

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)).

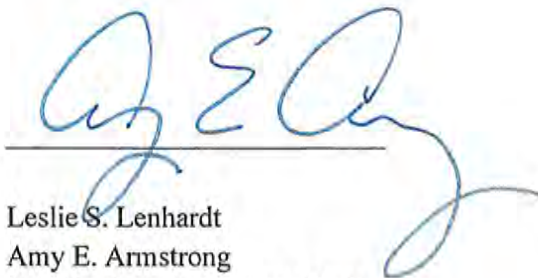
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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
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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: OSWW010863 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract, Phase 1
Block: NA **Lot:** 38
GPD: 480

Site: Seewee Rd & Bulls Island Rd, Awendaw

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

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-38

(Project Number)

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

Reviewed By:

Date: November 27, 2023

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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



Seema Shrivastava-Patel, Chairman
 Robert P. 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 50

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

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 Cheryl D. Shoun, Esquire
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 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-16, Pulte Homes Company, LLC
 Issuance of a permit to construct an onsite wastewater system at lot 38 of White Tract
 Phase 1. Permit ID. 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. OSWW010864 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.

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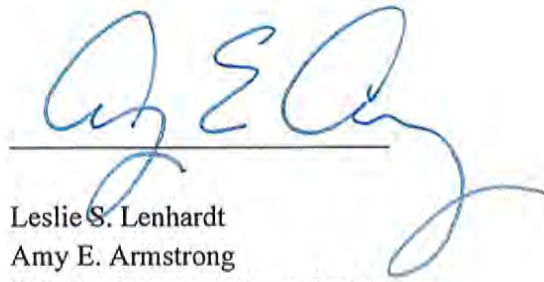
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Respectfully submitted,



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S.C. Environmental Law Project
510 Live Oak Drive
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(843) 527-0078
leslie@scelp.org

Mount Pleasant, South Carolina
April 5, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010864 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: 39		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-39

(Project Number)

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

Reviewed By:

Date: October 18, 2023

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

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

ROA 1733

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 P. 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 67

Leslie Lenhardt, Esquire
Email: leslie@scelp.org
Amy Armstrong, Esquire
Email: amy@scelp.org
South Carolina Environmental Law Project
510 Live Oak Drive
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Post Office Box 486
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Via Electronic 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-17, Pulte Homes Company, LLC
Issuance of a permit to construct an onsite wastewater system at lot 39 of White Tract
Phase 1. Permit ID. 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).

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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. OSWW010865 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)).

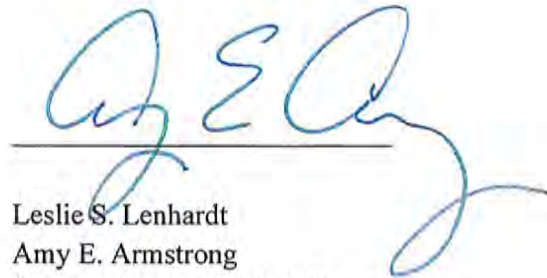
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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 'A. E. Armstrong', is written over a horizontal line. The signature is fluid 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: OSWW010865 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: 40		(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-40

(Project Number)

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

Reviewed By:

Date: November 01, 2023

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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



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 74

Leslie Lenhardt, Esquire
 Email: leslie@scelp.org
 Amy Armstrong, Esquire
 Email: amy@scelp.org
 South Carolina Environmental Law Project
 510 Live Oak Drive
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Via Electronic Mail 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-18, Pulte Homes Company, LLC
 Issuance of a permit to construct an onsite wastewater system at lot 40 of White Tract
 Phase 1. Permit ID. 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

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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.)	
)	
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. OSWW010869 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.

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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)).

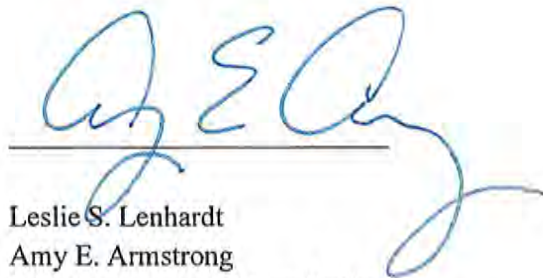
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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@scelp.org

Mount Pleasant, South Carolina
April 5, 2024



**PERMIT TO CONSTRUCT
Onsite Wastewater System**

Permit ID: OSWW010869 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract, Phase 1
Block: NA **Lot:** 41
GPD: 480

Site: Seewee Rd & Bulls Island Rd, Awendaw

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

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-41

(Project Number)

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

Reviewed By:

Date: November 27, 2023

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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



Seema Shrivastava-Patel, Chairman
Robert B. 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 81

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Via Electronic 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-19, Pulte Homes Company, LLC
Issuance of a permit to construct an onsite wastewater system at lot 41 of White Tract
Phase 1. Permit ID. 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. OSWW010870 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)).

