for the Administrative Law Court, hereby requests a contested case hearing to review the decision of the Respondent South Carolina Department of Health and Environmental Control ("DHEC") to issue Permit No. OSWW010848 v1.0 to Construct Onsite Wastewater System (the "Permit") to Respondent Pulte Homes LLC ("Pulte").

I. Background

Pulte Homes LLC, the permittee, is the purported owner of approximately 233.45 acres known as the "White Tract," located in Awendaw, South Carolina, proximate to the Intracoastal Waterway and within one mile of Cape Romain National Wildlife Refuge. The Permit, along with 43 other septic tank permits, facilitates the development of 204 single-family homes, all serviced by individual septic systems, on lots ranging from 0.325 to 0.934 acres.

The Petitioner submits that the issuance of the Permit contravenes several statutory and regulatory mandates, chiefly failing to conduct the requisite Coastal Zone Consistency review as mandated by the Coastal Tidelands and Wetlands Act of 1977 (the "Act"), S.C. Code Ann. § 48-39-80, thereby violating not only specific provisions of the Act but also the broader policies of the Coastal Management Program.

II. The League's Interests and Involvement

The Coastal Conservation League, a non-profit organization dedicated to protecting South Carolina's coastal resources, asserts a significant interest in this matter. The League's over 4,000 members, who reside, recreate, and rely on the waters and wetlands around Bulls Bay and Cape Romain National Wildlife Refuge, are directly impacted by the potential for pollution and environmental degradation posed by the improperly reviewed and issued permits.

III. Grounds for Reversal

A. The Denial Does Not Comply with 48-39-10(B)

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" where OCRM has direct permitting 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.

B. 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;
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- 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.

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

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In

particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

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

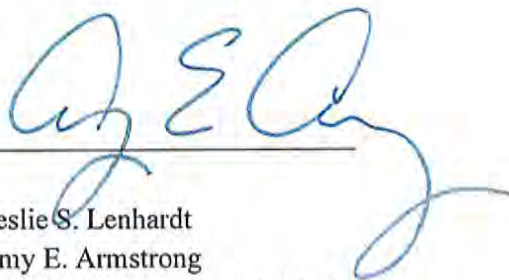
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To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. See, e.g., *Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice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

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

WHEREFORE, the Coastal Conservation League respectfully requests that this Court conduct a contested case hearing on the Permit and reverse the Department of Health and Environmental Control's decision to issue the Permit to Pulte Homes LLC, thereby upholding the statutory and regulatory protections intended to safeguard South Carolina's coastal resources.

Respectfully submitted,

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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

Mount Pleasant, South Carolina
April 5, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010848 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: **Lot:** 26
GPD: 480

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

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

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

9/12/2023

(Plan Date)

21-421-SD-26

(Project Number)

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

Reviewed By:

Tee Thompson

Date: October 05, 2023

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

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

- *Do not install under wet soil conditions. Minimum 9" cover over system after installation. 75' setback from all private wells. 100' setback from public wells.*
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Board:
 J.B. (Sonny) Kinney
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March 6, 2024

Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1424 7926 15

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

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

RE: Docket No. 24-RFR-04, Pulte Homes Company, LLC
 Issuance of a permit to construct an onsite wastewater system at lot 26 of White Tract
 Phase 1. Permit ID. OSWW010845v.1.0, Charleston County

Counsel of Record:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.



CONTESTED CASE GUIDANCE

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Columbia, SC 29201

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Sincerely,



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

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Coastal Conservation League,	)	Docket No. 22-ALJ-07-___-CC
)	
)	
Petitioner,)	
v.)	
)	
South Carolina Department of Health and)	REQUEST FOR CONTESTED CASE HEARING
Environmental Control and)	
Pulte Homes LLC,)	
)	
Respondents.)	
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TO: THE ADMINISTRATIVE LAW COURT AND THE RESPONDENTS:

The Coastal Conservation League ("Petitioner"), pursuant to S.C. Code Ann. § 44-1-60 and Rule 11 of the Rules of Procedure for the Administrative Law Court, hereby requests a contested case hearing to review the decision of the Respondent South Carolina Department of Health and Environmental Control ("DHEC") to issue Permit No. OSWW010850 v1.0 to Construct Onsite Wastewater System (the "Permit") to Respondent Pulte Homes LLC ("Pulte").

I. Background

Pulte Homes LLC, the permittee, is the purported owner of approximately 233.45 acres known as the "White Tract," located in Awendaw, South Carolina, proximate to the Intracoastal Waterway and within one mile of Cape Romain National Wildlife Refuge. The Permit, along with 43 other septic tank permits, facilitates the development of 204 single-family homes, all serviced by individual septic systems, on lots ranging from 0.325 to 0.934 acres.

The Petitioner submits that the issuance of the Permit contravenes several statutory and regulatory mandates, chiefly failing to conduct the requisite Coastal Zone Consistency review as mandated by the Coastal Tidelands and Wetlands Act of 1977 (the "Act"), S.C. Code Ann. § 48-39-80, thereby violating not only specific provisions of the Act but also the broader policies of the Coastal Management Program.

II. The League's Interests and Involvement

The Coastal Conservation League, a non-profit organization dedicated to protecting South Carolina's coastal resources, asserts a significant interest in this matter. The League's over 4,000 members, who reside, recreate, and rely on the waters and wetlands around Bulls Bay and Cape Romain National Wildlife Refuge, are directly impacted by the potential for pollution and environmental degradation posed by the improperly reviewed and issued permits.

III. Grounds for Reversal

A. The Denial Does Not Comply with 48-39-10(B)

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" where OCRM has direct permitting 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.

B. 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.

C. 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)).

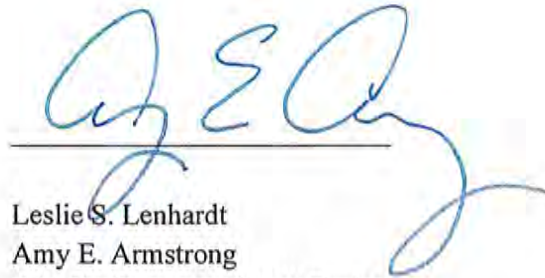
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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, the Coastal Conservation League respectfully requests that this Court conduct a contested case hearing on the Permit and reverse the Department of Health and Environmental Control's decision to issue the Permit to Pulte Homes LLC, thereby upholding the statutory and regulatory protections intended to safeguard South Carolina's coastal resources.

