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SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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

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Appellate Case No.: 2025-000379

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

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South Carolina Coastal Conservation League

v.

Appellant,

South Carolina Department of Environmental Services  
and Pulte Homes, LLC

Respondents.

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RECORD ON APPEAL  
VOLUME V

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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	)	<b>REQUEST FOR CONTESTED</b>
Environmental Control and	)	<b>CASE HEARING</b>
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. OSWW010893 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)).

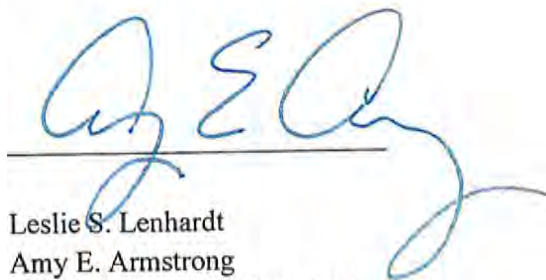
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide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

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Mount Pleasant, South Carolina  
April 5, 2024



**PERMIT TO CONSTRUCT**  
**Onsite Wastewater System**

Permit ID: OSWW010893 v1.0  
County: Charleston

**Name:** Pulte Home Company LLC  
**Type Facility:** Residential  
**Subdivision:** White Tract Phase 1  
**Block:**      **Lot:** 60  
**GPD:** 480

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

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

**PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS**

*See engineered system design and supporting documentation.*

**SPECIAL INSTRUCTIONS/CONDITIONS**

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

**PERMIT TO CONSTRUCT**

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

**CPR Engineering Solutions, LLC**

*(Engineering Company)*

**Caleb Rodgers**

*(Consulting Engineer)*

**SC 32006 COA 5170**

*(State & License Number)*

**Tyler Sgro**

*(Soil Classifier)*

**SC LPSC # 119**

*(State and License Number)*

**09/12/2023**

*(Plan Date)*

**21-421-SD-60**

*(Project Number)*

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

Reviewed By:

Date: October 24, 2023

### **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 78**

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

**RE: Docket No. 24-RFR-38, Pulte Homes Company, LLC**

Issuance of a permit to construct an onsite wastewater system at lot 60 of White Tract  
Phase 1. Permit ID. 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	)	<b>REQUEST FOR CONTESTED</b>
Environmental Control and	)	<b>CASE HEARING</b>
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. OSWW010894 v1.0 to Construct Onsite Wastewater System (the "Permit") to Respondent Pulte Homes LLC ("Pulte").

**I. Background**

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## III. Grounds for Reversal

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

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas" where OCRM has direct permitting authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to "[d]evelop a system whereby [OCRM] shall have the authority to review all state and federal permit applications in the coastal zone, and to certify that these do not contravene the management plan." S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

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

The historic use of clustered residential septic systems near coastal waterways has a well-documented history of long-term impacts to water quality. The CMP document itself states that

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

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

- 1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for OCRM in implementation of its management program these being:
  - a. “To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;
  
- 2) “the extent to which the project will have adverse impacts on the ‘critical areas’ (beach/dune system, coastal waters, tidelands);
  
- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
  
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
  
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

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

**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)).

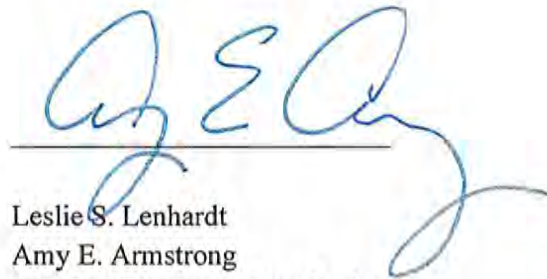
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide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

Mount Pleasant, South Carolina  
April 5, 2024



**PERMIT TO CONSTRUCT  
Onsite Wastewater System**

Permit ID: OSWW010894 v1.0  
County: Charleston

**Name:** Pulte Home Company LLC  
**Type Facility:** Residential  
**Subdivision:** White Tract Phase 1  
**Block:**      **Lot:** 61  
**GPD:** 480

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

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

**PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS**

*See engineered system design and supporting documentation.*

**SPECIAL INSTRUCTIONS/CONDITIONS**

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

**PERMIT TO CONSTRUCT**

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

**CPR Engineering Solutions, LLC**

*(Engineering Company)*

**Caleb Rodgers**

*(Consulting Engineer)*

**SC 32006 COA 5170**

*(State & License Number)*

**Tyler Sgro**

*(Soil Classifier)*

**SC LPSC # 119**

*(State and License Number)*

09/12/2023

*(Plan Date)*

21-421-SD-61

*(Project Number)*

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

Reviewed By:

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

**Board:**  
 I. 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 85**

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

**RE: Docket No. 24-RFR-39, Pulte Homes Company, LLC**

Issuance of a permit to construct an onsite wastewater system at lot 61 of White Tract Phase 1. Permit ID. 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	)	<b>REQUEST FOR CONTESTED CASE HEARING</b>
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. OSWW010895 v1.0 to Construct Onsite Wastewater System (the "Permit") to Respondent Pulte Homes LLC ("Pulte").

**I. Background**

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

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

## II. The League's Interests and Involvement

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

## III. Grounds for Reversal

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

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas" where OCRM has direct permitting authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to "**[d]evelop a system whereby [OCRM] shall have the authority to review all state and federal permit applications in the coastal zone, and to certify that these do not contravene the management plan.**" S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

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

The historic use of clustered residential septic systems near coastal waterways has a well-documented history of long-term impacts to water quality. The CMP document itself states that

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

Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal zone—OCRM would be required to consider the “long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area.” CMP III-14.

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

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

1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for OCRM in implementation of its management program these being:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

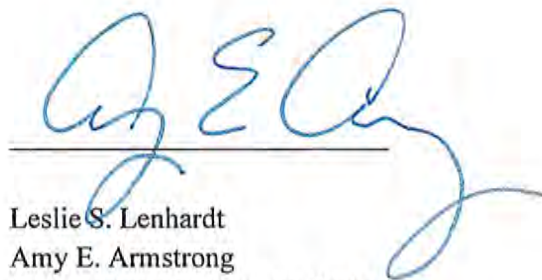
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide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

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

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

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

Respectfully submitted,

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

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

Mount Pleasant, South Carolina  
April 5, 2024



**PERMIT TO CONSTRUCT**  
Onsite Wastewater System

Permit ID: OSWW010895 v1.0  
County: Charleston

**Name:** Pulte Home Company LLC  
**Type Facility:** Residential  
**Subdivision:** White Tract Phase 1  
**Block:** Lot: 62  
**GPD:** 480

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

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

**PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS**

*See engineered system design and supporting documentation.*

**SPECIAL INSTRUCTIONS/CONDITIONS**

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

**PERMIT TO CONSTRUCT**

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

**CPR Engineering Solutions, LLC**

*(Engineering Company)*

**Caleb Rodgers**

*(Consulting Engineer)*

**SC 32006 COA 5170**

*(State & License Number)*

**Tyler Sgro**

*(Soil Classifier)*

**SC LPSC # 119**

*(State and License Number)*

**09/12/2023**

*(Plan Date)*

**21-421-SD-62**

*(Project Number)*

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

Reviewed By:

Date: October 24, 2023

### **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 92**

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

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

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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	)	<b>REQUEST FOR CONTESTED</b>
Environmental Control and	)	<b>CASE HEARING</b>
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. OSWW010897 v1.0 to Construct Onsite Wastewater System (the "Permit") to Respondent Pulte Homes LLC ("Pulte").

**I. Background**

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

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

## II. The League's Interests and Involvement

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

## III. Grounds for Reversal

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

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas" where OCRM has direct permitting authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to "[d]evelop a system whereby [OCRM] shall have the authority to review all state and federal permit applications in the coastal zone, and to certify that these do not contravene the management plan." S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

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

The historic use of clustered residential septic systems near coastal waterways has a well-documented history of long-term impacts to water quality. The CMP document itself states that

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

Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal zone—OCRM would be required to consider the “long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area.” CMP III-14.

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

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

- 1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for OCRM in implementation of its management program these being:
  - a. "To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;
  
- 2) "the extent to which the project will have adverse impacts on the 'critical areas' (beach/dune system, coastal waters, tidelands);
  
- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
  
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
  
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

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

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

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

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

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

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

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

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

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

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

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

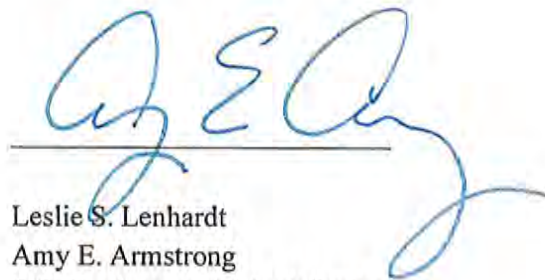
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide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

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

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

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

Respectfully submitted,

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

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

Mount Pleasant, South Carolina  
April 5, 2024



**PERMIT TO CONSTRUCT**  
**Onsite Wastewater System**

Permit ID: OSWW010897 v1.0  
County: Charleston

**Name:** Pulte Home Company LLC  
**Type Facility:** Residential  
**Subdivision:** White Tract Phase 1  
**Block:**     **Lot:** 63  
**GPD:** 480

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

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

**PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS**

*See engineered system design and supporting documentation.*

**SPECIAL INSTRUCTIONS/CONDITIONS**

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

**PERMIT TO CONSTRUCT**

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

**CPR Engineering Solutions, LLC**

*(Engineering Company)*

**Caleb Rodgers**

*(Consulting Engineer)*

**SC 32006 COA 5170**

*(State & License Number)*

**Tyler Sgro**

*(Soil Classifier)*

**SC LPSC # 119**

*(State and License Number)*

**09/12/23**

*(Plan Date)*

**21-421-SD-63**

*(Project Number)*

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

Reviewed By:

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 1997

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 7933 08**

Leslie Lenhardt, Esquire  
Email: [leslie@scelp.org](mailto:leslie@scelp.org)  
Amy Armstrong, Esquire  
Email: [amy@scelp.org](mailto: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](mailto:mshahid@maynardnexsen.com)  
Cheryl D. Shoun, Esquire  
Email: [cshoun@maynardnexsen.com](mailto:cshoun@maynardnexsen.com)  
Post Office Box 486  
Charleston, SC 29402

**Via Electronic Mail**

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

**RE: Docket No. 24-RFR-41, Pulte Homes Company, LLC**  
Issuance of a permit to construct an onsite wastewater system at lot 63 of White Tract  
Phase 1. Permit ID. 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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STATE OF SOUTH CAROLINA  
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South Carolina Department of Health and	)	<b>REQUEST FOR CONTESTED</b>
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**I. Background**

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

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas" where OCRM has direct permitting authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to "[d]evelop a system whereby [OCRM] shall have the authority to review all state and federal permit applications in the coastal zone, and to certify that these do not contravene the management plan." S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

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

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

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

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

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

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

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

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

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)).

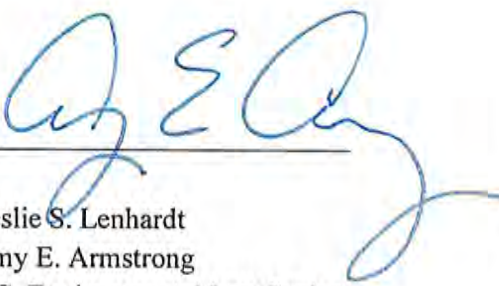
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide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

Mount Pleasant, South Carolina  
April 5, 2024



**PERMIT TO CONSTRUCT**  
Onsite Wastewater System

Permit ID: OSWW010900 v1.0  
County: Charleston

**Name:** Pulte Home Company LLC  
**Type Facility:** Residential  
**Subdivision:** White Tract Phase 1  
**Block:**      **Lot:** 64  
**GDP:** 480

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

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

**PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS**

*See engineered system design and supporting documentation.*

**SPECIAL INSTRUCTIONS/CONDITIONS**

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

**PERMIT TO CONSTRUCT**

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

**CPR Engineering Solutions, LLC**

*(Engineering Company)*

**Caleb Rodgers**

*(Consulting Engineer)*

**SC 32006 COA 5170**

*(State & License Number)*

**Tyler Sgro**

*(Soil Classifier)*

**SC LPSC # 119**

*(State and License Number)*

**09/12/2023**

*(Plan Date)*

**21-421-SD-64**

*(Project Number)*

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

Reviewed By:

Date: October 24, 2023

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

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

ROA 2008

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 7933 15**

Leslie Lenhardt, Esquire  
 Email: [leslie@scelp.org](mailto:leslie@scelp.org)  
 Amy Armstrong, Esquire  
 Email: [amy@scelp.org](mailto:amy@scelp.org)  
 South Carolina Environmental Law Project  
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 SCHEC – Office of General Counsel  
 2600 Bull Street  
 Columbia, SC 29201

**RE: Docket No. 24-RFR-42, Pulte Homes Company, LLC**  
 Issuance of a permit to construct an onsite wastewater system at lot 64 of White Tract  
 Phase 1. Permit ID. 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	)	<b>REQUEST FOR CONTESTED</b>	
Environmental Control and	)		<b>CASE HEARING</b>
Pulte Homes LLC,	)		
	)		
Respondents.	)		
<hr style="width: 100%;"/>			

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. OSWW010901 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)).

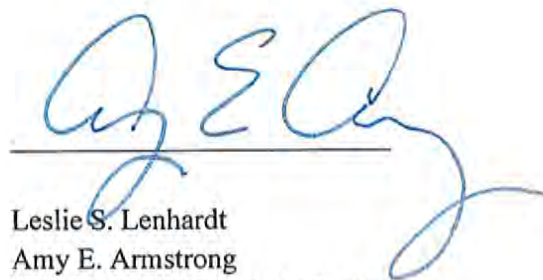
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide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

Mount Pleasant, South Carolina  
April 5, 2024



**PERMIT TO CONSTRUCT  
Onsite Wastewater System**

Permit ID: OSWW010901 v1.0  
County: Charleston

<b>Name:</b> Pulte Home Company LLC	<b>Site:</b> Seewee Rd & Bulls Island Rd, Awendaw	<b>Program Code:</b> ALTERNATIVE
<b>Type Facility:</b> Residential		<b>System Code:</b> 611 ENGINEERED SYS <1500GPD PUMP
<b>Subdivision:</b> White Tract Phase 1		<b>TM #:</b> 644-00-00-023 & 644-00-00-025 (Parent Parcels to be Subdivided)
<b>Block:</b> Lot: 65		<b>Water Supply:</b> Municipal
<b>GPD:</b> 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-65**

*(Project Number)*

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

Reviewed By:

Date: October 23, 2023

### **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 7933 22**

Leslie Lenhardt, Esquire  
 Email: [leslie@scelp.org](mailto:leslie@scelp.org)  
 Amy Armstrong, Esquire  
 Email: [amy@scelp.org](mailto: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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 Sara V. Martinez, Esquire  
 Email: [martinsv@dhec.sc.gov](mailto:martinsv@dhec.sc.gov)  
 SCHEC – Office of General Counsel  
 2600 Bull Street  
 Columbia, SC 29201

**RE: Docket No. 24-RFR-43, Pulte Homes Company, LLC**  
 Issuance of a permit to construct an onsite wastewater system at lot 65 of White Tract  
 Phase 1. Permit ID. 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 Pulte Homes LLC,	)	<b>REQUEST FOR CONTESTED CASE HEARING</b>
	)	
Respondents.	)	
<hr style="width: 40%; margin-left: 0;"/>		

TO: THE ADMINISTRATIVE LAW COURT AND THE RESPONDENTS:

The Coastal Conservation League ("Petitioner"), pursuant to S.C. Code Ann. § 44-1-60 and Rule 11 of the Rules of Procedure for the Administrative Law Court, hereby requests a contested case hearing to review the decision of the Respondent South Carolina Department of Health and Environmental Control ("DHEC") to issue Permit No. OSWW010903 v1.0 to Construct Onsite Wastewater System (the "Permit") to Respondent Pulte Homes LLC ("Pulte").

**I. Background**

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

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

## II. The League's Interests and Involvement

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

## III. Grounds for Reversal

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

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas" where OCRM has direct permitting authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to "**[d]evelop a system whereby [OCRM] shall have the authority to review all state and federal permit applications in the coastal zone, and to certify that these do not contravene the management plan.**" S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

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

The historic use of clustered residential septic systems near coastal waterways has a well-documented history of long-term impacts to water quality. The CMP document itself states that

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

Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal zone—OCRM would be required to consider the “long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area.” CMP III-14.

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

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

1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for OCRM in implementation of its management program these being:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

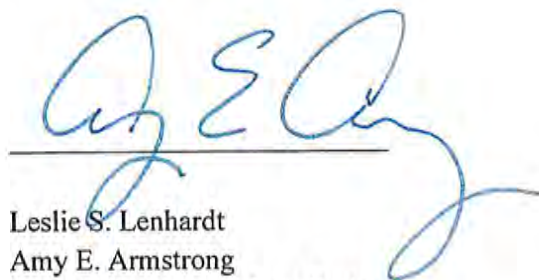
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide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

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

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

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

Respectfully submitted,

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

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](mailto:leslie@sceelp.org)

Mount Pleasant, South Carolina  
April 5, 2024



**PERMIT TO CONSTRUCT  
Onsite Wastewater System**

Permit ID: OSWW010903 v1.0  
County: Charleston

**Name:** Pulte Home Company LLC  
**Type Facility:** Residential  
**Subdivision:** White Tract Phase 1  
**Block:**      **Lot:** 66  
**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-66**

*(Project Number)*

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

Reviewed By:

Date: October 23, 2023

### **SPECIAL INSTRUCTIONS/CONDITIONS**

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

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

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

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



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 7933 39**

Leslie Lenhardt, Esquire  
 Email: [leslie@scelp.org](mailto:leslie@scelp.org)  
 Amy Armstrong, Esquire  
 Email: [amy@scelp.org](mailto: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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 SCHEC – Office of General Counsel  
 2600 Bull Street  
 Columbia, SC 29201

**RE: Docket No. 24-RFR-44, Pulte Homes Company, LLC**  
 Issuance of a permit to construct an onsite wastewater system at lot 66 of White Tract  
 Phase 1. Permit ID. 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	)	<b>REQUEST FOR CONTESTED</b>
Environmental Control and	)	<b>CASE HEARING</b>
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. OSWW010904 v1.0 to Construct Onsite Wastewater System (the "Permit") to Respondent Pulte Homes LLC ("Pulte").

**I. Background**

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

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

## II. The League's Interests and Involvement

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

## III. Grounds for Reversal

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

The Act charges DHEC with the implementation and enforcement of a comprehensive coastal management program for South Carolina. See S.C. Code Ann. § 48-39-80. In developing that program, the Act directs DHEC to take into account "all lands and waters in the coastal zone," which encompasses all eight coastal counties. S.C. Code Ann. § 48-39-10(B). The Act further directs DHEC to create two distinct regulatory programs: (1) a permitting program applicable to all uses and alterations of the coastal zone's "critical areas" where OCRM has direct permitting authority (S.C. Code Ann. § 48-39-130); and (2) a review and certification program, applicable throughout all of the coastal zone, through which the Department is directed to "[d]evelop a system whereby [OCRM] shall have the authority to review all state and federal permit applications in the coastal zone, and to certify that these do not contravene the management plan." S.C. Code Ann. § 48-39-80(B)(11) (emphasis added).

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

The historic use of clustered residential septic systems near coastal waterways has a well-documented history of long-term impacts to water quality. The CMP document itself states that

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

Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal zone—OCRM would be required to consider the “long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area.” CMP III-14.