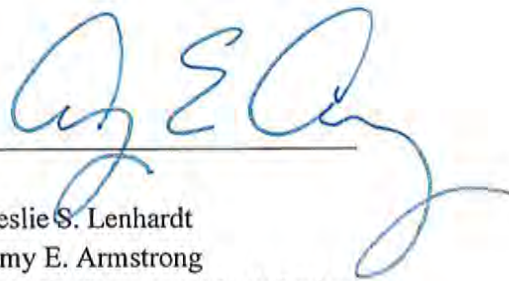
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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@scelp.org

Mount Pleasant, South Carolina
April 5, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010870 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract, Phase 1
Block: NA **Lot:** 42
GPD: 480

Site: Seewee Rd & Bulls Island Rd, Awendaw

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

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-42

(Project Number)

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

Reviewed By:

Date: November 27, 2023

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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



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 7930 01

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
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 Cheryl D. Shoun, Esquire
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 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-20, Pulte Homes Company, LLC
 Issuance of a permit to construct an onsite wastewater system at lot 42 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:

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. OSWW010871 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)).

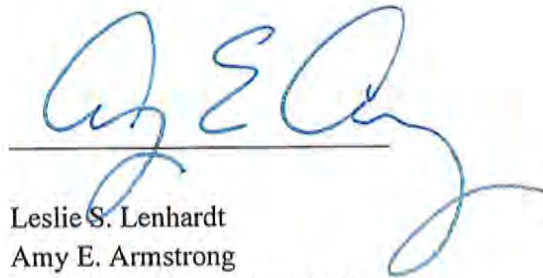
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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@scelp.org

Mount Pleasant, South Carolina
April 5, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010871 v1.0

County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract, Phase 1
Block: NA **Lot:** 43
GPD: 480

Site: Seewee Rd & Bulls Island Rd, Awendaw

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

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-43

(Project Number)

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

Reviewed By:

Date: November 28, 2023

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

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

ROA 1777

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
Morris E. Brown, III, MD, FAAPR
William D. Richmond, MD

March 6, 2024

Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1424 7930 32

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

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Mary D. Shahid, Esquire
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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-21, Pulte Homes Company, LLC

Issuance of a permit to construct an onsite wastewater system at lot 43 of White Tract
Phase 1. Permit ID. 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. OSWW010872 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.

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

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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:

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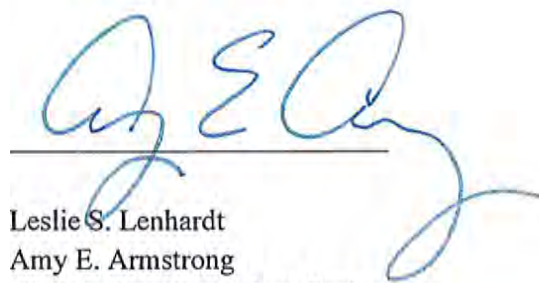
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Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, 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.

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: OSWW010872 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract, Phase 1
Block: NA **Lot:** 44
GPD: 480

Site: Seewee Rd & Bulls Island Rd, Awendaw

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

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-44

(Project Number)

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

Reviewed By:

Date: January 2, 2024

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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



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, F.A.A.P.
 William D. Richmond, MD

March 6, 2024

Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1424 7930 49

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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 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-22, Pulte Homes Company, LLC
 Issuance of a permit to construct an onsite wastewater system at lot 44 of White Tract
 Phase 1. Permit ID. 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. OSWW010873 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)).