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@sceip.org

Mount Pleasant, South Carolina
April 5, 2024



**PERMIT TO CONSTRUCT
Onsite Wastewater System**

Permit ID: OSWW010850 v1.0
County: Charleston

Name: Pulte Home Company LLC	Site: Seewee Rd & Bulls Island	Program Code: ALTERNATIVE
Type Facility: Residential	Rd, Awendaw, SC	System Code: 611 ENGINEERED SYS <1500GPD PUMP
Subdivision: White Tract Phase 1		TM #: 644-00-00-023 & 644-00-00-025
Block: Lot: 27		(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)

9/12/2023

(Plan Date)

21-421-SD

(Project Number)

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

Reviewed By:

Tee Thompson

Date: October 05, 2023

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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

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



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

March 6, 2024

Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1424 7926 39

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 and US Mail

Mary D. Shahid, Esquire
Email: mshahid@maynardnexsen.com
Cheryl D. Shoun, Esquire
Email: cshoun@maynardnexsen.com
Post Office Box 486
Charleston, SC 29402

Via Electronic Mail

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

RE: Docket No. 24-RFR-05, Pulte Homes Company, LLC
Issuance of a permit to construct an onsite wastewater system at lot 27 of White Tract
Phase 1. Permit ID. OSWW010845v.1.0, Charleston County

Counsel of Record:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.



CONTESTED CASE GUIDANCE

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

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South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

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ADMINISTRATIVE LAW COURT

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South Carolina Department of Health and)	REQUEST FOR CONTESTED
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Pulte Homes LLC,)	
)	
Respondents.)	
_____)		

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I. Background

Pulte Homes LLC, the permittee, is the purported owner of approximately 233.45 acres known as the "White Tract," located in Awendaw, South Carolina, proximate to the Intracoastal Waterway and within one mile of Cape Romain National Wildlife Refuge. The Permit, along with 43 other septic tank permits, facilitates the development of 204 single-family homes, all serviced by individual septic systems, on lots ranging from 0.325 to 0.934 acres.

The Petitioner submits that the issuance of the Permit contravenes several statutory and regulatory mandates, chiefly failing to conduct the requisite Coastal Zone Consistency review as mandated by the Coastal Tidelands and Wetlands Act of 1977 (the "Act"), S.C. Code Ann. § 48-39-80, thereby violating not only specific provisions of the Act but also the broader policies of the Coastal Management Program.

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III. Grounds for Reversal

A. The Denial Does Not Comply with 48-39-10(B)

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" where OCRM has direct permitting 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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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.

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

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2) "the extent to which the project will have adverse impacts on the 'critical areas' (beach/dune system, coastal waters, tidelands);

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7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;

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

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

The Act directs that "[t]he department shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program in accordance with the

provisions of this chapter and any rules and regulations promulgated under this chapter.” S.C. Code Ann. § 48-39-80 (emphasis added). Therefore, permits issued in the eight coastal counties and subject Coastal Zone Consistency Review must be consistent with the policies in the Act itself. Subsection (B), prior to identifying specific policies, states that the policies must be “followed in the implementation of this Chapter[.]” S.C. Code Ann. § 48-39-30(B). The policies that must be followed include:

- 1) To promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;
- 2) To protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations;
- 3) To formulate a comprehensive tidelands protection program.

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

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

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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.

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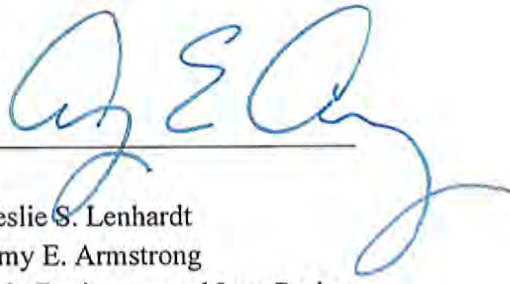
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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, the Coastal Conservation League respectfully requests that this Court conduct a contested case hearing on the Permit and reverse the Department of Health and Environmental Control's decision to issue the Permit to Pulte Homes LLC, thereby upholding the statutory and regulatory protections intended to safeguard South Carolina's coastal resources.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Leslie S. Lenhardt', is written over a horizontal line.

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

Mount Pleasant, South Carolina
April 5, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010852 v1.0
County: Charleston

Name: Pulte Home Company LLC	Site: Seewee Rd & Bulls Island Rd, Awendaw	Program Code: ALTERNATIVE
Type Facility: Residential		System Code: 611 ENGINEERED SYS <1500GPD PUMP
Subdivision: White Tract Phase 1		TM #: 644-00-00-023 & 644-00-00-025 (Parent Parcels to be Subdivided)
Block: Lot: 28		Water Supply: Municipal
GPD: 480		

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-28

(Project Number)

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

Reviewed By:

Date: October 24, 2023

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

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

ROA 1612

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



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

March 6, 2024

Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1424 7926 46

Leslie Lenhardt, Esquire
 Email: leslie@scelp.org
 Amy Armstrong, Esquire
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 South Carolina Environmental Law Project
 510 Live Oak Drive
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 Charleston, SC 29402

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

RE: Docket No. 24-RFR-06, Pulte Homes Company, LLC
 Issuance of a permit to construct an onsite wastewater system at lot 28 of White Tract
 Phase 1. Permit ID. OSWW010845v.1.0, Charleston County

Counsel of Record:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.