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

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

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

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

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

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

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

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

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

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

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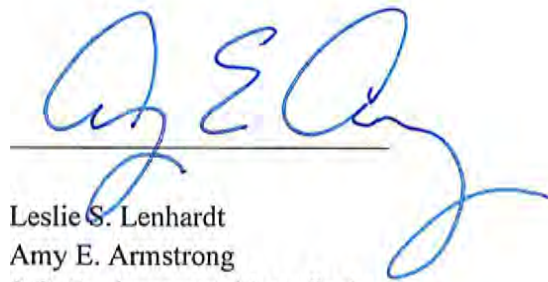
The General Assembly codified the same when it enacted Section 44-1-60(B), which provides: “To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings.” The purpose of this act “is intended to provide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

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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 be '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](mailto:leslie@scelp.org)

Mount Pleasant, South Carolina  
April 5, 2024



**PERMIT TO CONSTRUCT  
Onsite Wastewater System**

Permit ID: OSWW010904 v1.0  
County: Charleston

**Name:** Pulte Home Company LLC  
**Type Facility:** Residential  
**Subdivision:** White Tract Phase 1  
**Block:**     **Lot:** 67  
**GPD:** 480

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

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

**PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS**

*See engineered system design and supporting documentation.*

**SPECIAL INSTRUCTIONS/CONDITIONS**

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

**PERMIT TO CONSTRUCT**

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

**CPR Engineering Solutions, LLC**

*(Engineering Company)*

**Caleb Rodgers**

*(Consulting Engineer)*

**SC 32006 COA 5170**

*(State & License Number)*

**Tyler Sgro**

*(Soil Classifier)*

**SC LPSC # 119**

*(State and License Number)*

**09/12/2023**

*(Plan Date)*

**21-421-SD-67**

*(Project Number)*

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

Reviewed By:

Date: October 18, 2023

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

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

**SPECIAL INSTRUCTIONS/CONDITIONS**

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

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

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



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 7933 46**

Leslie Lenhardt, Esquire  
Email: [leslie@scelp.org](mailto:leslie@scelp.org)  
Amy Armstrong, Esquire  
Email: [amy@scelp.org](mailto: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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**Via Electronic Mail**

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

**RE: Docket No. 24-RFR-45, Pulte Homes Company, LLC**

Issuance of a permit to construct an onsite wastewater system at lot 67 of White Tract  
Phase 1. Permit ID. 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.



**SOUTH CAROLINA  
ENVIRONMENTAL  
LAW PROJECT**

*Lawyers for the Wild Side*

PO Box 1380, Pawleys Island, SC 29585 | (813) 527-0078 |  
[www.sclcp.org](http://www.sclcp.org)

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Emily S. Poole | emily@sclcp.org  
Madison R. Martin | madison@sclcp.org

May 28, 2024

**VIA U.S. MAIL**

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

Re: CCL v. DHEC & Pulte Homes

Dear Judge Durden:

Please find enclosed Petitioner's Prehearing Statements in the above-referenced matter.  
Thank you for your kind consideration.

Respectfully,

Leslie S. Lenhardt  
Senior Managing Attorney

Enclosure

cc: Sara V. Martinez, Esq.  
Mary D. Shahid, Esq.

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Coastal Conservation League,

Petitioner,

v.

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

Respondents,

In re: Lots #24 to 67.

Docket Nos.

24-ALJ-07-0088-CC to 24-ALJ-07-0131-CC

**CERTIFICATE OF MAILING**

I hereby certify that on this date I have served Petitioner's Prehearing Statement by depositing same in the U.S. Mail to the parties addressed to:

Sara Martinez  
SCHEC - Office of General Counsel  
2600 Bull Street  
Columbia SC 29201

Mary D. Shahid  
Maynard Nexsen  
205 King Street Suite 400  
Charleston, SC 29401



Deborah Weiner

May 28, 2024

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Coastal Conservation League,

Petitioner,

v.

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

Respondents,

In re: Lots #24 to 67.

Docket Nos.

24-ALJ-07-0088-CC to 24-ALJ-07-0131-CC

**PETITIONER'S PREHEARING  
STATEMENT**

Petitioner, Coastal Conservation League ("CCL") hereby submits its Prehearing Statement pursuant to this Court's Order.

**1. The nature of this proceeding:**

This is a consolidated contested case proceeding, challenging the decisions of Respondent, South Carolina Department of Health and Environmental Control ("DHEC") to approve 44 permits for onsite wastewater treatment systems (hereinafter referred to as septic tank permits) to Respondent, Pulte Homes, LLC.

**2. Statutory provision(s) conferring subject matter jurisdiction to this Court and other applicable statutes and regulations:**

The statutory provisions conferring subject matter jurisdiction and other applicable statutes and regulations are as follows: (1) S.C. Administrative Procedures Act, S.C. Code Ann. § 1-23-310, *et seq.*; S.C. Code Ann. §44-1-60; (2) the S.C. Coastal Zone Management Act (hereinafter referred to as "the Act"), S.C. Code Ann. § 48-39-10, *et seq.*; (3) Pollution Control Act, S.C. Code Ann. § 48-1-10, *et seq.*; (4) S.C. Code Ann. Reg. 61-56; (5) the South Carolina Coastal Management Program ("CMP").

**3. The issues set forth with particularity, to be presented for determination, including any claims or defenses expected to be raised:**

- a. Whether DHEC erred in issuing the Permits by failing to properly apply

South Carolina law as described in Petitioner's Requests for Contested Case;

- b. Whether DHEC erred in issuing the Permits in violation of S.C. Code Ann. Reg. 61-56 (Onsite Wastewater Systems);
- c. Whether DHEC erred in failing to conduct a Coastal Zone Consistency Review as required by S.C. Code Ann. § 48-39-80;
- d. Whether the Permits violate the policies contained in the Coastal Management Program applicable to all projects in the Coastal Zone;
- e. Whether DHEC has acted in violation of § 44-1-60(B) by failing to utilize a uniform system of public notice for individual septic tank applications.

**4. The action requested of the court and a detailed statement of the law which supports the requested action, including statutory and/or case citations:**

Petitioner seeks reversal of DHEC's decision to issue the Permits. The specific statutory and regulatory provisions to be considered by this court are as follows:

- a. § 44-1-60(B),
- b. § 48-39-10(B), § 48-39-30(B), (1), (2), (3); 48-39-80;
- c. Coastal Management Program, CMP III-60; CMP III-14; CMP III-16

**5. A brief summary of the facts to be presented at the hearing:**

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

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

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

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

added). Further, the CMP document directs the Department's Office of Ocean and Coastal Resource Management ("OCRM") to authorize septic installations in the coastal zone only for "*low density residential developments when they are designed properly and soils are adequate[.]*" CMP III-16 (emphases added). Despite this, the Department continues to permit the installation of thousands of densely-placed septic systems, all while skirting coastal zone consistency review.

Despite the proliferation of septic systems throughout the State, DHEC reviews each application individually and in isolation, even when submitted in large batches by residential developers. If applications for individual septic systems were reviewed for consistency with the CMP—like the agency is required to do for every other state and federal permit in the coastal zone—OCRM would be required to consider the "long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area." CMP III-14.

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

particularly in conjunction with dozens of permits on small lots, certainly warrants a closer look than the typical septic system, that review is not occurring.

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

- 1) The extent to which the project will further the policies of the South Carolina General Assembly which are mandated for OCRM in implementation of its management program these being:
  - a. "To promote the economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to III-3 achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone;
- 2) "the extent to which the project will have adverse impacts on the 'critical areas' (beach/dune system, coastal waters, tidelands);
- 5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities;
- 7) The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area;
- 8) The extent and significance of impact on the following aspects of quality or quantity of these valuable coastal resources: i) unique natural areas -- destruction of endangered wildlife or vegetation or of significant marine species (as identified in the Living Marine Resources segment), degradation of existing water quality standards; ii) public recreational lands -- conversion of these lands to other uses without adequate replacement or compensation, interruption of existing public access, or degradation of environmental quality in these areas; iii) historic or archeological resources -- irretrievable loss of sites identified as significant by the S. C. Institute of Archeology and Anthropology or the III-4 S. C. Department of Archives and History without reasonable opportunity for professional examination and/or excavation, or preservation.

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

## **II. The Permits Violate 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 decisions at issue violate these statutory policies because they were 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 permits, together with dozens of other similar permits, create a collective risk on a fragile public trust resource. There is nothing in the permitting decisions that shows DHEC took

into account any “coastal planning” concerns or the sensitive and fragile area where dozens of septic tanks are proposed.

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

Currently, the Department does not place applications for individual septic tanks on public notice, nor does it publicly notice issued permits for the same. This failure creates a system whereby affected persons and the public at large are unable to engage in decision-making processes that affect their rights. In particular, those rights include recreational uses in and on public trust resources, such as boating, swimming, fishing, and harvesting shellfish, in addition to impacts on their health and well-being and their property values. In short, affected persons are kept completely in the dark about the State’s permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment.

Administrative agencies such as DHEC are required to meet minimum standards of due process. *Stono River Env’t Prot. Ass’n v. DHEC*, 305 S.C. 90, 93-94 (1991)(citing S.C. Const. Art. 1, § 3; *Smith & Smith, Inc. v. S.C. Public Service Comm’n*, 271 S.C. 405 (1978)). The South Carolina Constitution provides that “[n]o person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on **due notice** and an opportunity be heard . . . and he shall have in all such instances the right to judicial review.” S.C. Const., Art. 1, § 22 (emphasis added); *see also Kurschner v. City of Camden Plan. Comm’n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process

does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River, supra*, (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

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

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

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

**6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion:**

Petitioner does not anticipate filing any motions at this time but reserves the right to amend this Prehearing Statement.

**7. A list of proposed witnesses and exhibits:**

- a. Riley Egger, Coastal Conservation League

- b. Other members of the Coastal Conservation League
- c. The exhibits will consist of the permitting file and any other documents obtained through discovery.

Petitioner reserves the right to call any other witness identified by any other party to this proceeding.

**8. A statement regarding the necessity for discovery, if any:**

Petitioner will seek discovery in this case and anticipates a need to seek the Court's permission to exceed the discovery time limitations and limits on depositions in this case.

**9. The estimated time required for the hearing:**

A hearing in this case likely will take one and a half to two days.

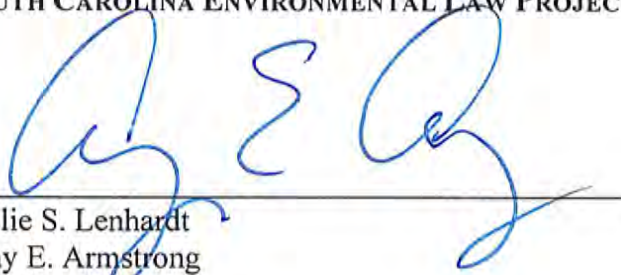
**10. Any dates within the next six months when you will not be available for a hearing:**

Petitioner is unavailable September 23-27, 2024.

**11. An e-mail address where you can be reached:**

[leslie@scelp.org](mailto:leslie@scelp.org)  
[amy@scelp.org](mailto:amy@scelp.org)

**SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT**



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Leslie S. Lenhardt  
Amy E. Armstrong  
P.O. Box 1380  
Pawleys Island, SC  
(843) 527-0078

May 28, 2024



May 28, 2024

Honorable Deborah Brooks Durden  
Judge, Administrative Law Court  
1205 Pendleton Street, Suite 224  
Columbia, South Carolina 29201

Re: Coastal Conservation League vs. South Carolina Department of Health and  
Environmental Control and Pulte Homes, LLC  
Docket No.: 24-ALJ-07-0088 to 24-ALJ-07-0131-CC

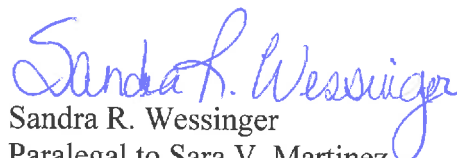
Dear Judge Durden:

Please find enclosed the South Carolina Department of Health and Environmental Control's **Prehearing Statement** for filing in connection with the above referenced matter. We kindly ask that you file the original and return a clocked copy to our office in the self-addressed, stamped envelope I have enclosed.

By copy of this letter, I am serving all parties of record.

Thank you for your assistance with this matter. Please contact our office should you have questions or need additional information.

Sincerely,

  
Sandra R. Wessinger  
Paralegal to Sara V. Martinez  
Chief Counsel for EQC

Enclosures

cc: Leslie Lenhardt, Esquire  
Amy Armstrong, Esquire  
Mary D. Shahid, Esquire  
Cheryl D. Shoun, Esquire

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Coastal Conservation League,	)	
	)	DOCKET NOS.
Petitioner,	)	24-ALJ-07-0088-CC to 24-ALJ-07-0131-CC
vs.	)	
	)	
South Carolina Department of Health and	)	<b>Respondent South Carolina Department</b>
Environmental Control and Pulte Homes, LLC,	)	<b>of Health and Environmental Control's</b>
	)	<b><i>Prehearing Statement</i></b>
Respondents.	)	
	)	
<u>In re: Lots #24 to 67</u>	)	

Respondent South Carolina Department of Health and Environmental Control (“Department”) submits this Prehearing Statement pursuant to Order for Prehearing Statements filed May 7, 2024, by the Honorable Deborah Brooks Durden, Administrative Law Court Judge.

1. **The nature of this proceeding:** The Petitioner in this case is challenging the Department’s decision to issue forty-four (44) permits (“Permits”) to Respondent Pulte Home Company, LLC (“Pulte Homes”) for the construction of engineered onsite wastewater systems with peak flow less than 1500 gallons per day (“OSWW systems”) to serve residences to be located on lots located in the subdivision in Awendaw, South Carolina in Charleston County.

At issue in this case is whether the Department was required to conduct a Coastal Zone Consistency review before issuing the Permits or place the permit applications on public notice. The Department will demonstrate that state and federal law do not require a Coastal Zone Consistency review for state permits to construct wastewater treatment systems or septic tanks that handle less than 1,500 gallons per day of domestic wastewater and do not require permit applications for onsite wastewater systems to be placed on public notice.

2. **Statutory provision(s) conferring subject matter jurisdiction to the agency and other applicable statutes and regulations:** Jurisdiction in contested cases is generally conferred

pursuant to S.C. Code Ann. §§ 1-23-10 et seq. and S.C. Code Ann. § 44-1-60.

Other applicable statutes and regulations include: South Carolina Pollution Control Act, S.C. Code Ann. §§ 48-1-10 et seq.; S.C. Code Ann. Regs. 61-56, *Onsite Wastewater Systems*; Coastal Tidelands and Wetlands Act, S.C. Code Ann. §§ 48-39-10 et seq.; and the South Carolina Coastal Zone Management Program Document, Chapter V (“CZMP”).

Specifically, S.C. Code Ann. § 48-39-80(B)(11) states “the Department shall have the authority to review all state and federal permit applications in the coastal zone and to certify that these do not contravene the management plan.” The expression of this authority is refined in the CZMP, which lists the specific state agency permits that are subject to review and certification. The list of permits subject to review includes permits for wastewater treatment systems or septic tanks, but only those that handle more than 1,500 gallons per day or handle effluent other than domestic waste. In other words, smaller systems for the treatment of domestic wastewater are exempt from Coastal Zone Consistency review based upon the approved CZMP document. This exemption has long been in place and has been upheld as properly accounting for factors including the Department’s lack of direct control or authority over sewage treatment and disposal, the sheer number of septic tank permits issued within the coastal zone, and the design of S.C. Code Ann. Regs. 61-56 “to insure that state water quality standards in adjacent water bodies must be maintained.” N. Beaufort Cnty. Committee v. S.C. Dep’t of Health & Env’tl. Control, No. 96-ALJ-07-0117-CC (S.C. Admin. L. Ct., Oct. 28, 1996) (Kittrell, J.). The CZMP was approved by the General Assembly in 1979, amended once in 1993, and has been upheld by the South Carolina Supreme Court as valid and enforceable. See, Spectre v. S.C. Dep’t Health & Env’tl. Control, 386 S.C. 357, 688 S.E.2d 844 (2010).

Additionally, the conditions that must be met for a septic permit to be issued by the

Department are detailed in S.C. Code Ann. Regs. 61-56 wherein the Department properly addresses the unique characteristics of the coastal zone by establishing a comprehensive framework of system standards, permit procedures, minimum conditions, and other requirements designed to protect the environment and public health from potential wastewater discharges. Potential sites for an onsite wastewater system would be prohibited from permitting in poor soil conditions or in close proximity to several setback conditions, including tidal waters of coastal waters and tidelands critical areas. See S.C. Code Ann. Regs. 61-56, Sections 200.1, 200.2, and 200.6.

There is no state law which requires the Department to issue public notices for each septic tank permit application. The Department meets minimum standards of due process with respect to these applications through other statutes designed to provide transparency and public participation in the Department's decision making processes. In addition to making a request for septic tank records such as applications or permitting decisions via the Department's freedom of information office, any member of the public may request notice of permitting decisions through the straightforward process established in Section 44-1-60(E)(I). These statutory provisions offer a meaningful opportunity for the public to be heard and for subsequent judicial review of permitting decisions.

3. **The issues presented for determination:** As stated above, the primary issues in this case are whether the Department was required to conduct a Coastal Zone Consistency review before issuing the Permits or to place the permit applications on public notice.

4. **The action requested of the court, if any:** The Department requests the Court affirm that the issuance of the Permits as being in compliance with all lawful requirements. Specifically, the Department was not required to conduct a Coastal Zone Consistency review

before issuing the Permits and was not required to place the permit applications on public notice. Where the Department is acting within its statutory authority and complying with its statutory mandates, Petitioners should not be allowed to disguise their disagreement with policy established in statutes and seek the judiciary to second-guess the legislative branch.

5. **A brief summary of the facts to be presented at the hearing:** In September 2023, the Department received permit applications, plans, and supporting documentation from Pulte Homes for the construction of the OSWW permits. After finalizing its review of the applications and ensuring they met all requirements of S.C. Code Ann. Regs. 61-56, the Department issued the Permits to Pulte Homes on December 21, 2023, and January 2, 2024. A request for review of the staff decision was filed by Petitioner on January 17, 2024, and the Board of Health and Environmental Control issued its decision not to conduct a Final Review Conference on March 6, 2024.

6. **A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion:** The Department will likely file a motion for summary judgment prior to a hearing and argue that the Department is entitled to judgment as a matter of law because there is no genuine issue as to any material fact. See Rule 56(c), SCRPC. As stated above, the Petitioner will likely argue the Department erred in failing to conduct a Coastal Zone Consistency review before issuing the Permits and failing to place the applications on public notice. These arguments are without merit, because an expansion of the legal requirements and a Coastal Zone Consistency review are not required under state or federal law, and state law does not require the Department to issue public notices for each septic tank permit application. The Department reserves the right to file additional motions as allowed under the Rules of Procedure for the Administrative Law Court.

7. **A list of proposed witnesses and exhibits:** At this time, the Department would anticipate calling the following witnesses, but reserves the right to name additional witnesses:

- **David Vaughan** – Director, Onsite Wastewater Division
- **Jason Goff** – Onsite Wastewater Program Manager
- **Timothy Kinney** – Director, Division of Compliance & Customer Support
- **Christopher Stout** – Bureau Chief, Ocean and Coastal Resource Management

At this time, the Department would anticipate introducing the following exhibits, but reserves the right to introduce additional exhibits: documents contained in the Department’s administrative files, documents obtained in discovery if conducted, and Chapter V of the CZMP.

8. **A statement regarding the necessity for discovery, if any:** The Department does not intend to conduct any discovery, but reserves the right to conduct standard discovery and believes it will be sufficient in this case.

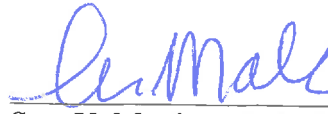
9. **The estimated length of the hearing:** The Department believes that a hearing on the merits of this case should take no more than one (1) day.

10. **Any dates within the next six months when you will not be available for a hearing:** As of this date, the Department staff and counsel are not available on the following dates: June 12-14, June 19, July 3-5, July 15, August 8-10, August 12, August 29-30, October 18, October 21-25, October 28, and November 28-29.

11. **An e-mail address where you can be reached:** The Department’s counsel may be reached at [martinsv@dhec.sc.gov](mailto:martinsv@dhec.sc.gov) and [giordaja@dhec.sc.gov](mailto:giordaja@dhec.sc.gov). In addition, the Department would request that counsel Bradley Churdar be copied on all matters regarding this case at [churdbd@dhec.sc.gov](mailto:churdbd@dhec.sc.gov), as well as the Department’s paralegal, Sandra R. Wessinger, at [wessinsr@dhec.sc.gov](mailto:wessinsr@dhec.sc.gov).

[Signature Page to Follow]

Respectfully submitted,



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May 28, 2024  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Coastal Conservation League,

Petitioner,

v.

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

Respondents.