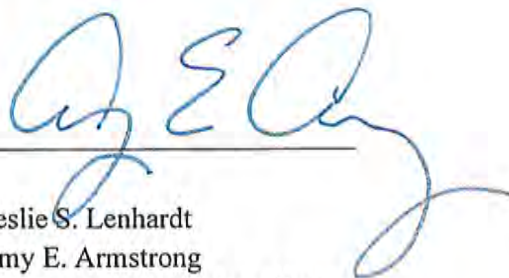
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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@scelp.org

Mount Pleasant, South Carolina
April 5, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010873 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: 45		Water Supplv: 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-45

(Project Number)

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

Reviewed By:

Date: January 2, 2024

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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



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 7930 63

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Amy Armstrong, Esquire
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Mary D. Shahid, Esquire
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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-23, Pulte Homes Company, LLC
Issuance of a permit to construct an onsite wastewater system at lot 45 of White Tract
Phase 1. Permit ID. 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

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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. OSWW010874 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)).

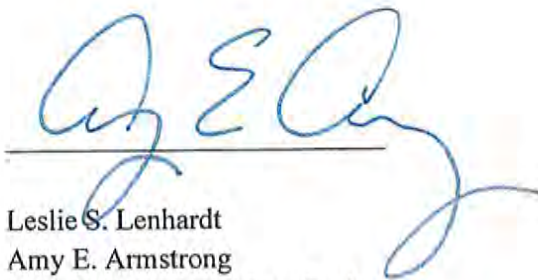
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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 'Amy E. Armstrong', is written over a horizontal line. The signature is fluid 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: OSWW010874 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract, Phase 1
Block: NA **Lot:** 46
GPD: 480

Site: Seewee Rd & Bulls Island Rd, Awendaw

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

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-46

(Project Number)

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

Reviewed By:

Date: November 28, 2023

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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



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 7930 70

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 Email: leslie@scelp.org
 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-24, Pulte Homes Company, LLC
 Issuance of a permit to construct an onsite wastewater system at lot 46 of White Tract
 Phase 1. Permit ID. 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. OSWW010875 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)).

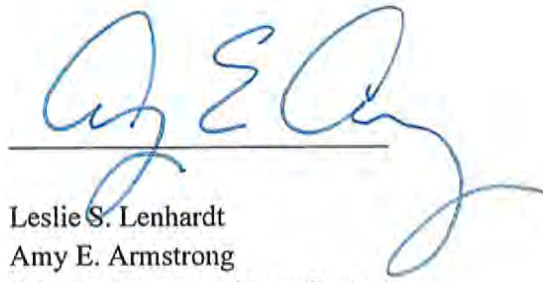
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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 extends to the right of 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: OSWW010875 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: 47		(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-47

(Project Number)

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

Reviewed By:

Date: November 28, 2023

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

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

ROA 1821

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. 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 7931 00

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-25, Pulte Homes Company, LLC
Issuance of a permit to construct an onsite wastewater system at lot 47 of White Tract
Phase 1. Permit ID. 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 CASE HEARING
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. OSWW010877 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)).

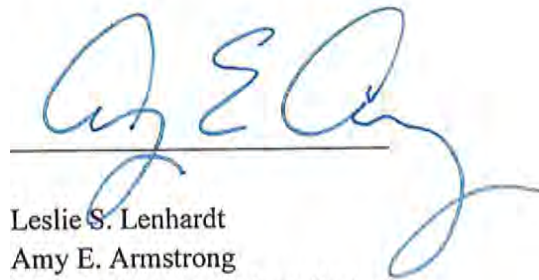
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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: OSWW010877 v1.0

County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract, Phase 1
Block: NA **Lot:** 48
GPD: 480

Site: Seewee Rd & Bulls Island Rd, Awendaw

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

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-48

(Project Number)

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

Reviewed By:

Date: November 28, 2023

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

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

ROA 1832

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
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 7931 17

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

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Post Office Box 486
Charleston, SC 29402

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

RE: Docket No. 24-RFR-26, Pulte Homes Company, LLC

Issuance of a permit to construct an onsite wastewater system at lot 48 of White Tract
Phase 1. Permit ID. 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,)
)
)
Petitioner,)
v.)
)
South Carolina Department of Health and)
Environmental Control and)
Pulte Homes LLC,)
)
Respondents.)
_____)

Docket No. 22-ALJ-07-___-CC

**REQUEST FOR CONTESTED
CASE HEARING**

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. OSWW010879 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.