CONTESTED CASE GUIDANCE

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



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

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Coastal Conservation League,	)	Docket No. 22-ALJ-07-___-CC
)	
)	
Petitioner,)	
v.)	
)	
South Carolina Department of Health and	)	REQUEST FOR CONTESTED
Environmental Control and	)	CASE HEARING
Pulte Homes LLC,)	
)	
Respondents.)	
_____)	

TO: THE ADMINISTRATIVE LAW COURT AND THE RESPONDENTS:

The Coastal Conservation League ("Petitioner"), pursuant to S.C. Code Ann. § 44-1-60 and Rule 11 of the Rules of Procedure for the Administrative Law Court, hereby requests a contested case hearing to review the decision of the Respondent South Carolina Department of Health and Environmental Control ("DHEC") to issue Permit No. OSWW010853 v1.0 to Construct Onsite Wastewater System (the "Permit") to Respondent Pulte Homes LLC ("Pulte").

I. Background

Pulte Homes LLC, the permittee, is the purported owner of approximately 233.45 acres known as the "White Tract," located in Awendaw, South Carolina, proximate to the Intracoastal Waterway and within one mile of Cape Romain National Wildlife Refuge. The Permit, along with 43 other septic tank permits, facilitates the development of 204 single-family homes, all serviced by individual septic systems, on lots ranging from 0.325 to 0.934 acres.

The Petitioner submits that the issuance of the Permit contravenes several statutory and regulatory mandates, chiefly failing to conduct the requisite Coastal Zone Consistency review as mandated by the Coastal Tidelands and Wetlands Act of 1977 (the "Act"), S.C. Code Ann. § 48-39-80, thereby violating not only specific provisions of the Act but also the broader policies of the Coastal Management Program.

II. The League's Interests and Involvement

The Coastal Conservation League, a non-profit organization dedicated to protecting South Carolina's coastal resources, asserts a significant interest in this matter. The League's over 4,000 members, who reside, recreate, and rely on the waters and wetlands around Bulls Bay and Cape Romain National Wildlife Refuge, are directly impacted by the potential for pollution and environmental degradation posed by the improperly reviewed and issued permits.

III. Grounds for Reversal

A. The Denial Does Not Comply with 48-39-10(B)

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" where OCRM has direct permitting 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.

B. 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.

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

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In

particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

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

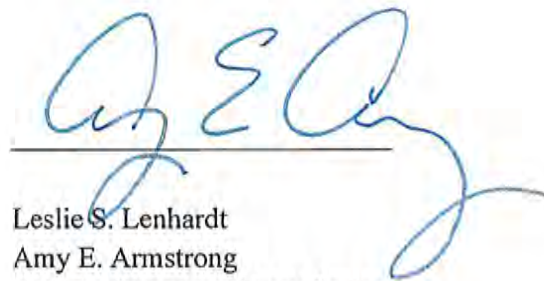
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To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. See, e.g., *Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice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

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WHEREFORE, the Coastal Conservation League respectfully requests that this Court conduct a contested case hearing on the Permit and reverse the Department of Health and Environmental Control's decision to issue the Permit to Pulte Homes LLC, thereby upholding the statutory and regulatory protections intended to safeguard South Carolina's coastal resources.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'LESQ', is written over a horizontal line. The signature is stylized and cursive.

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

Mount Pleasant, South Carolina
April 5, 2024



**PERMIT TO CONSTRUCT
Onsite Wastewater System**

Permit ID: OSWW010853 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:** 29

(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)

09/12/23

(Plan Date)

21-421-SD-29

(Project Number)

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

Reviewed By:

Date: October 18, 2023

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

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

ROA 1623

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



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

March 6, 2024

Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1424 7926 53

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 and US Mail

Mary D. Shahid, Esquire
 Email: mshahid@maynardnexsen.com
 Cheryl D. Shoun, Esquire
 Email: cshoun@maynardnexsen.com
 Post Office Box 486
 Charleston, SC 29402

Via Electronic Mail

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

RE: Docket No. 24-RFR-07, Pulte Homes Company, LLC
 Issuance of a permit to construct an onsite wastewater system at lot 29 of White Tract
 Phase 1. Permit ID. OSWW010845v.1.0, Charleston County

Counsel of Record:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.



CONTESTED CASE GUIDANCE

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

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Sincerely,



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

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Coastal Conservation League,	)	Docket No. 22-ALJ-07-___-CC
)	
)	
Petitioner,)	
v.)	
)	
South Carolina Department of Health and Environmental Control and	)	REQUEST FOR CONTESTED CASE HEARING
Pulte Homes LLC,)	
)	
Respondents.)	
<hr style="width: 30%; margin-left: 0;"/>		

TO: THE ADMINISTRATIVE LAW COURT AND THE RESPONDENTS:

The Coastal Conservation League ("Petitioner"), pursuant to S.C. Code Ann. § 44-1-60 and Rule 11 of the Rules of Procedure for the Administrative Law Court, hereby requests a contested case hearing to review the decision of the Respondent South Carolina Department of Health and Environmental Control ("DHEC") to issue Permit No. OSWW010855 v1.0 to Construct Onsite Wastewater System (the "Permit") to Respondent Pulte Homes LLC ("Pulte").

I. Background

Pulte Homes LLC, the permittee, is the purported owner of approximately 233.45 acres known as the "White Tract," located in Awendaw, South Carolina, proximate to the Intracoastal Waterway and within one mile of Cape Romain National Wildlife Refuge. The Permit, along with 43 other septic tank permits, facilitates the development of 204 single-family homes, all serviced by individual septic systems, on lots ranging from 0.325 to 0.934 acres.

The Petitioner submits that the issuance of the Permit contravenes several statutory and regulatory mandates, chiefly failing to conduct the requisite Coastal Zone Consistency review as mandated by the Coastal Tidelands and Wetlands Act of 1977 (the "Act"), S.C. Code Ann. § 48-39-80, thereby violating not only specific provisions of the Act but also the broader policies of the Coastal Management Program.

II. The League's Interests and Involvement

The Coastal Conservation League, a non-profit organization dedicated to protecting South Carolina's coastal resources, asserts a significant interest in this matter. The League's over 4,000 members, who reside, recreate, and rely on the waters and wetlands around Bulls Bay and Cape Romain National Wildlife Refuge, are directly impacted by the potential for pollution and environmental degradation posed by the improperly reviewed and issued permits.