In re: Lots #24 to 67

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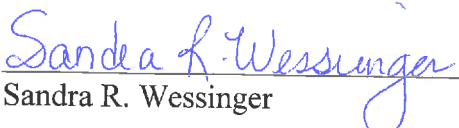
24-ALJ-07-0088-CC to 24-ALJ-07-0131

Certificate of Service

I, Sandra R. Wessinger, Paralegal for the South Carolina Department of Health and Environmental Control, hereby certify that I have on this 28<sup>th</sup> day of May, 2024, served the foregoing *Prehearing Statement* upon all parties and counsel of record by via U. S. Mail, First Class, and electronic mail as follows:

Leslie Lenhardt, Esq. Amy Armstrong, Esq. P.O. Box 1380 Pawleys Island, SC 29585 leslie@scelp.org amy@scelp.org	Mary D. Shahid, Esq. Cheryl D. Shoun, Esq. Post Office Box 486 Charleston, SC 29402 mshahid@maynardnexsen.com cshoun@maynardnexsen.com
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May 28, 2024  
Columbia, South Carolina

  
Sandra R. Wessinger

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Coastal Conservation League,

Petitioner,

vs.

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

Respondent.

In re: Lots #24 to-67.

Docket Nos.

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

**PREHEARING STATEMENT**

Respondent Pulte Homes, LLC

*Nature of Proceeding*

This proceeding is styled as a Contested Case initiated by the South Carolina Coastal Conservation League (“SCCCL”) through its counsel, the South Carolina Environmental Law Project. SCCCL seeks review by this Court of 44 individual permits issued by the Respondent South Carolina Department of Health and Environmental Control (“Department” or “SCDHEC.”) The permits authorized on-site wastewater systems designed for peak flows less than 1,500 Gallons per Day. The permits were issued to Respondent Pulte Home Company, LLC<sup>1</sup> to facilitate residential development of property located in Charleston County, the Town of Awendaw, identified as the White Tract Phase 1.

*Statutory Provisions Conferring Subject Matter Jurisdiction to the Agency and other Applicable Statutes and Regulations*

The Department has subject matter jurisdiction to review and approve the issuance of the 44 permits for onsite wastewater systems as established in S. C. Code Ann. Sec. 48-1-10 (Pollution Control Act) and 44-55-610, 44-55-630, 44-55-822, 44-55-827 (Health: Water Sewage, Waste Disposal, and the Like.) This Court has subject matter jurisdiction to review and dismiss this contested case as set forth in S. C. Code Ann Sec. 44-1-60(F)(2), and S. C. Code Ann. Sec 1-23-310.

*The Issues Presented for Determination*

Petitioner raises three issues for review by this Court. These issues do not relate to whether the authorized onsite wastewater systems comply with the Department’s requirements related to

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<sup>1</sup> Petitioner incorrectly identifies Respondent as “Pulte Homes, LLC.”

location of installation, groundwater assessment, soil assessment, design, capacity, and functionality. Rather, Petitioner asserts that the Department's decisions contravene S. C. Code Ann. Sec. 48-39-10(B) and the Department failed to consider policies set forth in S.C. Code Sec. 48-39-30. Petitioner's first reference is to the South Carolina Coastal Zone Management Program Document ("CZMPD") and the Department's obligation to develop a system to review state and federal permit applications in the coastal zone. This process is known as a coastal zone consistency certification.

Petitioner next references specific statutory policies, to wit: (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 resort or enhance the resources of the State's coastal zone for this and succeeding generations; (3) to formulate a comprehensive tidelands protection program.

Petitioner's third reference is a due process challenge, based on the Department's practice of not providing public notice of individual septic tanks permits.

*The Actions Requested of the Court, if Any*

Respondent will demonstrate to this Court that the Department's conduct in reviewing and issuing the subject onsite wastewater disposal systems was governed by the applicable regulations dictating the suitability of a site for use of a septic system. The remaining issues raised by Petitioner are policy and legislative issues, unrelated to the legal and technical sufficiency of the Department's review of the 44 permit applications. The CZMPD is a legislative document. The CZMPD was presented to the Governor and General Assembly for approval in compliance with S. C. Ann. Sec. 49-39-90(C). The S. C. Supreme Court has recognized this adoption process as more rigorous than the APA regulation process. Spectre, LLC v. SCDHEC, 387 S. C. 357, 373, 688 S. E. 2d 844, 852 (2010).

The CZMPD includes the following: "DHEC retains regulatory authority over septic tanks with flow rate of 1500 GPD or greater." Permit for anything less than 1500 GPD are not subject to review and certification. (III-62.) Table 1, CZMPD, included in Chapter 5 lists those State Agency Permits subject to review and certification and refers to "State permits to construct wastewater treatment systems, or septic tanks handling either more than 1500 GPD or other than domestic waste" (V-5).

Similarly, public notice is a legislative issue and is not required for permit applications for wastewater disposal. This is applicable to septic tanks and to the construction of sewer lines providing connections to a wastewater treatment plant. Construction of wastewater collection facilities occurs on private property. Septic tanks are often necessary in rural communities with limited access to a treatment plant. Wastewater discharges are a source of pollution, and the Legislature requires the Department to manage that source. Regulations promulgated by the Department, S. C. Code Reg. 61-56, governing the issuance of permits for septic tanks, do not

include requirements for notification. An ability to collect, treat, and properly discharge wastewater is integral to addressing pollution and necessary for the health and safety of the general population. If there is a home or homes located on property, there must be adequate waste disposal facilities. Comments by neighbors or citizen's groups have no role in the Department's duty to protect the public from pollution by requiring adequate wastewater facilities.

Respondent Pulte seeks denial of Petitioner's challenge to the 44 permits as the challenges are not associated with a failure to comply with regulatory standards, but reflect policy issues not applicable to septic tanks.

### *A Brief Summary of the Facts to be Presented at the Hearing*

Respondent Pulte commenced the process of obtaining approvals for development of the White Tract in 2021. The Town of Awendaw approved Pulte's Preliminary Plat. The development requires the use of onsite wastewater (septic tanks) because there is no available public wastewater treatment system in the Town. All new development in the Town is therefore dependent upon septic tanks.

Pulte's Preliminary Plat, approved by the Town on April 18, 2022 is dependent upon the installation of septic tanks. Pulte, with the assistance of a certified professional soil scientist, Tyler Sgro, of Davis Horizons, and Caleb Rodgers, PE, MBA, of Onsite Septic Engineering, a licensed professional engineer, determined that the White Tract (all phases) has the capacity to support 204 septic tanks based on soil conditions and other particulars examined by Sgro and Rodgers. Department staff, Jason Goff, considered the information provided by Sgro and Rodgers and evaluated the properties for suitability for installation of an engineered system.

Pulte will provide factual and documentary evidence demonstrating the reliability of the engineered systems and additional measures taken to ensure proper maintenance of the septic systems.

### *A Summary of any Motions Expected to be Raised at the Hearing and the Appropriate Authority Underlying the Motion*

- Respondent Pulte will file a Motion for Summary Judgment regarding Petitioner's allegations that the 44 permits were issued in violation of the CZMPD and/or without public notice. In addition, the Motion for Summary Judgment will address Petitioner's allegations regarding the applicability of policies in S. C. Code Ann. 48-39-30.
- Respondent Pulte will seek to lift the stay on construction at the appropriate time, including a request for a bond to address the hardship it will suffer should the stay remain in place.
- Respondent Pulte may file a Motion to Dismiss. The improperly named Pulte Homes, LLC has no interest or involvement in the development of the White Tract. The 44 permits that are the subject of this contested case were issued to Pulte Home

Company, LLC.

*A list of Proposed Witnesses and Exhibits*

WITNESSES

- 1) Representative(s) from Pulte's Land Team to be identified;
- 2) Caleb Rodgers;
- 3) Tyler Sgro; and
- 4) DHEC staff responsible for review and issuance of permits to Pulte.

Pulte reserves the right to name additional witnesses as discovery progresses in this case.

EXHIBITS

- 1) Documents reflecting soil analysis;
- 2) Documents identifying ground water depth;
- 3) Design documents for septic tanks;
- 4) Engineered plans if available;
- 5) Development Plans, including approved Preliminary Plat;
- 6) Aerial and Ground Imagery of White Tract and surrounding waters and/or sensitive areas;
- 7) Water quality data in waters surrounding or in close proximity to White Tract;
- 8) BCD COG information related to sewer availability for Awendaw;
- 9) 303(d) list of impaired waterbodies identifying sources of impairment; and
- 10) Documents produced by SCDHEC.

Pulte reserves the right to identify additional exhibits as discovery progresses in this case.

*A Statement Regarding the Necessity for Discovery, if Any*

Pulte has determined discovery is necessary in this contested case and intends to pursue discovery as allowed in the RPALC.

*The Estimated Length of the Hearing*

Pulte estimates that the hearing will require two full days.

*Any Dates Within the Next Six Months When You Will Not Be Available for a Hearing*

Pulte and its counsel/witnesses are unavailable as follows: June 10-21, June 25, July 1-12, July 18-19, July 24, August 1, August 21, September 9-12, September 20 – September 30, October 9-18. Unfortunately, the only time that Tyler Sgro is available conflicts with Pulte's unavailability, limiting Sgro's ability to testify at a hearing to August 1-16. However, this may be remedied by

use of a *de benne esse* video deposition of Sgro.

*An E-Mail Address Where You Can Be Reached*

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May 28, 2024  
Charleston, South Carolina

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Coastal Conservation League,

Petitioner,

vs.

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

Respondents.

In re: Lots #24 to 67

Docket Nos.

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

**RESPONDENTS' JOINT  
MOTION FOR SUMMARY JUDGMENT  
AND INCORPORATED MEMORANDUM**

Respondents Pulte Homes, LLC (“Pulte”) and the South Carolina Department of Health and Environmental Control hereby move for Summary Judgment pursuant to Rule 19 and Rule 68 of the Rules of Procedure for the Administrative Law Court and Rule 56 of the South Carolina Rules of Civil Procedure. This Motion is based on the Petitioner’s Prehearing Statement (“PHS”) filed with this Court on May 28, 2024 and on the relevant law. Petitioner describes the matters it intends to raise at the contested case hearing as follows: 1) whether the Department of Environmental Services (“DES”)<sup>1</sup> is required to conduct a review under the S. C. Coastal Zone Management Program Document (“CZMPD”) when evaluating Pulte’s submittal of 44 permit applications for individual septic tanks; 2) whether DES’ review of the permit applications failed to take into account statutory requirements set forth in S. C. Code Ann. Sec. 48-39-10 et seq., the Coastal Tidelands and Wetlands Act; and 3) whether the failure to provide public notice of individual septic tank applications constitutes a violation of due process.

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<sup>1</sup>S. C. Department of Health and Environmental Control was abolished on July 1, 2024, was replaced by two separate agencies: Department of Health Services and Department of Environmental Services.



As detailed below, summary judgment is appropriate for disposition of this contested case.<sup>2</sup> “Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.” Marlowe v. SC DOT, 441 S. C. 319, 329, 893 S. E. 2d 21, 26 (Ct. App. 2023). “The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact.” Baughman v. Amsteel and Tel. Co., 306 S. C. 101, 115, 410 S. E. 2d 537, 545 (1991). Here, there is no dispute that each of the 44 permits complies with the regulatory standards for septic tanks, including site suitability, and public notice is not required by statute or regulation.

### **ARGUMENT**

Petitioner asserts in its PHS that S.C. Code Ann. Sec. 48-39-80(B)(11) imposes on DES a duty to review every septic tank permit issued in the eight coastal counties for a determination of consistency with the CZMPD. Sec. 48-39-80. This section of the Coastal Tidelands and Wetlands Act directs DES to develop a comprehensive coastal management program and to establish regulations and policies for reviewing projects within the coastal zone. Specifically, DES has authorization to review all state and federal permit applications in the coastal zone and to certify that these do not contravene the CZMPD.

The CZMPD includes Chapter V, which specifically enumerates state agency permit applications that are subject to review and certification. Table 1, page V-5 of the CZMPD, requires consistency review and certification of “State permits to construct wastewater treatment systems or septic tanks handling either more than 1500 gallons per day or other than domestic waste.” The CZMPD was adopted with approval of the General Assembly. Smaller systems producing less than 1500 GPD are exempt from certification review. This exemption has been in place since

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<sup>2</sup> Petitioner’s attorney has acknowledged agreement with disposition of the case by way of summary judgment. (Email from Leslie Lenhardt to parties June 18, 2024.)

1979 and is necessary for multiple reasons including the need for waste disposal for all residential properties, the unavailability in certain areas of regional sewer and water services, DES' lack of direct control and authority over planning to provide wastewater services, as that is vested with local government, the historical use of septic tanks, and the demand for new installations.

Petitioner has not challenged the suitability of the property for septic tank installation, nor does Petitioner dispute that S. C. Code Regs. 61-56, governing DES' review and issuance of septic tank permits, is silent as to public notice procedures. Rather, Petitioner claims violations of due process because of a lack of public notice. Petitioner does not have a property interest in the 44 lots, collectively known as the White Tract. The State Constitution views due process in the context of individual property rights. "No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency **affecting private rights** except on due notice and an opportunity to be heard." S. C. Const. Art. I Sec. 22. In addition, "proof of a denial of due process in an administrative proceeding requires a showing of substantial prejudice." Myers v. S. C. Department of Health and Human Services, 418 S. C. 818, 795 S. E. 2d 301 (Ct. App 2016). "The procedural component of the state and federal due process clauses requires the individual whose property or liberty interests are affected to have received adequate notice of the proceeding, the opportunity to be heard in person, the opportunity to introduce evidence the right to confront and cross-examine adverse witnesses, and the right to meaningful judicial review." SCCCL v. SCDHEC, 380, 382 S. C. 349, 669 SE 2d 899, 916 (Ct. App. 2008).

Petitioner was able, through FOIA, to obtain copies of the issued permits and timely filed challenges to the permits. The Administrative Law Court procedures satisfy the due process standards dictated by the Appellate Courts. Petitioner has suffered no prejudice in this matter. "To prove the denial of due process in an administrative proceeding, a party must show that it was

substantially prejudiced by the administrative process. Leventis v. SCDHEC, 340 S. C. 118, 131-132, 540 S. E. 2d 643, 650 (Ct. App. 2000)

S. C. Code Ann. Sec. 44-1-60(B) includes the following: “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.” Identical language is included in S. C. Code Ann. Sec. 48-6-30(B). Importantly, the requirement is contingent upon it being feasible to provide public notice. As noted above, the sheer number of septic tank permits renders it difficult to provide public notice. Moreover, the importance of providing safe and effective wastewater disposal for single-family residential lots far out-weighs a neighboring landowner’s objections or comments.

A small onsite wastewater system (septic tank) is defined as “[a]n individual system serving an individually deeded dwelling or business that generates less than fifteen hundred GPD of domestic wastewater. Management and maintenance of each system is the responsibility of the individual property owner.” Septic Tank is defined as “A watertight, covered receptacle designed and constructed to receive the discharge of domestic wastewater from a building, sewer, separate solids from the liquid, digest organic matter, store digested solids through a period of detention and biological conditions of liquid waste, and allow the effluent to discharge for final treatment and disposal.” R. 61-56 (100.1) R. 61-56 contains extensive detail on determining sufficient area for a successful drain field, requiring setbacks between the drain field and sensitive areas, site evaluations necessary to determine if groundwater conditions and soil structure are sufficient to support a septic tank. Moreover, Pulte intends to record a Restrictive Covenant requiring annual inspections of the permitted septic tanks.

## CONCLUSION

“Due process is not a technical concept with fixed parameters unrelated to time, place and circumstances; rather it is flexible concept that calls for such procedural protections as the situation demands.” Matthews v. Eldridge, 424 U. S. 319, 96 S. Ct. 893, 57 L. Ed. 2d 18 (1976). Here, private property cannot be utilized without adequate wastewater facilities. Many rural areas in South Carolina are not connected to public infrastructure. The availability of wastewater disposal is a critical component of public health. As septic tanks are the only option for residential wastewater collection and disposal on the White Tract, greater weight is assigned to the ability to timely provide for wastewater disposal than delay the process through public notice, particularly notice to an entity with no protected interest in the matter. DES did not overlook or omit a notice process for septic tanks but instead limited the process to exclude residential development. The legislature agreed with DES and the decision that only septic tanks discharging 1500 GPD necessitate public notice. Petitioner has no legal interest in the manner in which a single property owner handles wastewater, and thus Petitioner’s case should be disposed of accordingly. Based on the foregoing, Pulte and DES ask the Court to Grant Summary Judgment, as there are no issues of fact in dispute, no legal requirements for public notice of septic tanks, and legislatively approved certification policies exempting septic tanks under 1500 GPD.

*[SIGNATURES ON FOLLOWING PAGE]*

*Cheryl D. Shoun by AHG*

Cheryl D. Shoun, SC Bar No. 5092

Mary D. Shahid, SC Bar No.: 1794

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October 1, 2024  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Coastal Conservation League,

Petitioner,

vs.

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

Respondents.

In re: Lots #24 to 67

Docket Nos.

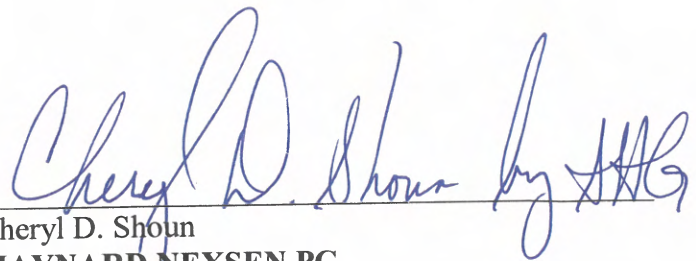
24-ALJ-07-0088 to 24-ALJ-07-131-CC

**CERTIFICATE OF SERVICE**

This is to certify that on the 1<sup>st</sup> day of October, 2024, a copy of Respondents Pulte Homes, LLC's and the South Carolina Department of Health of Environmental Control's Joint Motion for Summary Judgment and Incorporated Memorandum has been served upon the following by electronic mail and by placing a copy of the same in the US Mail, first class postage prepaid, addressed to the following as follows:

[leslie@scelp.org](mailto:leslie@scelp.org)

Leslie Lenhardt, Esquire  
Senior Managing Attorney  
SC Environmental Law Project  
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Cheryl D. Shoun  
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**SOUTH CAROLINA  
ENVIRONMENTAL  
LAW PROJECT**

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October 10, 2024

**VIA U.S. MAIL**

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

Re: CCL v. DHEC & Pulte Homes

Dear Judge Durden:

Please find enclosed Petitioner's Response to Respondents' Joint Motion for Summary Judgment and Cross-Motion for Summary Judgment in the above-referenced matter. Thank you for your kind consideration.

Respectfully,

Monica K. Whalen  
Staff Attorney

Enclosure

cc: Sara V. Martinez, Esq.  
Mary D. Shahid, Esq.

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

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Coastal Conservation League,

Petitioner,

v.

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

Respondents,

In re: Lots #24 to 67.

Docket Nos.

24-ALJ-07-0088-CC to 24-ALJ-07-0131-CC

**PETITIONER'S RESPONSE TO  
RESPONDENTS' JOINT MOTION  
FOR SUMMARY JUDGMENT AND  
CROSS-MOTION FOR SUMMARY  
JUDGMENT**

---

**TO: HONORABLE DEBORAH BROOKS DURDEN, RESPONDENTS  
AND THEIR ATTORNEYS**

Petitioner, South Carolina Coastal Conservation League (“the League”) responds in opposition to the Respondents’ Joint Motion for Summary Judgment, and pursuant to SCRCF 56 and SCALC Rule 19, moves this Court for an Order denying Respondents’ motion and granting summary judgment in its favor. The material facts are not disputed, and Petitioner is entitled to judgment as a matter of law. The basis for Petitioner’s Response and Motion is as follows:

**INTRODUCTION**

The Requests for Contested Case Hearings were brought against Respondents Department of Health and Environmental Control (the “Department,” now known as the Department of Environmental Services), and Pulte Homes, LLC (“Pulte Homes”), challenging the issuance of Permit No. OSWW010845 through Permit No. OSWW010904. The basis of the League’s challenge is the Department’s failure to review the forty-four (“44”) permit applications for

individual “small” onsite wastewater systems,<sup>1</sup> also known as septic tanks or septic systems, for consistency with the State’s Coastal Management Program, and the Department’s additional failure to publicly notice the septic applications and permits.