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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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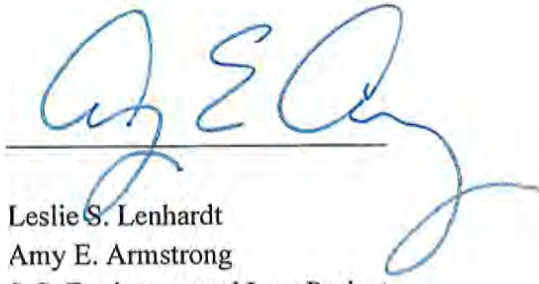
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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: OSWW010879 v1.0

County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: **Lot:** 49
GPD: 480

Site: Seewee Rd & Bulls Island Rd, Awendaw

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

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-49

(Project Number)

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

Reviewed By:

Date: October 18, 2023

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

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

ROA 1843

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

SPECIAL INSTRUCTIONS/CONDITIONS

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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 7931 24

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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Post Office Box 486
Charleston, SC 29402

Via Electronic 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-27, Pulte Homes Company, LLC
Issuance of a permit to construct an onsite wastewater system at lot 49 of White Tract
Phase 1. Permit ID. 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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South Carolina Administrative Law Court
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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. OSWW010880 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)).

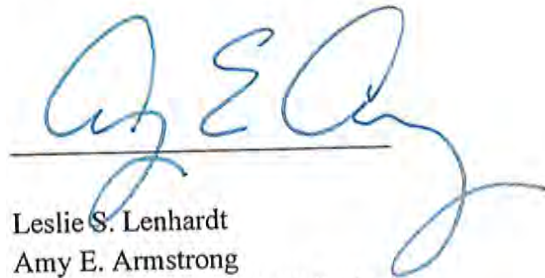
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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 'L. 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: OSWW010880 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: **Lot:** 50
GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

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

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-50

(Project Number)

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

Reviewed By:

Date: November 01, 2023

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

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

ROA 1854

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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

Due to shallower zone of saturation noted in repair area, see engineered submittal sheet SP50-2 for repair area configuration.



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 7931 48

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

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Mary D. Shahid, Esquire
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 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-28, Pulte Homes Company, LLC
 Issuance of a permit to construct an onsite wastewater system at lot 50 of White Tract
 Phase 1. Permit ID. 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

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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. OSWW010882 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)).

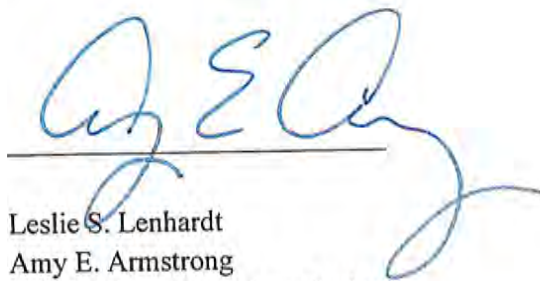
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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@scelp.org

Mount Pleasant, South Carolina
April 5, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010882 v1.0

County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: **Lot:** 51
GPD: 480

Site: Seewee Rd & Bulls Island Rd, Awendaw

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

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-51

(Project Number)

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

Reviewed By:

Date: November 01, 2023

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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. Morgani, Jr., M.D., M.B.A. 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 7931 55

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 Email: leslie@scelp.org
 Amy Armstrong, Esquire
 Email: amy@scelp.org
 South Carolina Environmental Law Project
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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-29, Pulte Homes Company, LLC
 Issuance of a permit to construct an onsite wastewater system at lot 51 of White Tract
 Phase 1. Permit ID. 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.)	
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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. OSWW010884 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)).

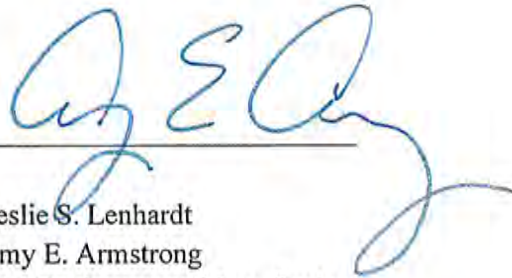
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To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. See, e.g., *Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice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

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', 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: OSWW010884 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: 52		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-52

(Project Number)

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

Reviewed By:

Date: November 01, 2023

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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



Seema Shrivastava-Patel, Chairman
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman
Charles M. Joye (I), 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 7931 62

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-30, Pulte Homes Company, LLC
Issuance of a permit to construct an onsite wastewater system at lot 52 of White Tract
Phase 1. Permit ID. 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
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. OSWW010886 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 -- irremediable 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)).