III. Grounds for Reversal

A. The Denial Does Not Comply with 48-39-10(B)

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" where OCRM has direct permitting 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.

B. 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.

C. 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)).

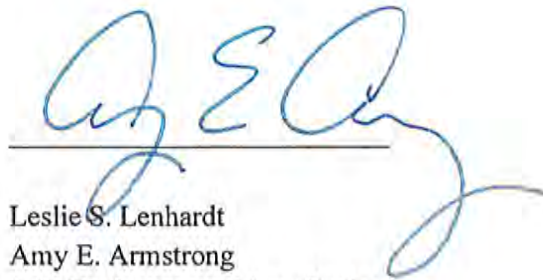
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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, the Coastal Conservation League respectfully requests that this Court conduct a contested case hearing on the Permit and reverse the Department of Health and Environmental Control's decision to issue the Permit to Pulte Homes LLC, thereby upholding the statutory and regulatory protections intended to safeguard South Carolina's coastal resources.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'LESLEY', is written over a horizontal line. The signature is stylized and cursive.

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

Mount Pleasant, South Carolina
April 5, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010855 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: **Lot:** 30
GPD: 480

Site: Seewee Rd & Bulls Island Rd , Awendaw.

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

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-30

(Project Number)

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

Reviewed By:

Date: November 14, 2023

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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



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

March 6, 2024

Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1424 7926 60

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Amy Armstrong, Esquire
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South Carolina Environmental Law Project
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Sara V. Martinez, Esquire
Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201

RE: Docket No. 24-RFR-08, Pulte Homes Company, LLC
Issuance of a permit to construct an onsite wastewater system at lot 30 of White Tract
Phase 1. Permit ID. OSWW010845v.1.0, Charleston County

Counsel of Record:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.



CONTESTED CASE GUIDANCE

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



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

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Coastal Conservation League,	)	Docket No. 22-ALJ-07-__-CC
)	
)	
Petitioner,)	
v.)	
)	
South Carolina Department of Health and	)	REQUEST FOR CONTESTED
Environmental Control and	)	CASE HEARING
Pulte Homes LLC,)	
)	
Respondents.)	
<hr/>		

TO: THE ADMINISTRATIVE LAW COURT AND THE RESPONDENTS:

The Coastal Conservation League ("Petitioner"), pursuant to S.C. Code Ann. § 44-1-60 and Rule 11 of the Rules of Procedure for the Administrative Law Court, hereby requests a contested case hearing to review the decision of the Respondent South Carolina Department of Health and Environmental Control ("DHEC") to issue Permit No. OSWW010856 v1.0 to Construct Onsite Wastewater System (the "Permit") to Respondent Pulte Homes LLC ("Pulte").

I. Background

Pulte Homes LLC, the permittee, is the purported owner of approximately 233.45 acres known as the "White Tract," located in Awendaw, South Carolina, proximate to the Intracoastal Waterway and within one mile of Cape Romain National Wildlife Refuge. The Permit, along with 43 other septic tank permits, facilitates the development of 204 single-family homes, all serviced by individual septic systems, on lots ranging from 0.325 to 0.934 acres.

The Petitioner submits that the issuance of the Permit contravenes several statutory and regulatory mandates, chiefly failing to conduct the requisite Coastal Zone Consistency review as mandated by the Coastal Tidelands and Wetlands Act of 1977 (the "Act"), S.C. Code Ann. § 48-39-80, thereby violating not only specific provisions of the Act but also the broader policies of the Coastal Management Program.

II. The League's Interests and Involvement

The Coastal Conservation League, a non-profit organization dedicated to protecting South Carolina's coastal resources, asserts a significant interest in this matter. The League's over 4,000 members, who reside, recreate, and rely on the waters and wetlands around Bulls Bay and Cape Romain National Wildlife Refuge, are directly impacted by the potential for pollution and environmental degradation posed by the improperly reviewed and issued permits.

III. Grounds for Reversal

A. The Denial Does Not Comply with 48-39-10(B)

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" where OCRM has direct permitting 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;

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5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;

7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;

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

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

B. 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;
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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.

C. 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

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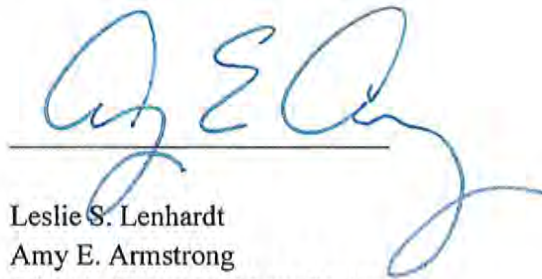
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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, the Coastal Conservation League respectfully requests that this Court conduct a contested case hearing on the Permit and reverse the Department of Health and Environmental Control's decision to issue the Permit to Pulte Homes LLC, thereby upholding the statutory and regulatory protections intended to safeguard South Carolina's coastal resources.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'A. E. Armstrong', is written over a horizontal line.

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

Mount Pleasant, South Carolina
April 5, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010856 v1.0
County: Charleston

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

Site: Seewee Rd & Bulls Island Rd, Awendaw

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

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-31

(Project Number)

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

Reviewed By:

Date: November 27, 2023

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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



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

March 6, 2024

Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1424 7926 77

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

RE: Docket No. 24-RFR-09, Pulte Homes Company, LLC
 Issuance of a permit to construct an onsite wastewater system at lot 31 of White Tract
 Phase I. Permit ID. OSWW010845v.1.0, Charleston County

Counsel of Record:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.



CONTESTED CASE GUIDANCE

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

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Edgar A. Brown Building
1205 Pendleton St., Suite 224
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Sincerely,



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

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Coastal Conservation League,	)	Docket No. 22-ALJ-07-___-CC
)	
)	
Petitioner,)	
v.)	
)	
South Carolina Department of Health and	)	REQUEST FOR CONTESTED
Environmental Control and	)	CASE HEARING
Pulte Homes LLC,)	
)	
Respondents.)	
_____)	

TO: THE ADMINISTRATIVE LAW COURT AND THE RESPONDENTS:

The Coastal Conservation League ("Petitioner"), pursuant to S.C. Code Ann. § 44-1-60 and Rule 11 of the Rules of Procedure for the Administrative Law Court, hereby requests a contested case hearing to review the decision of the Respondent South Carolina Department of Health and Environmental Control ("DHEC") to issue Permit No. OSWW010857 v1.0 to Construct Onsite Wastewater System (the "Permit") to Respondent Pulte Homes LLC ("Pulte").