In 1977, the General Assembly created the South Carolina Coastal Council and gave it significant regulatory duties and responsibilities within the state’s “coastal zone.”<sup>2</sup> Act No. 123 of 1977, S.C. Code Ann. § 48-39-10, *et seq.* The South Carolina Coastal Tidelands and Wetlands Act (the “Act”) established two regulatory programs:

- (1) a permitting program applicable to all uses and alterations of the coastal zone’s “critical areas,”<sup>3</sup> S.C. Code Ann. § 48-39-130; and
- (2) a certification program, applicable throughout all of the coastal zone, and implemented through review of all state and federal permits for activities in the coastal zone. S.C. Code Ann. §§ 48-39-80 & 48-39-90.

In creating the critical area permitting program, the Act directed the Coastal Council to promulgate rules and regulations pursuant to the South Carolina Administrative Procedures Act,<sup>4</sup> S.C. Code Ann. § 1-23-10, *et seq.* S.C. Code Ann. § 48-39-130(B). These rules and regulations were duly promulgated. S.C. Code Ann. Regs. § R.30-1, *et seq.*

For the certification program, the Act directed the Coastal Council to “develop a comprehensive coastal management program.” S.C. Code Ann. § 48-39-80. The Act provided detailed instructions for the agency to follow in developing the coastal management program:

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<sup>1</sup> See S.C. Code Ann. Regs. 61-56.101, defining “small onsite wastewater systems” as individual onsite wastewater systems serving an individually deeded dwelling or business that generates less than fifteen hundred (1500) gpd of domestic wastewater.

<sup>2</sup> The Act defines the “coastal zone” as including “all coastal waters and submerged lands seaward to the State’s jurisdictional limits and all lands and waters in the counties of the State which contain any one or more critical areas. These counties are Beaufort, Berkeley, Charleston, Colleton, Dorchester, Horry, Jasper and Georgetown.” S.C. Code Ann. § 48-39-10(B).

<sup>3</sup> The “critical areas” include saline coastal waters and tidelands, beaches and the beach/dune system. S.C. Code Ann. § 48-39-10(F), (G), (H) and (J).

<sup>4</sup> The original language of the Coastal Zone Management Act directed that the regulations be promulgated in compliance with Act No. 671 of 1976. The present Administrative Procedures Act was enacted in 1977 and Act 671 of 1976 was repealed. Act 176 of 1977, Art. III, § 2.

**§ 48-39-80. Development of coastal management program.**

The department<sup>5</sup> shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program in accordance with the provisions of this chapter and any rules and regulations promulgated under this chapter. In developing the program the department shall:

- (A) Provide a regulatory system which the department shall use in providing for the orderly and beneficial use of the critical areas.
- (B) In devising the management program the department shall consider all lands and waters in the coastal zone for planning purposes. In addition, the department shall:
  - (1) Identify present land uses and coastal resources.
  - (2) Evaluate these resources in terms of their quality, quantity and capability for use both now and in the future.
  - (3) Determine the present and potential uses and the present and potential conflicts in uses of each coastal resource.
  - (4) Inventory and designate areas of critical state concern within the coastal zone, such as port areas, significant natural and environmental, industrial and recreational areas.
  - (5) Establish broad guidelines on priority of uses in critical areas.
  - (6) Provide for adequate consideration of the local, regional, state and national interest involved in the siting of facilities for the development, generation, transmission and distribution of energy, adequate transportation facilities and other public services necessary to meet requirements which are other than local in nature.
  - (7) Provide for consideration of whether a proposed activity of an applicant for a federal license or permit complies with the State's coastal zone program and for the issuance of notice to any concerned federal agency as to whether the State concurs with or objects to the proposed activity.
  - (8) Provide for a review process of the management plan and alterations thereof that involves local, regional, state and federal agencies.
  - (9) Conduct other studies and surveys as may be required, including the beach erosion control policy as outlined in this chapter.
  - (10) Devise a method by which the permitting process shall be streamlined and simplified so as to avoid duplication.

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<sup>5</sup> In 1993, the Coastal Council was abolished, and the responsibility for carrying out the mandates of the Coastal Zone Management Act was transferred to the South Carolina Department of Health and Environmental Control, now the Department of Environmental Services.

- (11) **Develop a system whereby the department shall have the authority to review all state and federal permit applications in the coastal zone, and to certify that these do not contravene the management plan.**

S.C. Code Ann. § 48-39-80 (Cum. Supp. 2006) (1977 Act No. 123, § 8, as amended).

The State followed the procedures for promulgating the Coastal Management Program (“CMP”) set forth in Section 48-39-90. The CMP was approved by the General Assembly and the Governor in 1979, and upheld as binding rules by the South Carolina Supreme Court in *Spectre, LLC v. S.C. Dep’t. of Health & Env’t. Control*, 386 S.C. 357, 688 S.E.2d 844 (2010). The Coastal Management Plan contains regulatory criteria designed to ensure that projects requiring state or federal permits within the eight coastal counties are carried out with due consideration for the sensitive coastal resources. In the coastal zone, septic systems are at risk of becoming overwhelmed due to groundwater rising from wet weather natural events such as flooding, coastal storms, seasonal variances and sea level rise. S.C. Dep’t of Health & Env’t Control, *Wastewater (Sewer) Overflows* (2019), <https://scdhec.gov/wastewater-sewer-overflows>. This risk is particularly concerning for the area known as, “White Tract,” where the septic systems are proposed to be installed, as it is located within a mile of the Cape Romain National Wildlife Refuge.<sup>6</sup> Additional risks associated with improperly maintained or managed septic tanks include, but are not limited to, toxic gas exposure, structural collapse, contamination of water sources, and the spread of harmful bacteria and viruses.<sup>7</sup> See S.C. Dep’t of Health & Env’t Control, *Septic Tank Safety Warnings*, <https://des.sc.gov/permits-regulations/septic-tanks/homeowner->

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<sup>6</sup> Cape Romain National Wildlife Refuge is composed almost entirely of barrier islands, salt marsh, and coastal waters. U.S. Fish & Wildlife Serv., *Cape Romain National Wildlife Refuge*, <https://www.fws.gov/refuge/cape-romain>.

<sup>7</sup> These facts do not represent material facts in dispute because they would only be relevant if the Department had actually conducted a review. Their inclusion is meant to provide context regarding the types of considerations that would be involved and why the recreational interests of the League members in the nearby waters are so threatened.

resources/septic-tank-safety-warnings (last visited Oct. 10, 2024).

Despite the Act's requirement that the Department "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 48-39-80(B)(11), the Department issued the 44 septic tank permits without certifying their consistency with the management plan, in violation of S.C. Code Ann. § 48-39-80. Additionally, the Department did not provide public notice for the applications and permits. Therefore, the Department's issuance of the permits was in error. Petitioner is entitled to summary judgment in its favor.

#### **STANDARD OF REVIEW**

"The judgment sought shall be rendered forthwith if the pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the nonmoving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. "Summary judgment is appropriate when there is no genuine issue of material fact, and it is clear the moving party is entitled to a judgment as a matter of law." *Hancock v. Mid-South Management Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 802 (2009).

#### **STATEMENT OF UNDISPUTED MATERIAL FACTS**

In support of this motion and to provide background, Petitioner incorporates by reference its Requests for Contested Case Hearings, Prehearing Statement, and other documents filed with this Court. It is undisputed that in September 2023, Pulte Homes submitted 44 individual septic tank permit applications for septic tanks generating less than 1,500 gallons of water per day (gpd). The permitted septic tanks would be installed in a subdivision known as White Tract in Awendaw, Charleston County, SC. The Department did not publish any notice of the applications and admitted that any kind of individual septic tank permit applications of less than 1,500 gallons per

day (gpd) are not placed on public notice. S.C. Dep't of Env'tl Servs., Resp. to Pet'r's Requests for Admission (July 23, 2024), ¶ 3, Exhibit A. (Pg. 1). The Department issued the permits on December 21, 2023 and January 2, 2024. Petitioner initiated this contested case with the DHEC Board on April 5, 2024.

The Department conceded that a permit to construct an onsite wastewater system is a state-issued permit, and that a permit to construct and operate any new, upgraded, or expanded onsite wastewater system must be obtained from the Department prior to construction and operation of the system. S.C. Dep't of Env'tl Servs., Resp. to Pet'r's Requests for Admission (July 23, 2024), ¶ 6 and 7, Exhibit A (Pg. 1-2). More specifically, the Department admitted that it is the state agency charged with processing permit applications to construct and operate wastewater systems generating less than 1,500 gpd. S.C. Dep't of Env'tl Servs., Resp. to Pet'r's Requests for Admission (July 23, 2024), ¶ 5, Exhibit A (Pg. 2). It is an uncontested fact that the Department did not conduct a review of the septic tank applications for consistency with the CMP. S.C. Dep't of Env'tl Servs., Resp. to Pet'r's Requests for Admission (Aug. 15, 2024), ¶ 1, Exhibit B (Pg. 1).

### **ARGUMENT AND CITATION OF AUTHORITIES**

Summary judgment should be entered when there are no disputed material facts and the movant is entitled to judgment as a matter of law. SCRCP 56(c). Because no genuine issues of material fact exist, the League is entitled to judgment as a matter of law regarding its claims for summary judgment and for injunctive relief.

#### **I. The Department's Issuance of the Septic Tank Permits at Issue Does Not Comply with the Requirements Set Forth in S.C. Code § 48-39-80(B) and the Coastal Management Program.**

Well-established case law directs courts to adhere to the plain language of a statute. *See Spectre, LLC v. S.C. Dep't. of Health & Envt. Control*, 386 S.C. 357, 688 S.E.2d 844 (2010); *Kiawah Development Partner, II v. S.C. Dept. of Health and Envt. Control* 411 S.C. 1635-36, 766

S.E.2d 707, 719 (2014). South Carolina recognizes that “where [. . .] the plain language of the statute is contrary to the agency’s interpretation, the Court will reject the agency’s interpretation.” *State v. Sweat*, 379 S.C. 367, 374, 665 S.E.2d 645, 649 (Ct. App. 2008), quoting *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003). Here, the Department’s failure to review septic tank permits for Coastal Zone Consistency certification, despite the clear language of S.C. Code § 48-39-80, directly violates its statutory duty.

S.C. Code Ann. § 48-39-80 charges the Department with the implementation and enforcement of a comprehensive coastal management program for South Carolina. In developing that program, the Act directs the Department to take into account “all lands and waters in the coastal,” which encompasses all eight coastal counties. S.C. Code § 48-39-10(B). The Act further directs the Department 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 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 § 48-39-80(B)(11) (emphasis added). The use of “shall” imposes a clearly mandatory obligation on the Department to not only create the system but to actively review and certify all state and federal permit applications in the eight coastal counties for consistency with the CMP.<sup>8</sup>

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<sup>8</sup> “Shall” as defined in the Merriam Webster dictionary means “used in laws, regulations, or directives to express what is mandatory.” Merriam-Webster, Shall (3b), Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/shall> (last visited Sept. 12, 2024). “Shall” is defined as “[h]as a duty to; more broadly, is required to <the requester shall send notice> <notice shall be sent>.” This is the mandatory sense that drafters typically intend and that courts typically uphold.” *Black’s Law Dictionary* (11th ed. 2019). See, e.g., *S.C. Pub. Interest Found. v. S.C. Dep’t of Transp.*, 421 S.C. 110, 123, 804 S.E.2d 854, 861 (2017) (construing “shall” as used in the South Carolina Constitution to mean “must.”).

The Department admits that it is the state agency charged with processing permit applications to construct and operate onsite wastewater systems generating less than 1,500 gpd, and it admits that a permit to construct and operate any new, upgraded, or expanded onsite wastewater system must be obtained prior to construction and operation of the system. Declaration of S.C. Dep't of Env'tl Servs., Resp. to Pet'r's Requests for Admission (July 23, 2024), ¶ 5 and 6, Exhibit A (Pg. 2). The Department did issue 44 septic tank permits, which are subject of this contested case, Permit No. OSWW010845 through Permit No. OSWW010904, without review for consistency with the policies of the CMP. S.C. Dep't of Env'tl Servs., Resp. to Pet'r's Requests for Admission (Aug. 15, 2024), ¶ 1, Exhibit B (Pg. 1). In doing so, the Department not only violated its statutory duty, but it also put the interests of the League at risk, as the Department contended that a percentage of improperly maintained septic systems could malfunction. S.C. Dep't of Env'tl Servs., Resp. to Pet'r's Requests for Admission (July 23, 2024), ¶ 2, Exhibit A (Pg. 1).

In their Joint Motion for Summary Judgment, the Respondents cite to CMP policies which purport to exempt certain permit applications from review and certification, but fail to provide any legal support for how those CMP provisions can override the statute. Respondents' Joint Motion for Summary Judgment at 2. The Respondents assert that the exemption of review for septic tanks generating less than 1,500 gpd is "necessary for multiple reasons including the need for waste disposal for all residential properties, the unavailability in certain areas of regional sewer and water services, DES' lack of direct control and authority over planning to provide wastewater services, as that is vested with local government, the historical use of septic tanks, and the demand for new installations." Respondents' Joint Motion for Summary Judgment at 3. Those reasons are irrelevant to the legal question at issue in this case. The Petitioner is not asking the Court to prohibit

the Department from ever issuing a septic tank permit or to require connection to sewer. Rather, the Petitioner seeks to ensure that the Department fulfills its statutory duty by reviewing the permit applications with the policies of the CMP. Only after such a review can the Department make an informed decision, and an application for septic tank permit in one of the eight coastal counties would only be denied as a result of the CZC review if the issuance would contravene the CMP.

The failure to certify the 44 septic tank permits for consistency with the policies under the CMP undermines the purpose of the Program. Moreover, even in the light most favorable to the Department, this failure cannot stand. The law is clear that any administrative action or regulation that materially alters or adds to the unambiguous language of a statute must be rejected, as courts have consistently struck down such administrative overreach. *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003); *State v. Sweat*, 379 S.C. 367, 374, 665 S.E.2d 645, 649 (Ct. App 2008); *see S.C. Coastal Conserv. League v. S.C. Dep't. Health & Env't. Control*, 390 S.C. 418, 429, 702 S.E.2d 246, 252 (2010) (reasoning that “[a]lthough a regulation has the force of law, it must fall when it alters or adds to a statute.”); *Milliken v. S.C. Dep't. of Labor*, 275 S.C. 264, 268 S.E.2d 763, 764 (1980) (recognizing that “an administrative order which materially alters or adds to the law is void”); *see also Lee v. Michigan Millers Mut. Ins. Co.*, 250 S.C. 462, 468, 158 S.E.2d 774, 776 (1968) (explaining that “[a]n order cannot be made by an administrative body which would materially alter or add to the law.”); *Heyward v. S.C. Tax Comm'n*, 240 S.C. 347, 355-56 126 S.E.2d 15, 20 (1962) (holding that even though an agency was delegated the power to publish rules and regulations to enforce the law, they were not delegated the authority to adopt an alteration that satisfied their own legal theories). In this instance, the CMP is the equivalent of a regulation under *Spectre*, and thus cannot override the plain language of the Act.

Further, South Carolina case law also reinforces the interpretation that the Department is required to actively certify all state and federal permit applications in the coastal zone, rather than merely possess the authority to develop a system and certify consistency with the CMP. The Supreme Court of South Carolina has repeatedly held that a regulatory body like the Department only possesses powers explicitly granted by statute, and by necessity, the implied powers needed to effectively carry out its statutory duties. *City of Rock Hill v. S.C. Dep't of Health & Env't Control*, 302 S.C. 161, 165, 394 S.E.2d 327, 330 (1990); *City of Columbia v. Bd. of Health & Env't Control*, 292 S.C. 199, 202, 355 S.E.2d 536, 538 (1987); *S.C. Elec. & Gas Co. v. Pub. Serv. Comm'n*, 275 S.C. 487, 489, 272 S.E.2d 793, 794 (1980); *Carolina Water Service, Inc. v. South Carolina Public Service Commission*, 272 S.C. 81, 248 S.E.2d 924 (1978); *Beard-Laney, Inc. v. Darby*, 213 S.C. 380, 49 S.E.2d 564 (1948). This reasoning applies directly to the unambiguous requirements under S.C. Code § 48-39-80, which mandates the development of a system for the Department to review and certify *all* permit applications in the coastal zone. The term “all” leaves no room for exemptions, making it clear that the certification process must apply to permit applications for septic tanks generating less than 1,500 gallons per day (gpd) when in the coastal zone.

Additionally, the legislative intent of the statute reinforces this interpretation. The Act was designed to balance economic development with environmental protection, with a strong emphasis on safeguarding fragile coastal resources. S.C. Code § 48-39-30(B). The Act mandates the Department to protect, restore, and enhance the State’s coastal resources. Reviewing and considering the impacts posed by septic systems, particularly when in high density developments sited in low-lying areas adjacent to sensitive waters, is essential to protecting coastal resources. By

failing to conduct Coastal Zone Consistency reviews, the Department has neglected its role in upholding this balance.

Without undertaking a Coastal Zone Consistency review, the Department has failed to incorporate the specialized knowledge of coastal processes, functions, and values, which OCRM possesses, into its permitting of these coastal septic systems. This disconnect between the Department's coastal authority and its septic permitting reflects a serious flaw in the agency's decision-making, which is driven in part by the Department's failure to conduct Coastal Zone Consistency review for all septic permitting. Consistency review is mandated by statute and is intended to give weight to the unique value of natural resources on the coast, as well as the unique natural forces at play on the coast.

The Department's failure to undertake Coastal Zone Consistency review and its related failure to consider the appropriateness and impacts of coastal forces on the 44 septic systems is not only inconsistent with the plain language of S.C. Code § 48-39-80(B)(11), but also contrary to the established case law and legislative intent. Accordingly, summary judgment in favor of the party seeking mandatory review of Coastal Zone Consistency for these septic tank permits in the coastal zone is warranted.

## **II. The Department's Failure to Public Notice Septic Tank Applications Constitutes a Violation of Constitutional Rights to Due Process.**

The League is entitled to judgment as a matter of law concerning its claim that the Department has infringed on the League's Due Process Rights as it relates to public notice of individual "small" onsite wastewater systems. The Department admits any kind of individual septic tank permit applications of less than 1,500 gallons per day (gpd) are not placed on public notice, including the 44 permit applications at issue. S.C. Dep't of Env'tl Servs., Resp. to Pet'r's Requests for Admission (July 23, 2024), ¶ 3, Exhibit A (Pg. 1). In short, affected persons are

continuously kept completely in the dark about the Department's permitting of septic systems in ecologically sensitive coastal areas that have the potential to harm the quality of their communities and surrounding environment. Because the Department does not provide any public notice of septic tank permit applications or its decisions to grant such permits, the public and any affected persons immediately are denied a meaningful opportunity to be heard and subsequent judicial review.

Administrative agencies such as the Department 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; *see also Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171 (2008) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.”). “Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.” *Kurschner*, 376 S.C. at 171-72 (internal citations omitted); *see also Stono River*, 305 S.C. 90, 93-94 (1991) (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

The General Assembly codified the same when it enacted S.C. Code § 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.” This act “is

intended to provide a uniform procedure for contested cases and appeals from administrative agencies.” *S.C. Coastal Conserv. League v. S.C. Dep’t Health & Env’t. Control*, 390 S.C. 418, 429 (2010) (quoting Act No. 387 § 53). The Respondents assert, “[t]he importance of providing safe and effective wastewater disposal for single-family residential lots far out-weighs a neighboring landowner’s objections or comments.” Respondents’ Joint Motion for Summary Judgment at 4. However, this characterization downplays the significance of public participation, dismisses the valid concerns raised by the Petitioner, and overlooks the broader implications that “the sheer number of septic tank permits” issued has on the surrounding community. *Id.* 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. Indeed, the League’s members have protected rights to recreate in and on public trust resources, including specifically the waters of Bulls Bay which are adjacent to the proposed White Tract septic systems. *See Sierra Club v. Kiawah Resort Assocs.*, 318 S.C. 119, 127-128, 456 S.E.2d 397, 402 (1995) (“Under [the public trust doctrine], everyone has the inalienable right to breathe clean air; to drink safe water; to fish and sail, and recreate upon the high seas, territorial seas and navigable waters; as well as to land on the seashores and riverbanks.”)(quoting Gregg L. Spyridon & Same A. LeBlanc, *The Overriding Public Interest in Privately Owned Natural Resources: Fashioning a Cause of Action*, 6 Tul. Envtl. L.J. 287, 291 (1993)). When such public trust waters, which League members have a Constitutional right to utilize, are harmed or threatened by pollution, such harm and threat impairs and interferes with members’ protected rights. The failure to provide any public notice has unjustly restricted the League’s ability to oppose the placement of these systems that could impact their rights to recreation and public trust resources, and their health and well-being.