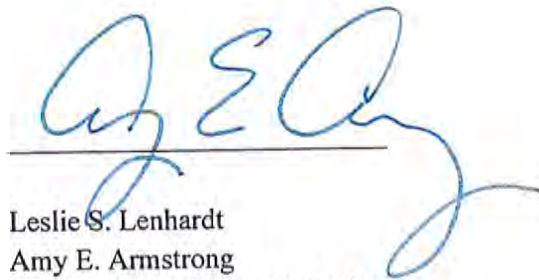
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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 '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: OSWW010886 v1.0

County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: Lot: 53
GPD: 480

Site: Seewee Rd & Bulls Island Rd, Awendaw

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

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-53

(Project Number)

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

Reviewed By:

Date: November 01, 2023

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

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

ROA 1887

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 7931 79

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

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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-31, Pulte Homes Company, LLC
 Issuance of a permit to construct an onsite wastewater system at lot 53 of White Tract
 Phase 1. Permit ID. 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. OSWW010887 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.

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

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

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

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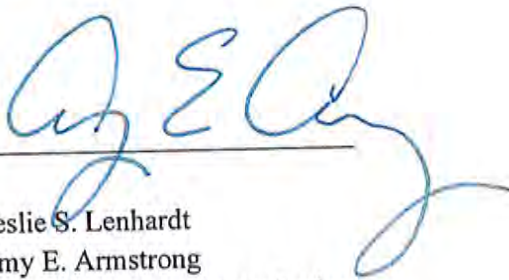
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To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. See, e.g., *Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice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

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: OSWW010887 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: 54		(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-54

(Project Number)

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

Reviewed By:

Date: October 26, 2023

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

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

ROA 1898

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

Due to shallower zone of saturation noted in the repair area, see engineer submittal sheet SP54-2 for repair area section.



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 7931 86

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
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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-32, Pulte Homes Company, LLC
Issuance of a permit to construct an onsite wastewater system at lot 54 of White Tract
Phase 1. Permit ID. 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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South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

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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 Pulte Homes LLC,)	REQUEST FOR CONTESTED 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. OSWW010888 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)).

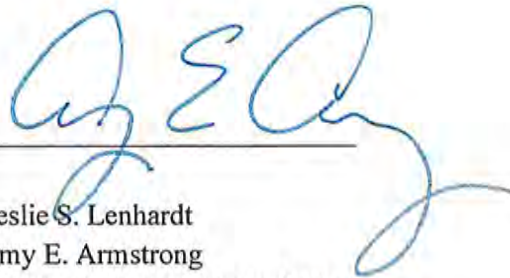
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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@scelp.org

Mount Pleasant, South Carolina
April 5, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010888 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: 55		(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-55

(Project Number)

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

Reviewed By:

Date: October 26, 2023

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

This Permit is Appealable Under the Administrative Procedures Act.
There may be an Additional Fee for Changes in this Permit that
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 7932 09

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

Via Electronic Mail and US Mail

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RE: Docket No. 24-RFR-33, Pulte Homes Company, LLC
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Counsel of Record:

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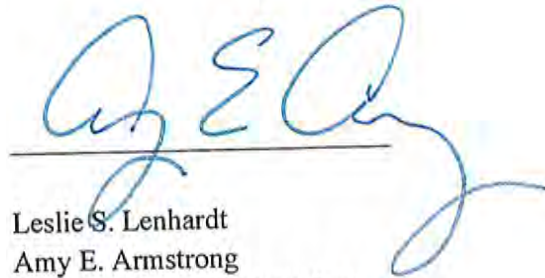
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Because DHEC does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons are foreclosed from a meaningful opportunity to be heard and subsequent judicial review.

WHEREFORE, 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@scelp.org

Mount Pleasant, South Carolina
April 5, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010889 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: **Lot:** 56
GPD: 480

Site: Seewee Rd & Bulls Island
Rd, Awendaw

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

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-56

(Project Number)

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

Reviewed By:

Date: October 26, 2023

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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



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 7932 16

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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-34, Pulte Homes Company, LLC
Issuance of a permit to construct an onsite wastewater system at lot 56 of White Tract
Phase 1. Permit ID. 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.

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)).