I. Background

Pulte Homes LLC, the permittee, is the purported owner of approximately 233.45 acres known as the "White Tract," located in Awendaw, South Carolina, proximate to the Intracoastal Waterway and within one mile of Cape Romain National Wildlife Refuge. The Permit, along with 43 other septic tank permits, facilitates the development of 204 single-family homes, all serviced by individual septic systems, on lots ranging from 0.325 to 0.934 acres.

The Petitioner submits that the issuance of the Permit contravenes several statutory and regulatory mandates, chiefly failing to conduct the requisite Coastal Zone Consistency review as mandated by the Coastal Tidelands and Wetlands Act of 1977 (the "Act"), S.C. Code Ann. § 48-39-80, thereby violating not only specific provisions of the Act but also the broader policies of the Coastal Management Program.

II. The League's Interests and Involvement

The Coastal Conservation League, a non-profit organization dedicated to protecting South Carolina's coastal resources, asserts a significant interest in this matter. The League's over 4,000 members, who reside, recreate, and rely on the waters and wetlands around Bulls Bay and Cape Romain National Wildlife Refuge, are directly impacted by the potential for pollution and environmental degradation posed by the improperly reviewed and issued permits.

III. Grounds for Reversal

A. The Denial Does Not Comply with 48-39-10(B)

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” where OCRM has direct permitting 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.

B. 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.

C. 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)).

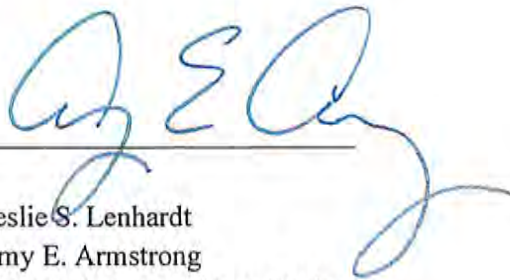
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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, the Coastal Conservation League respectfully requests that this Court conduct a contested case hearing on the Permit and reverse the Department of Health and Environmental Control's decision to issue the Permit to Pulte Homes LLC, thereby upholding the statutory and regulatory protections intended to safeguard South Carolina's coastal resources.

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@sceelp.org

Mount Pleasant, South Carolina
April 5, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010857 v1.0
County: Charleston

Name: Pulte Home Company LLC	Site: Seewee Rd & Bulls Island Rd, Awendaw	Program Code: ALTERNATIVE
Type Facility: Residential		System Code: 611 ENGINEERED SYS <1500GPD PUMP
Subdivision: White Tract, Phase 1		TM #: 644-00-00-023 & 644-00-00-025 (Parent Parcels to be Subdivided)
Block: Lot: 32		Water Supply: Municipal
GPD: 480		

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-32

(Project Number)

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

Reviewed By:

Date: November 27, 2023

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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



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

March 6, 2024

Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1424 7926 91

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

Via Electronic Mail and US Mail

Mary D. Shahid, Esquire
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Email: martinsv@dhec.sc.gov
SCHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201

RE: Docket No. 24-RFR-10, Pulte Homes Company, LLC
Issuance of a permit to construct an onsite wastewater system at lot 32 of White Tract
Phase 1. Permit ID. OSWW010845v.1.0, Charleston County

Counsel of Record:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.



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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Coastal Conservation League,)	Docket No. 22-ALJ-07-___-CC
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Petitioner,)	
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South Carolina Department of Health and Environmental Control and)	REQUEST FOR CONTESTED
Pulte Homes LLC,)	CASE HEARING
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I. Background

Pulte Homes LLC, the permittee, is the purported owner of approximately 233.45 acres known as the "White Tract," located in Awendaw, South Carolina, proximate to the Intracoastal Waterway and within one mile of Cape Romain National Wildlife Refuge. The Permit, along with 43 other septic tank permits, facilitates the development of 204 single-family homes, all serviced by individual septic systems, on lots ranging from 0.325 to 0.934 acres.

The Petitioner submits that the issuance of the Permit contravenes several statutory and regulatory mandates, chiefly failing to conduct the requisite Coastal Zone Consistency review as mandated by the Coastal Tidelands and Wetlands Act of 1977 (the "Act"), S.C. Code Ann. § 48-39-80, thereby violating not only specific provisions of the Act but also the broader policies of the Coastal Management Program.

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III. Grounds for Reversal

A. The Denial Does Not Comply with 48-39-10(B)

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" where OCRM has direct permitting 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:

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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.

B. 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.

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

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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.

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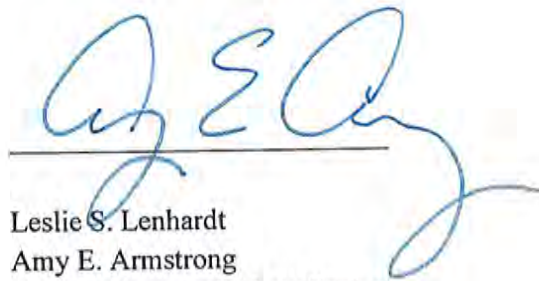
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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, the Coastal Conservation League respectfully requests that this Court conduct a contested case hearing on the Permit and reverse the Department of Health and Environmental Control's decision to issue the Permit to Pulte Homes LLC, thereby upholding the statutory and regulatory protections intended to safeguard South Carolina's coastal resources.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'LESQ', is written over a horizontal line. The signature is stylized and cursive.