The Respondents pointed out that to prevail on a claim of denial of due process in an administrative proceeding in South Carolina, 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). The Court may reverse or modify an agency's decision if the substantial rights of the Plaintiff have been prejudiced because the administrative decisions are: a) in violation of constitutional or statutory provisions; b) in excess of the statutory authority of the agency; c) made upon unlawful procedure; d) affected by other error of law; e) clearly erroneous in view of evidence on the whole record; or f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *Myers v. S.C. Dep't of Health & Hum. Servs.*, 418 S.C. 608, 615 (Ct. App. 2016). Here, the lack of public notice for these permit applications and issuances substantially prejudices the League by depriving them of the opportunity to participate in the administrative process, which constitutes unlawful procedure under the applicable standards.

The Department's admission reveals no genuine or material fact in dispute. Therefore, in the light most favorable to the Respondents, taking into consideration the deference provided to administrative agencies, this Court should recognize the Department's failure to place applications for individual septic tanks or issued permits on public notice substantially prejudices the Petitioner because they receive no notice of an agency decision and thereby cannot timely challenge that decision, which clearly violates Constitutional due process.

### CONCLUSION

For the foregoing reasons, the Petitioner respectfully submits that the Court should enter an Order granting summary judgment in the Petitioner's favor and against Respondents, declaring that the Department has failed to uphold their statutory duties under S.C. Code 48-39-80(B)(11) as it relates to individual "small" onsite wastewater treatment systems. The Petitioner also request

the Court to move for an Order granting summary judgment in the Petitioner favor and against the Respondent the Department for infringing upon the Petitioner's Due Process rights by failing to provide reasonable avenues to be involved in the permitting processes for individual "small" onsite wastewater treatment systems.

Respectfully submitted,

---

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*Attorneys for S.C. Coastal Conservation  
League*

October 10, 2024

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Coastal Conservation League,

Petitioner,

v.

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

Respondents,

In re: Lots #24 to 67.

Docket Nos.

24-ALJ-07-0088-CC to 24-ALJ-07-0131-CC


**PETITIONER'S RESPONSE TO  
RESPONDENTS' JOINT MOTION  
FOR SUMMARY JUDGMENT AND  
CROSS-MOTION FOR SUMMARY  
JUDGMENT**

I hereby certify that on this date I have served Petitioner's Response to Respondents' Joint Motion for Summary Judgment and Cross-Motion for Summary Judgment by depositing same in the U.S. Mail to the parties addressed to:

Sara V. Martinez, Esq.  
SCDES-OGC  
2600 Bull Street  
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South Carolina Environmental Law Project

  
Jaya Wragg

October 10, 2024

# Exhibit A



July 23, 2024

Leslie S. Lenhardt, Esquire  
Amy E. Armstrong, Esquire  
Monica K. Whalen, Esquire  
South Carolina Environmental Law Project  
Post Office Box 1380  
Pawleys Island, South Carolina 29585

Re: Coastal Conservation League vs. South Carolina Department of Health and  
Environmental Control and Pulte Homes, LLC  
Docket Nos.: 24-ALJ-07-0088-CC to 24-ALJ-07-0131-CC

Dear Ms. Lenhart:

Please find enclosed the South Carolina Department of Environmental Services' *Response to Petitioner's Requests for Admission to Respondent South Carolina Department of Health and Environmental Control* for service upon you in connection with the above referenced matter.

Please contact our office should you have questions or need additional information.

Sincerely,

A handwritten signature in blue ink that reads "Sandra R. Wessinger".

Sandra R. Wessinger  
Paralegal to Joseph A. Giordano  
Assistant General Counsel

Enclosures

cc: Mary D. Shahid, Esquire

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Coastal Conservation League,	)	
	)	DOCKET NO. 24-ALJ-07-0088-CC to 24-
Petitioner,	)	ALJ-07-0131-CC
vs.	)	
	)	
South Carolina Department of Environmental Services and Pulte Homes, LLC,	)	<b>Respondent South Carolina Department of Environmental Service's <i>Response</i> <i>To Petitioner's Requests for Admission</i></b>
	)	
Respondents.	)	
	)	
	)	
	)	
	)	

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TO: LESLIE LENHARDT, ATTORNEY FOR THE PETITIONER:

Pursuant to Rule 21 and Rule 36 of the South Carolina Rules of Civil Procedure, Respondent South Carolina Department of Environmental Services (“DES” or “the Department”), by and through its undersigned attorneys, hereby responds to Petitioner’s Requests for Admissions as set forth below.

1. Admit that the Coastal Management Program policies relating to septic tanks have not been updated since the policies were approved by the General Assembly in 1979.

**RESPONSE: Admit.**

2. Admit that DES is fully aware that septic tanks can and do malfunction.

**RESPONSE: DES admits only it is fully aware that a percentage of improperly maintained septic systems could malfunction. DHEC denies the remainder of Request to Admit No. 2.**

3. Admit that DES does not place on public notice any kind of individual septic tank permit applications of less than 1,500 gallons per day (gpd).

**RESPONSE: Admit.**

4. Admit that DES does not review individual septic applications that generate less than 1,500 gpd of domestic wastewater for consistency with the current Coastal Management

Program.

**RESPONSE: DES admits only that it is not required to review individual septic applications that generate less than 1,500 gallons per day of domestic wastewater for consistency with the current Coast Management Program. DES denies the remainder of Request to Admit No. 4.**

5. Admit that DES is the state agency charged with processing permit applications to construct and operate onsite wastewater systems generating less than 1,500 gpd.

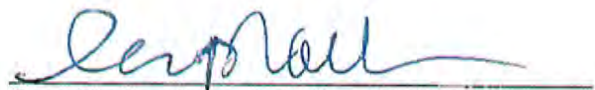
**RESPONSE: Admit.**

6. Admit that a permit to construct and operate any new, upgraded, or expanded onsite wastewater system must be obtained from DES prior to construction and operation of the system.

**RESPONSE: Admit.**

7. Admit that a permit to construct an onsite wastewater system is a state-issued permit.

**RESPONSE: Admit.**



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July 23, 2024  
Columbia, South Carolina

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Coastal Conservation League,

Petitioner,

v.

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

Respondents.

In re: Lots #24 to 67

DOCKET NOS.

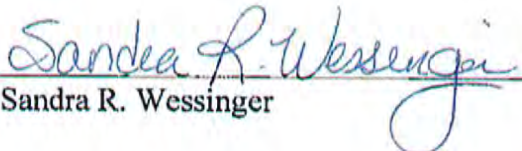
24-ALJ-07-0088-CC to 24-ALJ-07-0131

**Certificate of Service**

I, Sandra R. Wessinger, Paralegal for the South Carolina Department of Health and Environmental Control, hereby certify that I have on this 23rd day of July, 2024, served the foregoing *Respondent South Carolina Department of Health and Environmental Control's Response to Petitioner's Requests for Admission* upon all parties and counsel of record by via U. S. Mail, First Class, as follows:

Leslie Lenhardt, Esq. Amy Armstrong, Esq. P.O. Box 1380 Pawleys Island, SC 29585	Mary D. Shahid, Esq. Cheryl D. Shoun, Esq. Post Office Box 486 Charleston, SC 29402
---	--

July 23, 2024  
Columbia, South Carolina

  
Sandra R. Wessinger

# Exhibit B

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Coastal Conservation League,	)	
	)	DOCKET NO. 24-ALJ-07-0088-CC to 24-
Petitioner,	)	ALJ-07-0131-CC
vs.	)	
	)	
South Carolina Department of Environmental	)	<b>Respondent South Carolina Department</b>
Services and Pulte Homes, LLC,	)	<b>of Environmental Service's <i>Second</i></b>
	)	<b><i>Response to Petitioner's Requests</i></b>
	)	<b><i>For Admission</i></b>
Respondents.	)	
	)	
	)	
	)	


---

TO: LESLIE LENHARDT, ATTORNEY FOR THE PETITIONER:

Pursuant to Rule 21 and Rule 36 of the South Carolina Rules of Civil Procedure, Respondent South Carolina Department of Environmental Services (“DES” or “the Department”), by and through its undersigned attorneys, hereby responds to Petitioner’s Requests for Admission as set forth below.

1. Admit that DES did not review or certify the forty-four (44) individual septic tank permit applications, which are the subject of this Contested Case, Permit No. OSWW010845 v1.0 through Permit No. OSWW010904 v1.0, for consistency with the policies of the Coastal Management Program.

**RESPONSE: Admit.**

  
\_\_\_\_\_  
Sara V. Martinez, S.C. Bar #74822  
Joseph A. Giordano, S.C. Bar #104500  
SCDHEC – Office of General Counsel  
2600 Bull Street  
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August 15, 2024  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Coastal Conservation League,

Petitioner,

v.

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

Respondents,

In re: Lots #24 to 67.

Docket Nos.

24-ALJ-07-0088-CC to 24-ALJ-07-0131-CC

**PETITIONER'S RESPONSE TO  
RESPONDENTS' JOINT MOTION  
FOR SUMMARY JUDGMENT AND  
CROSS-MOTION FOR SUMMARY  
JUDGMENT**

I hereby certify that on this date I have served Petitioner's Response to Respondents' Joint Motion for Summary Judgment and Cross-Motion for Summary Judgment by depositing same in the U.S. Mail to the parties addressed to:

Sara V. Martinez, Esq.  
SCDES-OGC  
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Columbia, SC 29201  
[Sara.martinez@des.sc.gov](mailto:Sara.martinez@des.sc.gov)

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Charleston, SC 29401  
[MSahid@maynardnexsen.com](mailto:MSahid@maynardnexsen.com)

South Carolina Environmental Law Project

  
Jaya Wragg

October 10, 2024



**Mary D. Shahid**  
Shareholder  
Admitted in SC

October 21, 2024

**VIA FED-EX OVERNIGHT DELIVERY AND ELECTRONIC MAIL**

The Honorable Deborah Durden  
South Carolina Administrative Law Court  
Edgar A. Brown Building  
1205 Pendleton Street, Suite 224  
Columbia, South Carolina 29201

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

Dear Judge Durden:

Attached please find Respondents' Department of Environmental Services and Pulte Homes Joint Response to Petitioner Coastal Conservation League's Motion for Summary Judgment. The original filing will be delivered via Federal Express overnight delivery.

Very truly yours,

A handwritten signature in black ink that reads "Mary D. Shahid".

Mary D. Shahid

MDS/eh

Enclosures: as stated

cc (via email only): Cheryl Shoun, Leslie Lenhardt, Sara Martinez

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**T** (843) 720-1788  
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Maynard Nexsen PC  
**Attorneys and Counselors at Law**

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Coastal Conservation League,

Petitioner,

vs.

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

Respondents.

In re: Lots #24 to #67

Docket Nos.

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

**RESPONDENTS' JOINT  
RESPONSE TO PETITIONER'S MOTION  
FOR SUMMARY JUDGMENT**

Respondents Pulte Homes, LLC (“Pulte”) and the South Carolina Department of Environmental Services<sup>1</sup> (“DES”) respond in opposition to Petitioner’s Motion for Summary Judgment filed October 10, 2024, pursuant to Rule 19(A) of the Rules of Procedure for the Administrative Law Court.

*Compliance with S. C. Code Ann. Sec. 48-39-80*

Petitioner claims that Respondent DES failed to comply with Sec. 48-39-80 and, as a result, the Pulte septic tank permits were issued in error and Petitioner is entitled to Summary Judgment. Sec. 48-39-80(B)(11) imposes a requirement upon DES to “[d]evelop a system whereby the department shall have the authority to review all state and federal permit applications in the coastal zone.” Sec. 48-39-80 contains other requirements imposed upon DES including “[d]evelop a method by which the permitting process shall be streamlined and simplified so as to avoid duplication” and “[d]etermine the present and potential uses and the present and potential conflicts

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

in uses of each coastal resource.” DES created the Coastal Zone Management Program Document “CZMPD”<sup>2</sup> as instructed by Sec. 48-39-80. In accordance with Sec. 48-39-90, the CZMPD is subject to approval by the General Assembly and the Governor. Moreover, “[u]pon review and approval of the proposed management plan by the Governor and the General Assembly, the proposed plan shall become the final management plan for the State’s coastal zone.” S. C. Code Ann. Sec. 48-39-90(D).

As set forth in Respondents’ Joint Motion for Summary Judgment, the CZMPD, approved and adopted by the State’s Governor and Legislature forty-five (45) years ago included an exemption from coastal zone consistency review of individual septic permits with capacity of less than 1500 gallons per day of domestic waste. This is specified in Table 1, entitled “State Agency Permits Subject to Council Review and Certification.” Table 1 is included in Chapter V entitled “Management Authorities Governmental/Public Involvement.” A copy of Table 1 is attached to this Response as Exhibit A. Table 1 is consistent with the requirement in Sec. 48-38-80 to streamline and simplify permitting. Table 1 demonstrates a deliberate decision by DES to put limitations on coastal zone consistency certification of septic tanks, as the remaining six agencies and types of permits on Table 1 require coastal zone consistency certification.

Petitioner’s Motion suggests that an error of law occurred upon DES’ failure to review Pulte’s application for domestic septic tanks, when in fact, it would be legal error for DES to review individual septic tanks with capacity less than 1500 gallons per day.

As noted, the General Assembly enacted the CZMA which required DHEC to “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. The statute further provides that, in developing the program, DHEC shall “[d]evelop a system whereby the department shall have the authority to review all state and federal permit applications in

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<sup>2</sup> The acronyms “CZMPD” and “CMP” are used interchangeably.

the coastal zone, and to certify that these do not contravene the management plan.” *Id.* The CZMA set out specific procedures DHEC must follow in enacting the CMP, which included statewide hearings and public review of DHEC documents. *See* S. C. Code Ann. § 48–39–90(A), (B). After conducting the hearings and considering input from interested parties, the statute required DHEC to submit the final version of the CMP to the Governor and General Assembly for approval. *See* S. C. Code Ann. § 48–39–90(C). **After review and approval by the Governor and General Assembly, “the proposed plan shall become the final management plan for the State’s coastal zone.” S. C. Code Ann. § 48–39–90(D).** Spectre, LLC v. SCDHEC, 386 S. C. 357, 688 S. E. 2d 844 (S. Ct. 2010).

Importantly, the Supreme Court held that the CZMPD, inclusive of Table 1, is “enforceable” as adopted. Spectre at 370, 850. “In our view, the language of Sec. 48-39-80 supports DHEC’s view that the General Assembly meant the CMP policies themselves to be enforceable in the consistency review of state and federal permits. ... Moreover, the stringent requirements for enactment of the CMP, as outlined above, and referenced by the Supreme Court in Spectre would include Table 1 of Chapter V of the CMPD. In claiming that a certification was required for Pulte’s septic tank permits, Petitioner is challenging the legitimacy of the CZMPD. “An administrative regulation is valid as long as it is reasonably related to the purpose of the enabling legislation.” McNickel’s v South Carolina Department of Revenue, 331 S. C. 629, 634 503 S. E. 2d 723, 725 (Sc.D. 1998). “Although a regulation has the force of law, it must fail when it alters or adds to a statute.” SCCCL v. SCDHEC, 309 S. C. 418, 429, 702 S. E. 2d 246, 253. The inquiry for this Court is not whether Respondent DES acted in contravention to the requirements of S. C. Code Ann. Sec. 48-39-80. Rather, it is whether the lack of requirements for a coastal zone consistency certification for individual septic tanks is reasonably related to the provisions of S. C. Code Ann. 48-39-80

Sec. 48-39-80(B) mandates that DES consider all lands and waters in the coastal zone for planning purposes and includes a list of tasks required for development of the CZMPD. (B)(10)

refers to streamlining and simplifying permitting. (B)(11) references a “system where by the department shall have the authority to review all state and federal permit applications.” Note that review is not mandated, only development of a system for review. Table 1 is entirely reflective of a systematic approach for review and consistency with streamlined and simplifying permitting processes. Consequently, and in keeping with SCCCL v. SCDHEC, Table 1 is reasonably related to S. C. Code Ann. Sec. 48-39-80. Review of polices included in Chapter V, in addition to Table 1, demonstrates an acknowledgement of the policy to “promote the economic and social improvement of the State’s citizens.” Availability of safe and effective wastewater collection and disposal is critical to economic and social improvement. V-2 includes the following:

The burden of implementing the South Carolina Coastal Management Program rests not only with the Coastal Council, **but also with all other State and local agencies and commissions**. Even though such agencies are statutorily mandated to carry out their own policies, **the effect of networking is to tie the implementation of these individual authorities into a comprehensive framework that addresses more than the individual responsibilities of each agency and that makes these authorities part of an overall, unified strategy for managing coastal resources**. The Section 7 (A) mandate to the other state and local agencies broadens the scope of their legal responsibilities to include the implementation of the policies and rules and regulations of the Coastal Management Program. Section 7 (A), along with 9(D), 8 (B) (II) and other general provisions of the Act, bind all relevant agencies and commissions to the Coastal Management Program. **Two methods of cooperation are needed between the Council and other State and local agencies in giving effect to the Act: 1) a cooperative process of permit review and certification; and 2) memoranda of agreement confirming the statutory duties of the respective agencies.**

V-4 addresses Procedures for Review and Certification:

Coastal Council review and certification of permits of other State agencies is mandated by Section 8(B) (11) of the South Carolina Coastal Management Act, and **the cooperative efforts of these agencies in implement the program is mandated by Section 7(a)**

These policies, included in Section V along with Table 1, indicate cooperation and discretion related to coordination between State agencies. Such required coordination and cooperation

resulted in a decision between two State agencies in 1979 (now separate Bureaus in DES) to limit coastal zone consistency review to larger septic systems and not to put applications for smaller systems, necessary for wastewater disposal and for use as a residential lot, through an unnecessary comment process.

### Petitioner's Due Process Rights

Respondents' Motion for Summary Judgment details the processes available to Petitioner that contributed to Petitioner's ability to timely file 43 contested case challenges to Pulte's permits. There is no statutory or regulatory requirement that DES provide public notice of septic tank permits. "Due process is flexible and calls for such procedural protections as the situation demands." Leventis v. SCDHEC 340 S. C. 118,131, 530 S. E. 2d 643, 650 (Ct. App. 2000). Petitioner cannot demonstrate that it has suffered substantial prejudice because of the lack of public notice.

The basis for not requiring public notice can be determined from DES' regulations – specifically 61-56. 61-56(103.1) requires that "Each dwelling, business, or other structure occupied for more than two (2) hours per day shall be provided with an approved method for the treatment and disposal of domestic wastewater." "No person shall begin construction of a dwelling, business, or other structure to be served by an onsite waste water system ... until the permit to construct and operate an onsite wastewater system has been issued." The Pollution Control Act, S. C. Code Ann. Sec. 48-1-100(C) designates DES as "the agency of state government having jurisdiction over these matters involving real or potential threat to the health of the people of South Carolina including the handling and disposal of garbage and refuse; septic tanks; and individual or privately-owned waste systems for the disposal of offal and human or animal wastes."

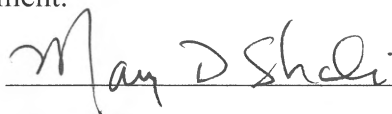
The public health implications of providing safe and effective waste disposal supports the

urgency for all property owners to have access to a method of waste disposal. While, ideally, all development should tie into existing sewer collections systems, that is unrealistic for South Carolina where rural areas rely on septic tanks. Extending sewer lines requires funding, but even with funding, municipalities and counties can refuse to extend water and sewer to developable land.