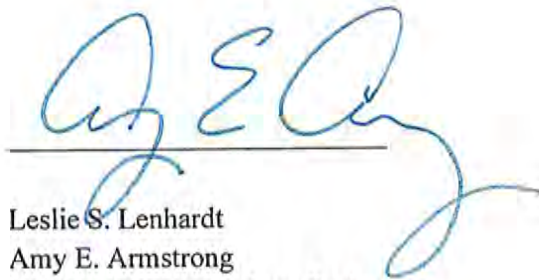
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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. 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: OSWW010890 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: 57		(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-57

(Project Number)

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

Reviewed By:

Date: October 26, 2023

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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



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 7932 30

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
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 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-35, Pulte Homes Company, LLC
 Issuance of a permit to construct an onsite wastewater system at lot 57 of White Tract
 Phase 1. Permit ID. 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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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. OSWW010891 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)).

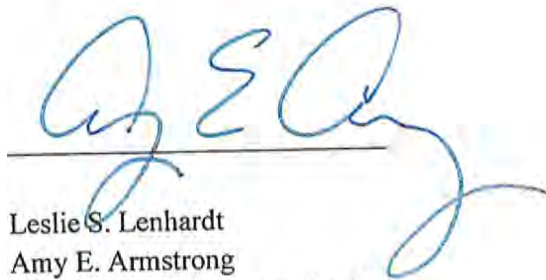
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide 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@scelp.org

Mount Pleasant, South Carolina
April 5, 2024



PERMIT TO CONSTRUCT
Onsite Wastewater System

Permit ID: OSWW010891 v1.0
County: Charleston

Name: Pulte Home Company LLC
Type Facility: Residential
Subdivision: White Tract Phase 1
Block: **Lot:** 58
GPD: 480

Site: Seewee Rd & Bulls Island
Rd , Awendaw

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

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-58

(Project Number)

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

Reviewed By:

Date: October 18, 2023

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

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

SPECIAL INSTRUCTIONS/CONDITIONS

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

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

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



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

Board:
 J.B. (Sonny) Kinnrey
 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 7932 47

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

RE: Docket No. 24-RFR-36, Pulte Homes Company, LLC
 Issuance of a permit to construct an onsite wastewater system at lot 58 of White Tract
 Phase 1. Permit ID. 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. OSWW010892 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;
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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

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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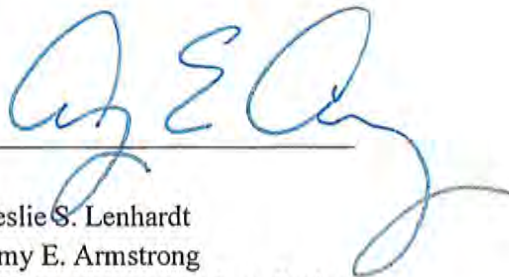
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To prevail on a claim of denial of due process in an administrative proceeding, there must be a showing of substantial prejudice. See, e.g., *Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n*, 282 S.C. 430, 435 (1984). Here, lack of public notice 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,

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: OSWW010892 v1.0
County: Charleston

Name: Pulte Home Company LLC	Site: Seewee Rd & Bulls Island	Program Code: ALTERNATIVE
Type Facility: Residential	Rd, Awendaw	System Code: 611 ENGINEERED SYS <1500GPD PUMP
Subdivision: White Tract Phase 1		TM #: 644-00-00-023 & 644-00-00-025
Block: Lot: 59		(Parent Parcels to be Subdivided)
GPD: 480		Water Supply: Municipal

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

See engineered system design and supporting documentation.

SPECIAL INSTRUCTIONS/CONDITIONS

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

PERMIT TO CONSTRUCT

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

CPR Engineering Solutions, LLC

(Engineering Company)

Caleb Rodgers

(Consulting Engineer)

SC 32006 COA 5170

(State & License Number)

Tyler Sgro

(Soil Classifier)

SC LPSC # 119

(State and License Number)

09/12/2023

(Plan Date)

21-421-SD-59

(Project Number)

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

Reviewed By:

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.

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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:
 T.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 7932 54

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
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 Cheryl D. Shoun, Esquire
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 Post Office Box 486
 Charleston, SC 29402

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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-37, Pulte Homes Company, LLC
 Issuance of a permit to construct an onsite wastewater system at lot 59 of White Tract
 Phase 1. Permit ID. 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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Sincerely,



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

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