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

Mount Pleasant, South Carolina
April 5, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010858 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: NA Lot: 33		(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-33

(Project Number)

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

Reviewed By:

Date: November 27, 2023

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

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

ROA 1667

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

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



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

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

March 6, 2024

Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1424 7927 07

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Amy Armstrong, Esquire
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Mount Pleasant, SC 29464

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

RE: Docket No. 24-RFR-11, Pulte Homes Company, LLC
Issuance of a permit to construct an onsite wastewater system at lot 33 of White Tract
Phase 1. Permit ID. OSWW010845v.1.0, Charleston County

Counsel of Record:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.



CONTESTED CASE GUIDANCE

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



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

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Coastal Conservation League,	)	Docket No. 22-ALJ-07-___-CC
)	
)	
Petitioner,)	
v.)	
)	
South Carolina Department of Health and	)	REQUEST FOR CONTESTED
Environmental Control and	)	CASE HEARING
Pulte Homes LLC,)	
)	
Respondents.)	

TO: THE ADMINISTRATIVE LAW COURT AND THE RESPONDENTS:

The Coastal Conservation League ("Petitioner"), pursuant to S.C. Code Ann. § 44-1-60 and Rule 11 of the Rules of Procedure for the Administrative Law Court, hereby requests a contested case hearing to review the decision of the Respondent South Carolina Department of Health and Environmental Control ("DHEC") to issue Permit No. OSWW010859 v1.0 to Construct Onsite Wastewater System (the "Permit") to Respondent Pulte Homes LLC ("Pulte").

I. Background

Pulte Homes LLC, the permittee, is the purported owner of approximately 233.45 acres known as the "White Tract," located in Awendaw, South Carolina, proximate to the Intracoastal Waterway and within one mile of Cape Romain National Wildlife Refuge. The Permit, along with 43 other septic tank permits, facilitates the development of 204 single-family homes, all serviced by individual septic systems, on lots ranging from 0.325 to 0.934 acres.

The Petitioner submits that the issuance of the Permit contravenes several statutory and regulatory mandates, chiefly failing to conduct the requisite Coastal Zone Consistency review as mandated by the Coastal Tidelands and Wetlands Act of 1977 (the "Act"), S.C. Code Ann. § 48-39-80, thereby violating not only specific provisions of the Act but also the broader policies of the Coastal Management Program.

II. The League's Interests and Involvement

The Coastal Conservation League, a non-profit organization dedicated to protecting South Carolina's coastal resources, asserts a significant interest in this matter. The League's over 4,000 members, who reside, recreate, and rely on the waters and wetlands around Bulls Bay and Cape Romain National Wildlife Refuge, are directly impacted by the potential for pollution and environmental degradation posed by the improperly reviewed and issued permits.

III. Grounds for Reversal

A. The Denial Does Not Comply with 48-39-10(B)

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" where OCRM has direct permitting 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.

B. 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.

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

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In

particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept completely in the dark about the State's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

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

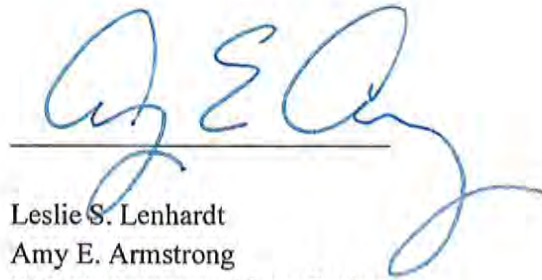
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WHEREFORE, the Coastal Conservation League respectfully requests that this Court conduct a contested case hearing on the Permit and reverse the Department of Health and Environmental Control's decision to issue the Permit to Pulte Homes LLC, thereby upholding the statutory and regulatory protections intended to safeguard South Carolina's coastal resources.

Respectfully submitted,

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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

Mount Pleasant, South Carolina
April 5, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010859 v1.0
County: Charleston

Name: Pulte Home Company LLC	Site: Seewee Rd & Bulls Island Rd, Awendaw	Program Code: ALTERNATIVE
Type Facility: Residential		System Code: 611 ENGINEERED SYS <1500GPD PUMP
Subdivision: White Tract, Phase 1		TM #: 644-00-00-023 & 644-00-00-025 (Parent Parcels to be Subdivided)
Block: NA Lot: 34		Water Supply: Municipal
GPD: 480		

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-34

(Project Number)

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

Reviewed By:

Date: November 27, 2023

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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



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

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

March 6, 2024

Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1424 7927 21

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 and US Mail

Mary D. Shahid, Esquire
Email: mshahid@maynardnexsen.com
Cheryl D. Shoun, Esquire
Email: cshoun@maynardnexsen.com
Post Office Box 486
Charleston, SC 29402

Via Electronic Mail

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

RE: Docket No. 24-RFR-12, Pulte Homes Company, LLC

Issuance of a permit to construct an onsite wastewater system at lot 34 of White Tract
Phase 1. Permit ID. OSWW010845v.1.0, Charleston County

Counsel of Record:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review
Conference on the above-referenced matter.



CONTESTED CASE GUIDANCE

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

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Sincerely,



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

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Coastal Conservation League,	)	Docket No. 22-ALJ-07-___-CC
)	
)	
Petitioner,)	
v.)	
)	
South Carolina Department of Health and)	REQUEST FOR CONTESTED CASE HEARING
Environmental Control and)	
Pulte Homes LLC,)	
)	
Respondents.)	
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TO: THE ADMINISTRATIVE LAW COURT AND THE RESPONDENTS:

The Coastal Conservation League ("Petitioner"), pursuant to S.C. Code Ann. § 44-1-60 and Rule 11 of the Rules of Procedure for the Administrative Law Court, hereby requests a contested case hearing to review the decision of the Respondent South Carolina Department of Health and Environmental Control ("DHEC") to issue Permit No. OSWW010860 v1.0 to Construct Onsite Wastewater System (the "Permit") to Respondent Pulte Homes LLC ("Pulte").

I. Background

Pulte Homes LLC, the permittee, is the purported owner of approximately 233.45 acres known as the "White Tract," located in Awendaw, South Carolina, proximate to the Intracoastal Waterway and within one mile of Cape Romain National Wildlife Refuge. The Permit, along with 43 other septic tank permits, facilitates the development of 204 single-family homes, all serviced by individual septic systems, on lots ranging from 0.325 to 0.934 acres.