Despite Petitioner's efforts to support a contrary position, there are no public notice requirements in the statutes and regulations governing DES's review of applications for septic tanks, under 1500 GPD, Given the public health risks associated with delay in obtaining permission and installing a septic system, the extensive reliance by rural residents on septic, and the absence of any meaningful benefit of public comment in light of the necessity of wastewater disposal, Petitioner's argument for public notice is simply intended to serve as an unnecessary procedural obstacle, as opposed to a necessary procedural protection, and thus must fail.

#### Conclusion

For the reasons set forth herein, and in Respondents' Joint Motion for Summary Judgment, Respondents request that this Court grant Respondents' Joint Motion for Summary Judgment and deny Petitioner's Motion for Summary Judgment.



---

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*Sara Martinez by MDS*

Sara V. Martinez, SC Bar No. 74822

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*w/ permission*

October 21, 2024  
Columbia, South Carolina

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Coastal Conservation League,

Petitioner,

vs.

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

Respondents.

In re: Lots #24 to 67

Docket Nos.

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

**CERTIFICATE OF SERVICE**

This is to certify that on the 21<sup>st</sup> day of October, 2024, a copy of Respondents Pulte Homes, LLC's and the South Carolina Department of Health of Environmental Control's Joint Return to Petitioner's Motion for Summary Judgment has been served upon the following by electronic mail and by placing a copy of the same in the US Mail, first class postage prepaid, addressed to the following as follows:

[leslie@scelp.org](mailto:leslie@scelp.org)  
Leslie Lenhardt, Esquire  
Senior Managing Attorney  
SC Environmental Law Project  
510 Live Oak Drive  
Mount Pleasant, SC 29464



Mary D. Shahid  
Cheryl D. Shoun  
**MAYNARD NEXSEN PC**  
205 King Street, Suite 400  
Charleston, SC 29401



**SOUTH CAROLINA  
ENVIRONMENTAL  
LAW PROJECT**

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Monica K. Whalen | monica@sccelp.org

October 28, 2024

**VIA U.S. MAIL**

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

Re: CCL v. DHEC & Pulte Homes

Dear Judge Durden:

Please find enclosed Petitioner's Reply to Respondents' Joint Response to Petitioner's Motion for Summary Judgment in the above-referenced matter. Thank you for your kind consideration.

Respectfully,

Amy E. Armstrong  
Executive Director

Enclosure

cc: Sara V. Martinez, Esq.  
Mary D. Shahid, Esq.

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

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Coastal Conservation League,

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South Carolina Department of Health and  
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In re: Lots #24 to 67.

Docket Nos.

24-ALJ-07-0088-CC to 24-ALJ-07-0131-CC

**PETITIONER’S REPLY TO  
RESPONDENTS’ JOINT RESPONSE  
TO PETITIONER’S MOTION FOR  
SUMMARY JUDGMENT**

---

**TO: HONORABLE DEBORAH BROOKS DURDEN, RESPONDENTS  
AND THEIR ATTORNEYS**

Petitioner, South Carolina Coastal Conservation League (“the League”) replies in opposition to the Respondents’ Joint Response to Petitioner’s Motion for Summary Judgment pursuant to SCALC Rule 19(A).

**I. Respondents Mischaracterize the Statutory Language, and the Omission of a CZC Review for the 44 Septic Tank Permits Exceeds the Mandate to Streamline and Simplify.**

Respondents cite to Sec. 48-39-80 to reference another requirement imposed on the Department—to “[d]evise a method by which the permitting process shall be streamlined and simplified so as to avoid duplication”—as an attempt to justify omitting a CZC review for septic tank permit applications for those with capacity of less than 1500 gpd of domestic wastewater. However, the directive to streamline and simplify the permitting process to avoid duplication cannot be used to override essential statutory requirements, as the Respondents suggest. The CZC

review plays a critical role in ensuring that projects are consistent with South Carolina’s coastal management policies. Its inclusion in the permitting process does not create duplication, but rather serves as a necessary safeguard for protecting coastal areas.

Elsewhere in the Act, the General Assembly provided for a streamlining process to include general permits and certifications. *See* S.C. Code § 48-39-130(E). The Department has routinely developed general coastal zone consistency certifications pursuant to these provisions, covering various categories such as, Individual Residential Lots (GCZC-2023-002), Minor Project Impacts (GCZC 2017-002), and Small Mining Operations (GCZC-2023-001).

Further, Respondents claim that subsection (B)(11), the requirement to develop “a system whereby the department shall have authority to review all state and federal applications” means that review is not mandated, just the development of a system is required. While it is true that the Department must establish a system for review, Respondents overlook the fact that the statute expressly requires that the system facilitates review for *all* state and federal applications.

Streamlining and simplifying the system cannot be used as a justification for bypassing statutory requirements. Therefore, Respondents’ rationale is both baseless and contrary to the statute’s intent.

**II. The Clear and Unambiguous Language of the Statute is Controlling, and the Coastal Zone Management Program Document Cannot Override It.**

Respondents primarily rely on the Coastal Zone Management Program Document (“CZMPD”) to support their position, while the Petitioner’s argument is firmly rooted in the statute itself. S.C. Code § 48-39-80 contains clear and unambiguous language that supports Petitioner’s Motion for Summary Judgment.

In their response, the Respondents cite to Table 1 in the CZMPD, which allegedly demonstrates the Department’s deliberate decision to put limitations on CZC certification of septic

tanks. However, the statute does not empower the Department to make those limitations, as it explicitly directs the Department to review all state and federal permits. Additionally, this interpretation when applied in this case, involving a total of 44 proposed septic tanks, raises practical concerns. A handful of densely-sited individual septic systems when considered collectively, quickly overcome the maximum threshold of 1500 gallons per day. Cumulatively, these septic tanks equate more to a large septic system, which the Department currently does review for consistency with the Coastal Management Program (“CMP”).

Moreover, Respondents cite to *Spectre v. SCDHEC* to support upholding Table 1; however, this case is distinguishable. *See* 386 S.C. 357 (S. Ct. 2010). While the Supreme Court in *Spectre* affirmed the enforceability of the CZMPD as adopted, it did not specifically address Table 1 or answer the question of whether Table 1 conflicts with the South Carolina Coastal Zone Management Act (“CZMA”). *Id.* In *Spectre*, the developer (“Spectre”) sought a stormwater/land disturbance permit in Horry County, but the permit was denied because the project was found to be inconsistent with the CMP. *Id.* at 361. The issues were: “(1) Did the ALC err in finding that the CMP, by its own terms, does not apply to the property in question, and (2) Did the ALC err in finding that, even if the CMP purports to apply to the property in question, it is unenforceable because it was not promulgated in accordance with the APA.” *Id.* at 362. The Supreme Court found that the CMP, by its own terms, applied to the property in question and was enforceable and that it was not the General Assembly’s intent for promulgating separate regulations for governing consistency certification. *Id.* at 373.

*Spectre* provides clarity on the general enforceability of the CMP, but it does not address situations where the CMP directly conflicts with the CZMA – the statute that authorizes the creation of the CMP. The Respondents cite the correct law: that an administrative regulation

which materially alters or adds to the law is invalid. *Society of Professional Journalists v. Sexton*, 283 S.C. 563, 324 S.E.2d 313 (1984); *Milliken and Company v. South Carolina Department of Labor*, 275 S.C. 264, 269 S.E.2d 763 (1980); *Brooks v. South Carolina State Board of Funeral Service*; *Banks v. Batesburg Hauling Co.* Yet they never squarely address how the CMP's provisions exempting septic tanks can stand when those provisions materially alter the Act's requirements for certification of all state and federal permits.

Respondents suggest that here the statute is directory and not mandatory. Statutes, or particular provisions of statutes, may be mandatory or directory. 73 Am.Jur.2d *Statutes* Section 14 (1974). Ordinarily, use of the word "shall" in a statute means the action referred to is mandatory. *South Carolina Department of Highways and Public Transportation v. Dickinson*, 288 S.C. 189, 341 S.E.2d 134 (1986). Where a statute's purpose is protection of public or private rights, as opposed to merely providing guidance to government officials, courts will usually interpret "shall" in a statute to impose mandatory rather than directory duties. *South Carolina Wildlife Federation v. Alexander*, 457 F.Supp. 118 (D.S.C.1978). Compliance with mandatory provisions of a statute is "a condition precedent to the privilege conferred." 73 Am.Jur.2d *Statutes* Section 16 at 278 (1974). In this case, the Respondents are asking the Court to hold that a regulation, the CMP, can alter the statutory requirement for review of all permits for consistency with the CMP based on the specious assertion that other statutory provisions direct the Department to streamline permitting. At base, such an interpretation is exactly what our appeals courts have sought to preclude. Consequently, focusing on the intricacies of the CZMPD does not resolve the legal issue here and this Court must focus on the plain language of the statute over Table 1 of the CZMPD.

**III. The Petitioner Demonstrated That Has Suffered Substantial Prejudice Because of the Lack of Public Notice.**

Respondents claim that the Petitioner cannot demonstrate that it has suffered substantial prejudice because of the lack of public notice. However, the Court may reverse or modify an agency's decision if the substantial rights of the Plaintiff have been prejudiced because the administrative decisions are: a) in violation of constitutional or statutory provisions; b) in excess of the statutory authority of the agency; c) made upon unlawful procedure; d) affected by other error of law; e) clearly erroneous in view of evidence on the whole record; or f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *Myers v. S.C. Dep't of Health & Hum. Servs.*, 418 S.C. 608, 615 (Ct. App. 2016). Here, the lack of public notice for these permit applications and issuances substantially prejudices the League by depriving it of the opportunity to participate in the administrative process, which constitutes unlawful procedure under the applicable standards. Furthermore, the absence of public notice not only limits public participation but also creates a lack of transparency, which is essential for ensuring that the decision-making process is fair and accountable. Thus, the Court should recognize that the failure to provide adequate public notice is a fundamental error results in substantial prejudice.

#### **IV. The Respondents' Public Health Argument Contains Contradiction and Ultimately Fails.**

Respondents assert, "[t]he public health implications of providing safe and effective waste disposal supports the urgency for all property owners to have access to a method of waste disposal." However, the Respondents also reference the Department's regulations stating, "No person shall begin construction of a dwelling, business, or other structure to be served by an onsite waste water system ... until the permit to construct and operate on onsite wastewater system has been issued." If construction of a dwelling cannot begin until a septic tank permit is granted, then the conditions that could create a public health risk simply do not exist. Occupancy, which is what

would necessitate a method of waste disposal, cannot occur until after permit approval and the completion of construction. Therefore, the urgency asserted by the Respondents falls flat.

**Conclusion**

For the reasons set forth herein, and in the Petitioner's Response to Respondents' Joint Motion for Summary Judgment and Cross Motion for Summary Judgment, the Petitioner requests that the Court enter an Order granting summary judgment in the Petitioner's favor and against Respondents.

Respectfully submitted,



---

Leslie S. Lenhardt, Bar No. 15858  
Amy E. Armstrong, Bar No. 70352  
Monica K. Whalen, Bar No. 106638  
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[monica@scelp.org](mailto:monica@scelp.org)

*Attorneys for S.C. Coastal Conservation League*

October 28, 2024

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Coastal Conservation League,

Petitioner,

v.

South Carolina Department of Health and  
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In re: Lots #24 to 67.

Docket Nos.

24-ALJ-07-0088-CC to 24-ALJ-07-0131-CC

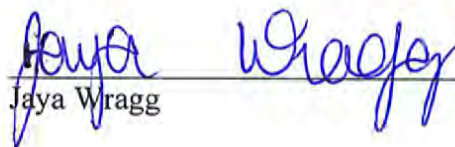
**PETITIONER'S REPLY TO  
RESPONDENTS' JOINT RESPONSE  
TO PETITIONER'S MOTION FOR  
SUMMARY JUDGMENT**

I hereby certify that on this date I have served Petitioner's Reply to Respondents' Joint Response to Petitioner's Motion for Summary Judgment by depositing same in the U.S. Mail to the parties addressed to:

Sara V. Martinez, Esq.  
SCDES-OGC  
2600 Bull Street  
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South Carolina Environmental Law Project

  
Jaya Wragg

October 28, 2024



**SOUTH CAROLINA  
ENVIRONMENTAL  
LAW PROJECT**

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December 30, 2024

**VIA U.S. MAIL AND ELECTRONIC MAIL**

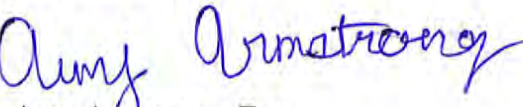
The Honorable Deborah Brooks Durden  
South Carolina Administrative Law Court  
Edgar A. Brown Building  
1205 Pendleton Street, Suite 224  
Columbia, SC 29201

**RE: *South Carolina Coastal Conservation League v. South Carolina Department of Health  
and Environmental Control and Pulte Homes, LLC***  
**Docket No. 24-ALJ-07-0088-CC to 24-ALJ-07-131-CC**

Dear Judge Durden:

Please find enclosed for filing Petitioner South Carolina Coastal Conservation League's Motion for Reconsideration, certificate of service, and the appropriate filing fee for the above-referenced consolidated matters. Please return a clocked-in copy in the self-addressed, stamped envelope provided.

Thank you for your assistance in this matter. If you have any questions or concerns regarding this submission, please do not hesitate to contact me at (843) 527-0078 or via email at [leslie@scelp.org](mailto:leslie@scelp.org).

Respectfully,  
  
Amy Armstrong, Esq.

Enclosures

cc: Mary D. Shahid, Esq.  
Sara V. Martinez, Esq.

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

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Coastal Conservation League,

Petitioner,

v.

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

Respondents,

In re: Lots #24 to 67.

Docket Nos.

24-ALJ-07-0088-CC to 24-ALJ-07-0131-CC

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

---

**TO: HONORABLE DEBORAH BROOKS DURDEN, RESPONDENTS  
AND THEIR ATTORNEYS**

PLEASE TAKE NOTICE that Petitioner South Carolina Coastal Conservation League (the "League") hereby moves the Administrative Law Court pursuant to SCALC Rule 29(D) and SCRCF Rule 59(e) for an order reconsidering its Final Order and Decision, dated December 18, 2024 ("Order"). Petitioner also moves this Court for an order staying its December 18 Order pursuant to SCALC Rule 29(E). The basis for this motion is as follows:

**ARGUMENT AND CITATION OF AUTHORITIES**

South Carolina law recognizes two basic situations in which a party may file a motion for reconsideration under Rule 59(e), SCRCF. First, "[a] party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Second, "[a] party *must* file such a

motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Id.* In the ALC, a motion for reconsideration is a prerequisite to filing a notice of appeal, which provides the basis for this motion. ALC Rule 29(D)(4).

A stay is necessary in order to protect the League’s constitutional right to meaningful judicial review, to protect access to and use of public trust resources, to protect fragile coastal resources from irreparable destruction, and to preserve the *status quo*. See S.C. Constitution, Art. I §22; S.C. Code Ann. §§ 1-23-380 & -600; Rule SCALC Rule 29.E.

**I. This Order Misapprehends the Statutory Framework Governing Coastal Zone Consistency Reviews.**

Respectfully, Petitioner submits this Court misunderstood the statutory framework governing the review of state and federal permits for consistency with the Coastal Management Program (“CMP”). The Petitioner asks the Court to reconsider the plain and unambiguous language of the Act, which requires that all such permits be reviewed for consistency with the CMP, with very limited exceptions. See S.C. Code Ann. § 48-39-80(B)(11).

The South Carolina Coastal Wetlands and Tidelands Act (the “Act”) charges the Department with the implementation and enforcement of a comprehensive coastal management program for South Carolina. S.C. Code Ann. § 48-39-80. In developing that program, the Act directs the Department 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). Further the Act states that “the department shall have the authority to review all state and federal permit applications in the coastal zone.” S.C. Code Ann. § 48-39-80(B)(11). The terms “shall” and “all” make it clear that the certification process must apply to all permit applications which are not otherwise exempted by statute, and specifically those for septic tanks generating less than 1,500 gallons per day (gpd) when in the coastal zone. Indeed, the General Assembly knew how to create an exemption from

the certification requirement, which it accomplished in § 48-39-80(B)(11) in allowing that for “navigable waters permits for docks located in the eight coastal counties . . . a coastal zone consistency certification is deemed approved if certification review is not completed within thirty days of an administratively complete application.” No other exemption exists in the statute.

Additionally, the legislative intent of the statute reinforces this application. The Act was enacted to balance economic development with environmental protection, with a strong emphasis on safeguarding fragile coastal resources. S.C. Code Ann. § 48-39-30(B). The CMP was mandated by the Act in order to account for the fact that “the coastal zone . . . may be ecologically fragile and consequently extremely vulnerable to destruction by man’s alterations.” S.C. Code § 48-39-20(D). The Act recognizes that “[i]mportant ecological, cultural, natural, geological and scenic characteristics, industrial, economic and historical values in the coastal zone are being irretrievably damaged or lost by ill - planned development that threatens to destroy these values.” § 48-39-20(E). The Act mandates the Department to protect, restore, and enhance the State’s coastal resources, and Coastal Zone Consistency reviews are a key mechanism for achieving these goals. *Id.* By failing to conduct these reviews, the Department has neglected its role in ensuring that fragile coastal resources receive additional considerations mandated by the General Assembly.

The Court erred in its application of the statutory framework. The statute clearly states that the Department “shall” review all permits, with limited exceptions explicitly outlined by the General Assembly. By construing the term, “authority,” as granting the Department unfettered discretion, the Court failed to give effect to the mandatory language of the statute. Therefore, the Court should reconsider its decision to align with the plain language of the statute and the legislative intent of the full statute.

## II. The Order Fails to Consider the Constitutional Requirement of Due Notice.

While the Court concludes that there are no statutory or regulatory requirements for the Department to provide public notice of these permits, it fails to adequately consider the constitutional implications of this omission. Specifically, the Court's determination that due process was satisfied because the League learned of the permits through FOIA requests fundamentally misinterprets the requirements of procedural due process.

Article I, § 3 of the Constitution states that no person "shall be deprived of life, liberty, or property without due process of law," and Article I, § 22 of the Constitution states the "[n]o person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on **due notice** and an opportunity to be heard..." (emphasis added).<sup>1</sup> Procedural due process, though flexible, requires that affected parties have a meaningful opportunity to participate in decision-making processes before adverse actions are taken. FOIA merely provides post-decision access to information and cannot substitute for the pre-decision participation required to safeguard constitutional rights. By relying on FOIA as a basis for finding due process satisfied, the Court conflates access to information with meaningful participation.

The League did not have an opportunity to comment on the septic permits before decisions were made. The absence of any mechanism for pre-decision input denies Petitioner and

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<sup>1</sup> South Carolina courts have interpreted the language of Article I, § 22 "as a safeguard for the protection of liberty and property of citizens" when such interests are affected by the decision of an administrative agency. See *McIntyre v. Sec. Comm. of S.C.*, 425 S.C. 439, 446-47, 823 S.E.2d 193, 196-97 (Ct. App., 2018); see also *S.C. Ambulatory Surgery Center Ass'n v. S.C. Workers' Compensation Comm.*, 389 S.C. 380, 391, 699 S.E.2d 146, 152 (2010) ("Although our appellate courts have not always used the term 'due process rights' when discussing Article I, Section 22, we have consistently indicated that the protections provided under this section are the equivalent of those afforded by the Due Process Clause of our state and federal Constitutions. 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.") (internal quotation marks and citations omitted).

other affected parties the ability to address environmental and public health concerns in a timely and effective manner. This procedural deficiency is particularly troubling given the potential environmental and public health consequences. The Order even acknowledged a concern about due process risks in other cases.

To satisfy constitutional requirements, due process must provide a meaningful opportunity to influence the decision-making process. The absence of any mechanism to comment on the permits before their issuance denies Petitioner and other affected parties the opportunity to address concerns in a timely and effective manner. The Court's reliance on the League's FOIA request, which provided information after the fact, deprived the Petitioner of the protections guaranteed under the Due Process Clause. This deficiency warrants reconsideration to ensure compliance with constitutional requirements.

### **III. A Stay is Necessary to Preserve the Status Quo**

The purpose of a stay is to preserve the *status quo* pending the determination of an appeal to prevent a contested issue from becoming moot. *Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (Ct. App. 1990). The Petitioner submits that a stay of this Court's Final Order and Decision is necessary to preserve its rights to a meaningful appeal by preventing environmental degradation from occurring prior to judicial review.