The Petitioner submits that the issuance of the Permit contravenes several statutory and regulatory mandates, chiefly failing to conduct the requisite Coastal Zone Consistency review as mandated by the Coastal Tidelands and Wetlands Act of 1977 (the "Act"), S.C. Code Ann. § 48-39-80, thereby violating not only specific provisions of the Act but also the broader policies of the Coastal Management Program.

II. The League's Interests and Involvement

The Coastal Conservation League, a non-profit organization dedicated to protecting South Carolina's coastal resources, asserts a significant interest in this matter. The League's over 4,000 members, who reside, recreate, and rely on the waters and wetlands around Bulls Bay and Cape Romain National Wildlife Refuge, are directly impacted by the potential for pollution and environmental degradation posed by the improperly reviewed and issued permits.

III. Grounds for Reversal

A. The Denial Does Not Comply with 48-39-10(B)

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" where OCRM has direct permitting 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.

B. 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.

C. 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)).

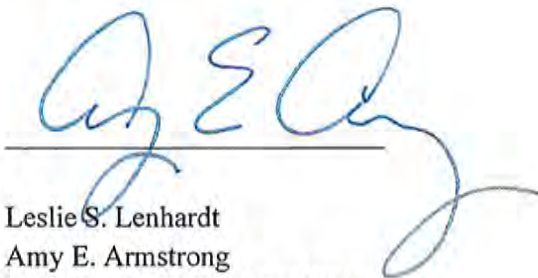
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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, the Coastal Conservation League respectfully requests that this Court conduct a contested case hearing on the Permit and reverse the Department of Health and Environmental Control's decision to issue the Permit to Pulte Homes LLC, thereby upholding the statutory and regulatory protections intended to safeguard South Carolina's coastal resources.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'LESLEY', is written over a horizontal line. The signature is stylized and cursive.

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

Mount Pleasant, South Carolina
April 5, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010860 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract, Phase 1
Block: NA **Lot:** 35
GPD: 480

Site: Seewee Rd & Bulls Island Rd, Awendaw

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

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-35

(Project Number)

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

Reviewed By:

Date: November 27, 2023

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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



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

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

March 6, 2024

Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1424 7928 99

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

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Via Electronic Mail

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

RE: Docket No. 24-RFR-13, Pulte Homes Company, LLC
 Issuance of a permit to construct an onsite wastewater system at lot 35 of White Tract
 Phase 1. Permit ID. OSWW010845v.1.0, Charleston County

Counsel of Record:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.



CONTESTED CASE GUIDANCE

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



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

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Coastal Conservation League,	)	Docket No. 22-ALJ-07-___-CC
)	
)	
Petitioner,)	
v.)	
)	
South Carolina Department of Health and Environmental Control and)	REQUEST FOR CONTESTED
Pulte Homes LLC,)	CASE HEARING
)	
Respondents.)	
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TO: THE ADMINISTRATIVE LAW COURT AND THE RESPONDENTS:

The Coastal Conservation League ("Petitioner"), pursuant to S.C. Code Ann. § 44-1-60 and Rule 11 of the Rules of Procedure for the Administrative Law Court, hereby requests a contested case hearing to review the decision of the Respondent South Carolina Department of Health and Environmental Control ("DHEC") to issue Permit No. OSWW010861 v1.0 to Construct Onsite Wastewater System (the "Permit") to Respondent Pulte Homes LLC ("Pulte").

I. Background

Pulte Homes LLC, the permittee, is the purported owner of approximately 233.45 acres known as the "White Tract," located in Awendaw, South Carolina, proximate to the Intracoastal Waterway and within one mile of Cape Romain National Wildlife Refuge. The Permit, along with 43 other septic tank permits, facilitates the development of 204 single-family homes, all serviced by individual septic systems, on lots ranging from 0.325 to 0.934 acres.

The Petitioner submits that the issuance of the Permit contravenes several statutory and regulatory mandates, chiefly failing to conduct the requisite Coastal Zone Consistency review as mandated by the Coastal Tidelands and Wetlands Act of 1977 (the "Act"), S.C. Code Ann. § 48-39-80, thereby violating not only specific provisions of the Act but also the broader policies of the Coastal Management Program.

II. The League's Interests and Involvement

The Coastal Conservation League, a non-profit organization dedicated to protecting South Carolina's coastal resources, asserts a significant interest in this matter. The League's over 4,000 members, who reside, recreate, and rely on the waters and wetlands around Bulls Bay and Cape Romain National Wildlife Refuge, are directly impacted by the potential for pollution and environmental degradation posed by the improperly reviewed and issued permits.

III. Grounds for Reversal

A. The Denial Does Not Comply with 48-39-10(B)

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" where OCRM has direct permitting 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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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.

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

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

C. 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

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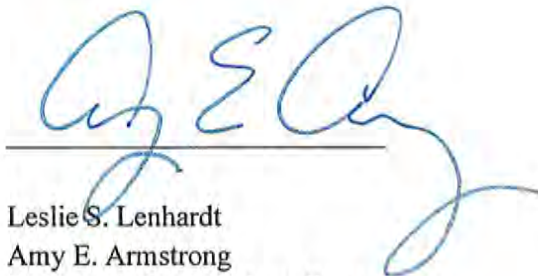
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To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. See, e.g., *Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice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

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WHEREFORE, the Coastal Conservation League respectfully requests that this Court conduct a contested case hearing on the Permit and reverse the Department of Health and Environmental Control's decision to issue the Permit to Pulte Homes LLC, thereby upholding the statutory and regulatory protections intended to safeguard South Carolina's coastal resources.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'L. S. Lenhardt', is written over a horizontal line. The signature is stylized and extends below the line.