Impacts to coastal resources like those on the White Tract require permission by law. *See*, S.C. Code Ann. § 1-23-310(4) (Defining "License" to include "the whole or part of any agency permit, franchise, certificate, approval, registration, charter, or similar form of permission required by law.>"). In that regard, the League has rights at stake that face significant risk if construction proceeds without judicial review of this present decision. Specifically, the League has an interest in protecting the public trust resources and recreational uses flowing therefrom to

its members, as well as the public at large. The Constitution gives the League due process rights to allow it to protect its interests, which can only be achieved if the *status quo* is maintained and any construction activities are stayed pending judicial review of the permitting decision announced in this Court's Final Order of December 18, 2024.

In this case, the *status quo* is the natural, undisturbed condition of the White Tract. Should construction occur, that natural condition will be drastically changed, and the harm that the League seeks to prevent through this case will occur. Specifically, if the septic tanks are installed, it will be done without consideration of the long-range, cumulative impacts of such systems in this low-lying area which is susceptible and vulnerable to sea level rise and other impacts that the CMP is designed to consider.

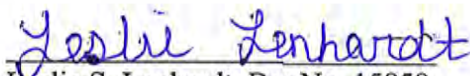
Moreover, the League has due process rights which entitle it to "notice, an opportunity to be heard in a meaningful way, and judicial review," before construction activities occur on a presently undisturbed, fragile and dynamic area. *Ogburn-Matthews v. Loblolly Partners*, 332 S.C. 551, 562, 505 S.E.2d 598, 603 (Ct. App. 1998), overruled on other grounds. These right are constitutionally protected as the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S.C.A. Const. Amend. 14. A fundamental requirement of procedural due process is an opportunity to be heard, and that opportunity must be granted at a meaningful time and in a meaningful manner. U.S.C.A. Const. Amends. 5, 14.

In this case, meaningful review cannot be had after installation of the septic systems, but must take place beforehand. If the structures are constructed as permitted, they will cause irreparable harm to the receiving waterbodies and environment because of the failures inherent in such systems. "Environmental injury, by its nature, can seldom be adequately remedied by

money damages and is often permanent or at least of long duration, i.e., irreparable.” *Amoco Production Co. v. Gambell*, 480 U.S. 531, 545 (1987).

The League asserts that justice and fairness would best be served by staying this decision until a reviewing court makes a final determination as to whether the harm to and degradation of public trust resources comports with the Coastal Zone Management Act (“CZMA”), S.C. Code Ann. § 48-39-10 *et seq.*, and the Coastal Management Program (“CMP”) policies.

Respectfully submitted,



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Amy E. Armstrong, Bar No. 70352  
Monica K. Whalen, Bar No. 106638  
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*Attorneys for S.C. Coastal Conservation League*

December 30, 2024

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Coastal Conservation League,

Petitioner,

v.

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

Respondents,

In re: Lots #24 to 67.

Docket Nos.

24-ALJ-07-0088-CC to 24-ALJ-07-0131-CC

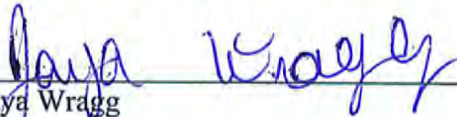
**PETITIONER'S MOTION FOR  
RECONSIDERATION**

I hereby certify that on this date I have served Petitioner's Motion for Reconsideration by depositing same in the U.S. Mail to the parties addressed to:

Sara V. Martinez, Esq.  
SCDES-OGC  
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South Carolina Environmental Law Project

  
\_\_\_\_\_  
Jaya Wragg

December 30, 2024



January 15, 2025

Honorable Deborah Brooks Durden  
Judge, Administrative Law Court  
1205 Pendleton Street, Suite 224  
Columbia, South Carolina 29201

Re: Coastal Conservation League vs. South Carolina Department of Environmental  
Services and Pulte Homes, LLC  
Docket No.: 24-ALJ-07-0088-CC to 24-ALJ-07-131-CC

Dear Judge Durden:

Please find enclosed the South Carolina Department of Environmental Services' *Response to Petitioner's Motion for Reconsideration* for filing in connection with the above referenced matter. We kindly ask that you file the original and return a clocked copy to our office in the self-addressed, stamped envelope I have enclosed.

By copy of this letter, I am serving counsel of record.

Thank you for your assistance with this matter. Please contact our office should you have questions or need additional information.

Sincerely,

A handwritten signature in blue ink that reads "Sandra R. Wessinger".

Sandra R. Wessinger  
Paralegal to Sara V. Martinez  
Chief Counsel, Environmental Services

Enclosures

cc: Amy Armstrong, Esquire  
Leslie S. Lenhardt, Esquire  
Monica K. Whalen, Esquire  
Mary D. Shahid, Esquire

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Coastal Conservation League,	)	
	)	DOCKET NO. 24-ALJ-07-0088-CC to 24-
Petitioner,	)	ALJ-07-0131-CC
vs.	)	
	)	
South Carolina Department of Environmental Services and Pulte Homes, LLC,	)	<b>RESPONSE TO PETITIONER'S MOTION FOR RECONSIDERATION</b>
	)	
	)	
Respondents.	)	
	)	
	)	

Pursuant to Rules 19 and 29(D) of the Rules of Procedure for the Administrative Law Court, Respondent South Carolina Department of Environmental Services ("Department") respectfully submits this Response in opposition to Petitioner's Motion for Reconsideration. The Department does not take a position on the Petitioner's request for a stay of this Court's Final Order and Decision dated December 18, 2024 ("Final Order"). For the reasons set forth below, the Petitioner's motion for reconsideration of the Final Order should be denied.

**STANDARD OF REVIEW**

SCALC Rule 29(D) permits a party to file a motion for "reconsideration ... to alter or amend the final decision, subject to the grounds for relief set forth in Rule 59, SCRPC .... " SCRPC 59(e) and its counterpart under the Federal Rules of Civil Procedure have been described as "practically identical." *Elam v. S.C. Dep 't of Transp.*, 361 S.C. 9, 22,602 S.E.2d 772, 779 (2004). Rule 59(e) motions are "not [to] be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment." *Exxon Shipping Co. v. Baker*, 554 U.S. 471,486, n.5 (2008) (internal quotation omitted); *see also Kiawah Property Owners Grp. v. Public Serv. Comm 'n of S.C.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004) (parties may not raise an issue in a motion to reconsider, alter, or amend a judgment that could have been raised previously). Courts

generally recognize three grounds for a court to alter or amend an earlier judgment: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence ...; or (3) to correct a clear error of law or prevent manifest injustice." *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993). "[M]ere disagreement" will not suffice. *Id.* at 1082; see also, e.g., *Mastercard International Inc. v. S. C. Dep 't of Rev.*, No. 20-ALJ-17-0008-CC, 2024 WL 3333777, at \*1 (S.C. Admin. L. Ct. Jul. 2, 2024) (Durden, J.) (denying motion for reconsideration that did "not seek to correct manifest errors of law or fact or to present newly discovered evidence"); at *Tractor Supply Co. v. S. C. Dep 't of Rev.*, No. 19-ALJ-17-0416-CC, 2024 WL 86950, at \*2 (S.C. Admin. L. Ct. Jan. 3, 2024) (Anderson, J.) (denying motion for reconsideration seeking to relitigate old matters and that "presented no new or compelling argument for why the Court should change its position").

### DISCUSSION

As an initial matter, the Department concurs with the arguments for denial of reconsideration set forth by Respondent Pulte Homes, LLC in its response to Petitioner's Motion for Reconsideration. The Department submits this response to emphasize that Petitioner's Motion leaves undisputed the absence of due process violations in this case and presents no new or compelling argument for why the Court should change its position that there are no statutory or regulatory requirements for the Department to provide public notice of wastewater system permits. Likewise, the Petitioner's Motion does not offer any new or compelling arguments why the Court should change its position that the exemption from conducting a coastal zone consistency review for individual wastewater system permits for systems with capacities of less than 1,500 gallons per day, as dictated by the Coastal Zone Management Program Document approved by the General Assembly, is consistent with S.C. Code § 48-39-80 which provides the Department the **authority** to review all state and federal permit applications in the coastal zone.

While claiming generally that this Court misinterpreted the requirements of procedural due process, the Petitioner offers no new arguments in support of its own interpretation of the law and no

compelling argument that this Court should change its interpretation. The Petitioner presents the same argument it has raised since the inception of this case, that the absence of public notice of wastewater system permits deprives Petitioner of due process. However, nothing in the Petitioner's motion for reconsideration presents any legal challenge to the lack of requirements in state law and regulations for public notice of wastewater system permits.

In claiming this Court erred in its application of the statutory framework, the Petitioner reiterates the same interpretation of the statute made it has made throughout this case that the statute requires the Department to review all permits. The Petitioner's Motion does not offer any new evidence, much less compelling evidence, why the Court should change its position and correct application of the plain wording of S.C. Code § 48-39-80 which requires the Department only to create a system which provides the Department the **authority** to review all state and federal permit applications in the coastal zone and does not require the Department to actually review all permit applications in the coastal zone.

### CONCLUSION

For the reasons set forth above, the Department requests that this Court deny the Petitioner's Motion for Reconsideration.



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Sara V. Martinez, S.C. Bar #74822  
Joseph A. Giordano, S.C. Bar #104500  
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January 15, 2025  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Coastal Conservation League,

Petitioner,

v.

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

Respondents.

In re: Lots #24 to 67

DOCKET NOS.


24-ALJ-07-0088-CC to 24-ALJ-07-0131

**Certificate of Service**

I, Sandra R. Wessinger, Paralegal for the South Carolina Department of Environmental Services, hereby certify that I have on this 15<sup>th</sup> day of January, 2025, served the foregoing *South Carolina Department of Environmental Services' Response to Petitioner's Motion for Reconsideration* upon all parties and counsel of record by via U. S. Mail, First Class, and electronic mail as follows:

Leslie Lenhardt, Esq. Amy Armstrong, Esq. P.O. Box 1380 Pawleys Island, SC 29585 leslie@scelp.org amy@scelp.org	Mary D. Shahid, Esq. Cheryl D. Shoun, Esq. Post Office Box 486 Charleston, SC 29402 mshahid@maynardnexsen.com cshoun@maynardnexsen.com
--	---

January 15, 2025  
Columbia, South Carolina

  
Sandra R. Wessinger

Mary Shahid  
Direct 843.720.1788  
Fax 843.414.8242  
Email mshahid@maynardnexsen.com



January 9, 2025

The Honorable Deborah Brooks Durden, Administrative Law Judge  
Edgar Brown Building  
1205 Pendleton Street Suite 224  
Columbia, SC 29201

**Re:** Coastal Conservation League v. SCDHEC and Pulte Homes, LLC  
Docket Nos. 24-ALJ-07-0088 to 24-ALJ-07-131-CC

Dear Judge Durden:

Please find attached the Response to Petitioner's Motion for Reconsideration and for Stay of Court's Order Issued December 18, 2024 submitted on behalf of Pulte Home Company, LLC in the above-referenced contested case. I am enclosing a copy of the Response to Petitioner's Motion and a return envelope and am requesting that the Clerk stamp the copy to indicate it has been received for filing and return it to my office.

Very truly yours,

s/ Mary D. Shahid  
Mary D. Shahid  
Admitted in SC

MDS:eh

cc: Cheryl D. Shoun, Esq. (cshoun@maynardnexsen.com)  
Sara Martinez, Esq. (sara.martinez@des.sc.gov)  
Amy Armstrong (amy@scelp.org)

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

South Carolina Coastal Conservation League,  
Petitioner,

vs.

Pulte Homes, LLC and the South Carolina  
Department of Health and Environmental  
Control (now the Department of Environmental  
Services),  
Respondents.

) Docket No. 25-ALJ-07-0088-CC to 24-ALJ-  
) 07-131-CC

) **RESPONSE TO PETITIONER'S**  
) **MOTION FOR RECONSIDERATION**  
) **AND FOR STAY OF COURT'S ORDER**  
) **ISSUED DECEMBER 18, 2024**

---

Respondent Pulte Homes, LLC ("Pulte"), submits the following in response to and in opposition of Petitioner's Motion.

**I. Petitioner's Motion is Untimely**

This Court issued its Order granting Respondents' Motion for Summary Judgment and Denying Petitioner's Motion for Summary Judgment on December 18, 2024 (the "Order"). All counsel were apprised of entry of the Order by electronic mail at 11:26 a.m. on December 18, 2024. Petitioner's counsel acknowledged receipt of the Order on the day of transmittal. SCALC Rule 29(D)(1) authorizes motions for reconsideration, only if filed within ten (10) days after an order concluding the matter before the administrative law judge. Petitioner's Motion was untimely filed twelve (12) days after issuance and notice of issuance of the Court's Order denying Petitioner's Motion. In this instance, the Court's Order granting Respondents' Motion for Summary Judgment and Denying Petitioner's Motion for Summary Judgment, is a Final Order having the effect of concluding this contested case.

It is well-settled in South Carolina jurisprudence that a Motion for Reconsideration must be timely. "Our Supreme Court has held an appellant's failure "to file a Motion for reconsideration or a

motion to alter or amend the judgment pursuant to SCALC Rule 29 or 68<sup>1</sup>...or Rule 59 or 60, SCRCPC renders review of an issue first arising from the ALC's final order unpreserved for the supreme court's review. *Risher v. SCDHEC*, 393 S. C. 1998, 208, 712 S. E. 2d 428, 433 (2011).” SCDMV v. Dover, 813 S. E. 2d 532. (Ct. App. 2018). This Court's ruling is final, subject only to a timely motion for reconsideration prior to a judicial appeal. Upon expiration of the tenth day following issuance of the Court's Order on December 18, 2024<sup>2</sup>, and in the absence of a timely Motion under Rule SCALC 29(D), this Court lacks authority over this matter. It has been recognized that rules limiting post-trial motions are rules of limitation, and not rules of jurisdiction. Standard Fed. Sav. & Loan Ass'n v. Mungo, 306 S.C., 22, 26 n. 1, 410 S.E.2d 18, 20 n. 1 (Ct. App.1991). Such rules of limitation cannot, however, be utilized to defeat the jurisdictional limit of trial courts. The established case authority is that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed. See, Pittman v. Republic Leasing Co., 351 S.C. 429, 570 S.E.2d 187 (Ct.App.2002).

As a result of the requirements of SCALC Rule 29(D)(1), Petitioner's Motion, in its entirety, must be set aside by this Court and given no further consideration.

**II. Petitioner Has Failed to Demonstrate Injury Sufficient to Justify a Stay Under SCALC Rule 29(E)**

Should the Court find Petitioner's Motion timely, which it is not, and further find that the Court retains jurisdiction, which respectfully, it does not, Pulte addresses Petitioner's motion for a stay, in the alternative.

Petitioner claims a stay of the Order “is necessary to preserve its rights to a meaningful appeal by preventing environmental degradation from occurring prior to judicial review.” Petitioner does not

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<sup>1</sup> Rule 68, SCALC, authorizes the ALC to use discretion in applying S. C. Rules of Civil Procedure for matters not addressed in the SCALC. However, the procedures and deadlines for filing a motion for reconsideration is fully addressed in SCALC 29(D) and would not trigger the ALC's discretion.

<sup>2</sup> Here, the deadline to file a Motion to Reconsideration was December 28, not December 30<sup>th</sup> (the date Petitioner filed the motion to reconsider.)

state with particularity the grounds for its Motion seeking a stay. Rather, Petitioner gives the Court nothing more than a broad and nonspecific reference to the South Carolina Constitution and to the statutes and rule that simply provide the procedural avenue for a motion to stay. S. C. Code Ann. Sec. 1-23-610 authorizes both the S. C. Court of Appeals and this Court to issue an Order staying the effectiveness of the Denial of Summary Judgment. S. C. Code Ann. 1-23-600(H)(4)(a) identifies the factors that would support a stay: “The court shall lift the stay unless the party that requested a contested case hearing proves: (i) the likelihood of irreparable harm if the stay is lifted, (ii) the substantial likelihood that the party requesting the contested case and stay will succeed on the merits of the case, (iii) the balance of equities weigh in favor of continuing the stay, and (iv) continuing the stay serves the public interest. The judge must issue an order no later than fifteen business days after the hearing is concluded.” This articulation requires a demonstration well beyond the general statements included in Petitioner’s Motion. Thus, even if considered, which it should not be, Petitioner’s effort to secure a stay from this Court is deficiently set forth and must be denied.

Petitioner’s deadline to file a judicial appeal of this Court’s Order is 30 days from the Court’s disposition of Petitioner’s motion. Should Petitioner choose to pursue an appeal, the matter then falls under the applicable South Carolina Appellate Court Rules, and SCACR Rule 241(b)(11) specifically excludes decisions from administrative tribunals from an appellate stay.

**III. Petitioner’s Motion for Reconsideration Fails to Satisfy the Requirements of SCALC Rule 29(D)**

This Court lacks subject matter jurisdiction to reconsider its December 18, 2024 Order, as more fully briefed above. However, should this Court determine that it will reconsider its Order, Petitioners are required to allege grounds for reconsideration consistent with SCRCRCP Rule 60. “... [U]nder the ALJD rules, it appears the only grounds for reconsideration are those contained in Rule 60(b) (1-5), SCRCRCP.” Micronics, Inc. v. SCDOR, 345 S. C. 506, 510, 548 S. E. 2d 223 (2001). Rule 60(b) (1-5) sets forth the following as grounds for reconsideration:

- (1) Mistake, inadvertence, surprise, or excusable neglect;
- (2) Newly discovered evidence;
- (3) Fraud, misrepresentation, or other misconduct of an adverse party;
- (4) Judgment is void;
- (5) Judgment satisfied.<sup>3</sup>

Here, Petitioner simply repeats the arguments that were presented to the Court in the hearing conducted on November 4, 2024. The first basis for reconsideration – that this Court misapprehends the statutory framework – is only viable if the Court overlooks the Coastal Zone Management Program Document, a product of the Coastal Zone Management Act, which reflects legislative action limiting instances of septic tank permits as subject to coastal zone consistency review. Given the judicial recognition that the Program Document has received over many decades, there is no basis to overlook the plain reading of the Program Document. This is stated plainly in this Court’s Order: “*The CMP was approved by the General Assembly and the Governor approximately forty-five years ago and it includes an exemption from Coastal Zone Consistency review of individual wastewater system permits for systems with capacities of less than 1,500 gallons per day.*” Order, p. 3.

The second claim, related to due process, is likewise unsupported. Petitioner, in its Motion, argues the Court’s order as to due process is erroneous as the Court fundamentally misinterprets the requirements of procedural due process. While Petitioner is correct that the Court, at the time of the hearing and in the Order, expresses concern that a lack of notice may result in a risk of due process violations in other cases, the Court gives the issue of notice due consideration here, finding there is no requirement for public notice of wastewater system permits and Petitioner was, indeed, not prejudiced by the lack of such notice. Petitioner was enabled and did, in fact, pursue a timely contested case with a path to appellate review.

---

<sup>3</sup> Upon review of several Orders issued by the ALC related to Motions for Reconsideration, the matters considered are whether the motion sets forth manifest errors of law and/or newly discovered evidence. See SCDOR v. Meenaxie, Inc., d/b/a Corner Mart, 13-ALJ-17-0216-CC. (Deborah Brooks Durden, ALJ.)

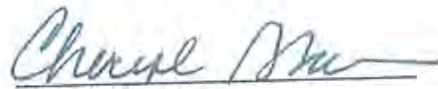
Because Petitioner's Motion is simply a reiteration of the arguments made before the Court on November, 4, 2024, and fails to satisfy any of the Rule 60(b) factors to properly support reconsideration, Petitioner's Motion should be denied

#### **IV. Conclusion**

This Court lacks jurisdiction to entertain Petitioner's Motion for Reconsideration. Should the Court determine that it will review the Motion, no factual or legal basis has been provided to warrant reconsideration. Petitioner fails to establish the grounds with any specificity to satisfy the requirements for obtaining reconsideration.

A lack of specificity also undermines Petitioner's Motion for Stay. The specificity required for this Court of lift the 90 day stay would also be applicable to a request for a stay at this stage in the proceedings

For the reasons set forth herein, Respondent Pulte requests that Petitioner's Motion for Reconsideration and for Stay of the Court's Order be denied.