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

Mount Pleasant, South Carolina
April 5, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010861 v1.0
County: Charleston

Name: Pulte Home Company LLC	Site: Seewee Rd & Bulls Island Rd, Awendaw	Program Code: ALTERNATIVE
Type Facility: Residential		System Code: 611 ENGINEERED SYS <1500GPD PUMP
Subdivision: White Tract, Phase 1		TM #: 644-00-00-023 & 644-00-00-025 (Parent Parcels to be Subdivided)
Block: NA Lot: 36		Water Supply: Municipal
GPD: 480		

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-36

(Project Number)

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

Reviewed By:

Date: November 27, 2023

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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



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

March 6, 2024

Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1424 7929 12

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 Mount Pleasant, SC 29464

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 Cheryl D. Shoun, Esquire
 Email: cshoun@maynardnexsen.com
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 Charleston, SC 29402

Via Electronic Mail

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

RE: Docket No. 24-RFR-14, Pulte Homes Company, LLC
 Issuance of a permit to construct an onsite wastewater system at lot 36 of White Tract
 Phase 1. Permit ID. OSWW010845v.1.0, Charleston County

Counsel of Record:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.



CONTESTED CASE GUIDANCE

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



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

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Coastal Conservation League,	)	Docket No. 22-ALJ-07-___-CC
)	
)	
Petitioner,)	
v.)	
)	
South Carolina Department of Health and	)	REQUEST FOR CONTESTED
Environmental Control and	)	CASE HEARING
Pulte Homes LLC,)	
)	
Respondents.)	
_____)		

TO: THE ADMINISTRATIVE LAW COURT AND THE RESPONDENTS:

The Coastal Conservation League ("Petitioner"), pursuant to S.C. Code Ann. § 44-1-60 and Rule 11 of the Rules of Procedure for the Administrative Law Court, hereby requests a contested case hearing to review the decision of the Respondent South Carolina Department of Health and Environmental Control ("DHEC") to issue Permit No. OSWW010862 v1.0 to Construct Onsite Wastewater System (the "Permit") to Respondent Pulte Homes LLC ("Pulte").

I. Background

Pulte Homes LLC, the permittee, is the purported owner of approximately 233.45 acres known as the "White Tract," located in Awendaw, South Carolina, proximate to the Intracoastal Waterway and within one mile of Cape Romain National Wildlife Refuge. The Permit, along with 43 other septic tank permits, facilitates the development of 204 single-family homes, all serviced by individual septic systems, on lots ranging from 0.325 to 0.934 acres.

The Petitioner submits that the issuance of the Permit contravenes several statutory and regulatory mandates, chiefly failing to conduct the requisite Coastal Zone Consistency review as mandated by the Coastal Tidelands and Wetlands Act of 1977 (the "Act"), S.C. Code Ann. § 48-39-80, thereby violating not only specific provisions of the Act but also the broader policies of the Coastal Management Program.

II. The League's Interests and Involvement

The Coastal Conservation League, a non-profit organization dedicated to protecting South Carolina's coastal resources, asserts a significant interest in this matter. The League's over 4,000 members, who reside, recreate, and rely on the waters and wetlands around Bulls Bay and Cape Romain National Wildlife Refuge, are directly impacted by the potential for pollution and environmental degradation posed by the improperly reviewed and issued permits.

III. Grounds for Reversal

A. The Denial Does Not Comply with 48-39-10(B)

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" where OCRM has direct permitting 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.

B. 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.

C. 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)).

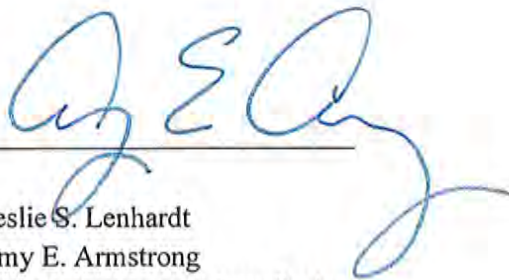
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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, the Coastal Conservation League respectfully requests that this Court conduct a contested case hearing on the Permit and reverse the Department of Health and Environmental Control's decision to issue the Permit to Pulte Homes LLC, thereby upholding the statutory and regulatory protections intended to safeguard South Carolina's coastal resources.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'Leslie S. Lenhardt', is written over a horizontal line.

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

Mount Pleasant, South Carolina
April 5, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010862 v1.0

County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract, Phase 1
Block: NA **Lot:** 37
GPD: 480

Site: Seewee Rd & Bulls Island Rd, Awendaw

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

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-37

(Project Number)

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

Reviewed By:

Date: November 27, 2023

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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



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

March 6, 2024

Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1424 7929 29

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

Via Electronic Mail and US Mail

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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

RE: Docket No. 24-RFR-15, Pulte Homes Company, LLC
 Issuance of a permit to construct an onsite wastewater system at lot 37 of White Tract
 Phase 1. Permit ID. OSWW010845v.1.0, Charleston County

Counsel of Record:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.



CONTESTED CASE GUIDANCE

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Sincerely,



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S.C. Board of Health and Environmental Control

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Coastal Conservation League,)	Docket No. 22-ALJ-07-___-CC
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Petitioner,)	
v.)	
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South Carolina Department of Health and)	REQUEST FOR CONTESTED
Environmental Control and)	CASE HEARING
Pulte Homes LLC,)	
)	
Respondents.)	
_____)	

TO: THE ADMINISTRATIVE LAW COURT AND THE RESPONDENTS:

The Coastal Conservation League ("Petitioner"), pursuant to S.C. Code Ann. § 44-1-60 and Rule 11 of the Rules of Procedure for the Administrative Law Court, hereby requests a contested case hearing to review the decision of the Respondent South Carolina Department of Health and Environmental Control ("DHEC") to issue Permit No. OSWW010863 v1.0 to Construct Onsite Wastewater System (the "Permit") to Respondent Pulte Homes LLC ("Pulte").

I. Background

Pulte Homes LLC, the permittee, is the purported owner of approximately 233.45 acres known as the "White Tract," located in Awendaw, South Carolina, proximate to the Intracoastal Waterway and within one mile of Cape Romain National Wildlife Refuge. The Permit, along with 43 other septic tank permits, facilitates the development of 204 single-family homes, all serviced by individual septic systems, on lots ranging from 0.325 to 0.934 acres.

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