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January 9, 2025

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Coastal Conservation League,

Petitioner,

vs.

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

Respondents.

Docket No.: 24-ALJ-07-0088 to 24-ALJ-07-  
0131-CC

**CERIFICATE OF SERVICE**

This is to certify that a copy of Petitioner's Response to Petitioner's Motion for Reconsideration and for Stay of Court's Order Issued December 18, 2024 has been served upon the following by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 9<sup>th</sup> day of January, 2025.

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OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT DIVISION  
Docket Nos. 24-ALJ-07-0088 through 24-ALJ-07-131

Coastal Conservation League, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 South Carolina Department of )  
 Health and Environmental Control, )  
 )  
 and )  
 )  
 Pulte Homes, LLC, )  
 )  
 Respondents. )  
 ----- )

**MOTION HEARING**

\*\*\*\*\*

**Monday, November 4, 2024**  
10:05 a.m. - 10:57 a.m.

The Motion for Summary Judgement was held before the Honorable Deborah Brooks Durden, was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 4th day of November, 2024 before Carla Dominick, Court Reporter and Notary Public in and for the State of South Carolina.



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ROA 2140

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**ALSO PRESENT:**  
Graham Hawkins, Pulte Homes, LLC

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**EXHIBITS**

(There were no exhibits marked in this motion.)

**STIPULATIONS**

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Court and the South Carolina Rules of Civil Procedure.



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ROA 2142

1     **THE COURT:**  Let's go on the record.  We're here for  
2             an oral Argument this morning in the matter of  
3             Coastal Conservation League, Petitioner, verses  
4             South Carolina Department of Health and  
5             Environmental Control and Pulte Homes, LLC,  
6             Respondent.  In re: lot numbers 24 to 67.  It's  
7             several cases.  The Docket numbers are 24-ALJ-  
8             07-0088 to 24-ALJ-07-131.  I thank y'all for  
9             your wonderful briefs.  I have read them, but  
10            let's go ahead and hear your oral Argument, and  
11            see what y'all have to say this morning.  Who's  
12            going to begin?

13    **MS. ARMSTRONG:**  I think the Respondent should start  
14            since they filed the motion.

15    **MS. SHAHID:**  We were first.

16    **THE COURT:**  Okay.

17    **MS. SHAHID:**  Thank you, Your Honor.  Could I use the  
18            ELMO for a few minutes?

19    **THE COURT:**  Certainly.  I love it when you use the  
20            ELMO.

21    **MOTION BY MS. SHAHID:**  Your Honor, I'm here with my  
22            law partner, Cheryl Shoun.  And our client  
23            Graham Hawkins is here, I believe, in the back.  
24            And, we represent Pulte Homes.  I think, if  
25            you've read the briefs, you know what the case



1 is about, but Pulte is a -- is a -- owns some  
2 property called the White Tract and has been  
3 given permission by the Town of Awendaw to do  
4 a 44-lot subdivision. And Awendaw, which is  
5 becoming a very desirable place to live due to  
6 location, does not have public sewer. And so,  
7 if you live in Awendaw, for the most part, you  
8 have to utilize septic tanks that are approved  
9 by DHEC. So the genesis of this appeal is that  
10 Pulte obtained approvals for the 44 lots to  
11 each have individual septic tanks.

12 What I wanted to use the ELMO for just a  
13 minute was to take a look at the statute. And  
14 I'm jumping ahead a little, and I'll cut back  
15 and catch up. But, what's being raised in this  
16 appeal is that, allegedly, according to the  
17 Petitioners, the Department did not follow 48-  
18 39-80. They did not follow the statute. And,  
19 what I think is important about looking at 48-  
20 39-80 is that in all the cases governing  
21 statutory review and statutory challenges and  
22 statutory construction, you look at the statute  
23 as a whole.

24 So, the purpose of 48-39-80 was, in '77  
25 the Legislature passed what they called the



1 Coastal Tidelands and Wetlands Act. And, that  
2 act was intended to give what is now the Bureau  
3 of Coastal Management authority over critical  
4 area which they have direct jurisdictional  
5 authority over critical area B tidelands,  
6 wetlands, the tidelands, beaches, tidal waters.  
7 And, then it gives the Bureau of Coastal  
8 Management authority, also, to certify other  
9 state and federal permits that are issued.  
10 And, that's called a Coastal Zone Consistency  
11 Certification. And it's a different type of  
12 authority from the critical area permitting,  
13 the Direct Regulatory Authority, because in the  
14 case of Coastal Zone Consistency Certification,  
15 the permit is issued by another agency such as,  
16 here, the same agency but a different bureau  
17 within DHEC, here, issued the 44 permits. Now,  
18 you know, back in '77, these were all different  
19 agencies. The Coastal Council was a separate  
20 agency from DHEC when this act was written.  
21 They certify the Corp of Engineers' permits.  
22 They certify first permits. Things like that.  
23 They don't issue the permit. They don't review  
24 the permit application for rules to see if it  
25 complies with regulations, but they do it to



1 see if it complies with the Coastal Zone  
2 Management Program Document.

3 So, what's interesting about A through --  
4 let's see about B through D -- I'm sorry. B  
5 through 11 of this statute. B being in  
6 devising the management program, the Department  
7 shall consider all lands and waters for  
8 planning purpose. In addition, the Department  
9 shall, and then number 10 says, devise a method  
10 by which the permitting process shall be  
11 streamlined and simplified to avoid  
12 duplication, and then develop a system whereby  
13 the Department shall have the authority over  
14 all state and federal permit applications in  
15 the coastal zone and to certify that these do  
16 not contravene the management plan. And, that  
17 system, Your Honor -- and it's in Exhibit 2 of  
18 our motions -- but that system is reflected in  
19 Table 1 of Chapter 5 of the Program Document.  
20 And in that system, it lists various permitting  
21 agencies: Aeronautic Commission, Budget and  
22 Control Board, DHEC, Land Resources, etcetera.  
23 And it then lists the various permits that are  
24 subject to council review and certification,  
25 and it says that state permits to construct



1 wastewater treatment systems or septic tanks  
2 with more than 1500 gallons per day disposal  
3 are subject to review by the agency. And,  
4 what's interesting about this is that the  
5 Legislature passed the statute in 1977, sending  
6 forth these obligations for the agency and then  
7 approved the management plan in 1979, two years  
8 later, and approved this particular action  
9 that. Yet, we're going to review DHEC's septic  
10 tanks with 1500 gallons per day disposal or  
11 less; not smaller septic tanks. And, I did  
12 want to tell the Court, Ms. Martinez is going  
13 to come behind me and I'm going to try not to  
14 step too much on her Arguments, but of course,  
15 the Petitioners before you now say that the  
16 permits were not issued properly because DHEC  
17 did not do an individual BCM. Did not do an  
18 individual review of each permit application.  
19 And, our position is that, that's not required  
20 by the statute; that they are misapplying the  
21 statute. The statute requires you to develop  
22 a system whereby you have the authority to  
23 review, but not -- it doesn't require you to  
24 review every single permit issued in the  
25 coastal zone. It requires you to develop a



1 system. And we think that, that is the correct  
2 interpretation of the statute, and not that the  
3 Bureau of Coastal Management is required to  
4 review every single permit in the coastal zone.  
5 And, we think that's enforced by the fact that  
6 there was a two-year time frame between the  
7 Legislature passing the Coastal Zone Management  
8 Act and approving the Program Document. And  
9 the Program Document doesn't just say it in  
10 Table 5 that we review septic tanks that are  
11 1500 gallons per day capacity or larger, it  
12 says it three or four other times within the  
13 Program Document. I didn't bring all the sited  
14 references, but I searched septic tank in  
15 Chapter 3 of the Program Document and it showed  
16 up 16 times, and in at least three or four of  
17 those, it showed up as saying DHEC's authority  
18 is limited to the 1500 gallons per day. Your  
19 Honor, I don't know if you remember or if  
20 you're familiar with the Coastal Zone  
21 Management Program Document. It's a very old  
22 document. It's a very valid document. I'm not  
23 saying it's not a document that they don't use  
24 every day, every hour of the day, in reviewing  
25 permits, but it's an older document. It's all



1 text. It was written by members of the staff  
2 at the first Coastal Council when it was  
3 created. It's been refined. I think the  
4 statute provides for program refinements. It's  
5 been refined only one time, and that was in  
6 1993 when they added Dock Master Planning and  
7 Wetland Master Planning to the Program  
8 Document. It hasn't been reopened again since  
9 1993. It's existed as it was in '77 with the  
10 exception of those refinements and hasn't been  
11 reopened again.

12 One thing I want to assure the court of is  
13 that DHEC has pages and pages of septic tank  
14 regulations. So, when DHEC reviews an  
15 individual septic tank permit, it's applying  
16 about 71 pages of regulations. It's not, like,  
17 they just say, yeah. I know you need to have  
18 a toilet you can flush, so I'm going to give  
19 you a septic tank permit. Our client hired an  
20 engineer and an expert soil classifier because  
21 the most important thing about the functioning  
22 of septic tanks is, will the soil support it?  
23 Can you prevent, you know, any harm to ground  
24 water, etcetera? And, it was determined that  
25 all of the soil on the White Tract where the 44



1           lots would be located survived all of the tests  
2           ---

3           **MS. ARMSTRONG:** Your Honor, I'm sorry. I hate to  
4           interrupt your Argument, but we're going to  
5           have -- we're starting to get into some  
6           material facts, I believe, that are not --  
7           would be in dispute. There's not any evidence  
8           of that. There hasn't been any factual  
9           determination. We haven't seen anything that  
10          shows that he's done -- that all these things  
11          are accurate ---

12          **THE COURT:** Now that you all noticed that, that fact  
13          is in dispute, maybe let's move on.

14          **MS. SHAHID:** Yeah. I just want the Court to be  
15          assured it wasn't just a rubber stamp. I  
16          mean there is a permit process that exists. I  
17          also want to remind the Court that there is a  
18          case out there, Spectre verses DHEC, which was  
19          a big challenge to the management document with  
20          a claim by landowners' attorney that you  
21          couldn't regulate wetlands -- the State  
22          couldn't regulate wetlands through the  
23          Management Document. And, it speaks  
24          specifically to the statute at issue -- the  
25          statutory section at issue, which is 48-39-



1 80(11) which is develop a system whereby the  
2 department shall have the authority to review  
3 all state and federal permit applications.  
4 And, this is what the Supreme Court said in  
5 Spectre, Through 48-39-80, it specifically  
6 requires DHEC to provide a regulatory system  
7 which the Department shall use in providing for  
8 the orderly and beneficial use of critical  
9 areas, that separating describing the two types  
10 of authority the Department has. First, it has  
11 regulatory authority over critical areas, and  
12 then it says, But if you look at 48-39-90, it  
13 requires only that DHEC develop a system for  
14 reviewing state and federal permit applications  
15 in the Coastal Zone for consistency. So,  
16 that's the Supreme Court's analysis in Spectre;  
17 the meaning of the statute.

18 So, Your Honor, that's the first issue  
19 that has been raised in the motions for summary  
20 judgement, and Pulte believes that this is an  
21 incorrect interpretation of the statute  
22 provided by the Petitioners. That it makes no  
23 sense to think that something that's been in  
24 place for 45 years that was determined approved  
25 by the General Assembly two years after they



1 passed the Act could be put into question at  
2 this point. It's been applied this way for 45  
3 years. I'm not sure it's ever been subject to  
4 challenge until now. And, they are pushing a  
5 meaning that doesn't exist. They are  
6 struggling hard to construe the statute to  
7 claim that BCM must/shall/is required to look  
8 at every single permit regardless of what the  
9 Coastal Zone Management Plan says and provides  
10 for with regard to these permits, even though  
11 they are supposed to rely on the policies of  
12 the Coastal Zone Management Program in  
13 reviewing these permits. And we think that's  
14 an unreasonable construction of the statute,  
15 and the Supreme Court in Spectre got it right  
16 when the emphasis was on establish a system.  
17 Develop a system whereby you review permits.  
18 And this is the system they developed. Table  
19 5-1 that I showed you, that is the system.

20 And, then, Your Honor, the other challenge  
21 that we're facing is the due process challenge.  
22 A claim that the lack of public notice is a  
23 violation of the league's due process. The  
24 first thing that we'd like to point out to the  
25 court is, we think this challenge is styled as



1 a facial challenge, not as an applied  
2 challenge. If you read the filings of the  
3 Petitioner, they speak specifically to a  
4 continued habit of DHEC of continuing to issue  
5 septic tank permits -- I think they refer to  
6 thousands of them -- across the coastal zone,  
7 repeatedly, without public notice. And, of  
8 course, there is no regulatory public notice  
9 required or statutory public notice required,  
10 but that's their claim. And, when we look at  
11 that, we read it as a facial challenge which  
12 this court lacks jurisdiction to hear. We  
13 don't see it as, as applied, specifically to  
14 this particular action, but as a very global  
15 issue. And Your Honor, there's also a very  
16 similar case -- I think it involves the White  
17 Tract and involves the septic tanks in the  
18 Court of Common Pleas where the Petitioners are  
19 seeking a ruling from the Court of Common Pleas  
20 on these issues. And that's ongoing.

21 Also, Your Honor, with regard to due  
22 process, they have suffered no prejudice. They  
23 are here in front of you today. They are able  
24 to make all the Arguments they want to make.  
25 They, along with us, agreed there were no



1 factual issues in dispute; that this was purely  
2 legal. They did a FOIA in advance, got the  
3 information through a FOIA in a timely fashion  
4 to file a timely contested case. They are  
5 receiving all of the statutory requirements, or  
6 judicial requirements necessary to satisfy due  
7 process. Notice an opportunity to be heard.  
8 They have no property interest on the White  
9 Tract, so it's not like their property rights  
10 have been denied. And, they are here before  
11 you today. I think that speaks volumes. They  
12 have not been prejudiced. Now, if they want to  
13 take it on that facial challenge and claim that  
14 there's just general prejudice to anybody  
15 because we don't give public notice, that  
16 again, I think, would potentially remove it  
17 from this Court's jurisdiction. So, Your  
18 Honor, I'm going to let Ms. Martinez fill in  
19 the many gaps I probably left out, but thank  
20 you.

21 **RESPONSE BY MS. MARTINEZ:** Thank you, Your Honor.  
22 May it appease the Court. I'm Sara Martinez  
23 for the Department of Environmental Services,  
24 formally DHEC. Ms. Shahid did not leave out  
25 much, but there are a few items I just wanted



1 to reiterate on the Department's position.  
2 This is an important case to us. You know, as  
3 Ms. Shahid was saying earlier, this is a permit  
4 challenge that I do want to make very clear  
5 that they're challenging 44 specific permits.  
6 That's why we're here. That's how we got here  
7 -- it's through the judicial process that's set  
8 forth in the Act for the appeal of permit  
9 decisions. As Ms. Shahid said that you have a  
10 separate case in the Circuit Court, some facial  
11 challenges to how DHEC is implementing these  
12 same two things here. Whether or not a CZC is  
13 required and whether a public notice is  
14 required for septic permits. But, that's  
15 really what this is about. There's two  
16 questions before you. One is factual, which  
17 we're here on summary judgement because it's  
18 not a dispute. The Department did not do a  
19 consistency review. We did admissions in this  
20 case, so we did not do a CZC consistency review  
21 for these 44 permits. The legal question is,  
22 is that required. And I think Ms. Shahid has  
23 done a great job of presenting to you why it's  
24 not. You know, just to be clear, just to  
25 reiterate, because the Zone Management Act --



1 the Petitioners asked us to look at that as a  
2 whole. When you look at that as a whole,  
3 multiple times throughout that Act, in 48-39-  
4 30, for example, it mentions the Act for the  
5 Development of Coastal Resources in order to  
6 achieve such improvement with due consideration  
7 for the environment and then it says, And  
8 within the framework of the Coastal Planning  
9 Program, and in 48-39-50, the Department's  
10 charged with developing and recommending to the  
11 Governor and the General Assembly a  
12 comprehensive program designed to promote the  
13 cause to this Act. In 48-39-80, which is the  
14 statute that we focused on a lot here, the  
15 provision that Ms. Shahid put up on the screen,  
16 we're charged with developing, enforcing and  
17 administering a comprehensive Coastal  
18 Management Program. That's what the Act tells  
19 us to do. The Act was written with those goals  
20 in mind and tells the Department, or not the  
21 Department, actually, but the Coastal Resource  
22 OCRM at the time, and now it's part of the  
23 Department, to make that program. And they  
24 did. In '77, the Act told them to. In '79 the  
25 Coastal Council presented this plan to the



1 Governor and to the Legislature and it was  
2 approved. And as Ms. Shahid pointed out, it  
3 was approved with the list of permits that, as  
4 this system was developed, that would be  
5 reviewed. And it says, We will review septic  
6 tanks that are greater than 1500 gallons. And  
7 that's what we do. Every tank in this case,  
8 all 44 of these permits, is less than 1500  
9 gallons. They raised points in their briefs  
10 about other provisions in the Act, and the  
11 Coastal Zone Management Program Document that  
12 mention, you know, high density development,  
13 and being cautious of septic tanks in high  
14 density development, and those provisions are  
15 in there. But, ultimately, there is a list --  
16 there is a system -- that says that we will  
17 only review tanks that are greater than 1500  
18 gallons. And at the Department, we manifestly  
19 considered septic tanks and all the coastal  
20 repercussions because we chose to set a  
21 threshold of 1500 gallons. The important --  
22 another point to add on just a little bit to  
23 what Ms. Shahid said, there's a process in the  
24 Act and in the Document. The Act requires us  
25 to have a process to amend that Document. As



1 Ms. Shahid said, it's only been done that one  
2 time in 1993. But, there is a process for  
3 that, and it's in the Statute, as well. And,  
4 it tells them that you must have a way for this  
5 Document to be amended. That's effectively  
6 what the Petitioners are asking me to do here.  
7 They are asking me to amend that Document.  
8 There's a process for that, and a comment  
9 challenge is not where that process is. So, we  
10 just want to point that out. The last thing,  
11 or the next to the last thing, you know, I  
12 understand that we don't want to bring facts in  
13 dispute eventually into this case, but I would  
14 say that the pre-hearing statement and the  
15 motion of the Petitioners discusses the fact of  
16 whether we did a Coastal Zone Consistency  
17 Review. There's never any facts in any of  
18 their pleadings that challenge whether the 61-  
19 56 review was done improperly. So, we're not  
20 even prepared to present that here because that  
21 wasn't even raised as a question. The issue is  
22 whether or not we did the CZC review, and like  
23 I said, we did not and we don't dispute that.  
24 The last thing I will say is on the public  
25 notice piece. I think Ms. Shahid covered that



1 pretty well and that, you know, even if there  
2 were some due process that they think more is  
3 required, we're here. So, we're here because  
4 they got due process and they were able to  
5 present to you today this judicial challenge.  
6 I think that's what due process requires. They  
7 quote the Constitution as requiring the right  
8 to be heard in the judicial review, and that's  
9 what they're getting here today, Your Honor. I  
10 do want to say that there's a couple statutes  
11 in there. What was formerly 44-1-60 is now  
12 codified for the Department of Environmental  
13 Service in 48-3 -- 46-8-30. Sorry about that.  
14 And it's a process whereabout you can challenge  
15 a permit and agency decisions. And, that's  
16 providing that due process, that right to be  
17 heard, that judicial review. That's the  
18 process that we follow. There is a provision  
19 to the extent possible, we have to have the  
20 uniform system of public notice. The case law  
21 that the Petitioners raised talked about how  
22 there's flexibility. There's a case that they  
23 cited in their motion that says due process  
24 should be a flexible process. There should be  
25 flexibility in coming up with that. The



1 Department has various means of public notice.  
2 I know that we've been before you on multiple  
3 types of permits where you've seen, probably in  
4 our regulations, that different regulations and  
5 different statutes, for that matter, you know.  
6 If you look at the Solid Waste Management Act  
7 or the Hazardous Waste Management Act, you have  
8 different acts that require different levels of  
9 public notice. There are no statutes or  
10 regulations that require an enhanced level of  
11 public notice in this case beyond the 44-1-60,  
12 what's available there, and now 48-6-30, and  
13 also the FOIA. I mean, like, they submitted a  
14 FOIA in this case and they could get the  
15 material that way. And then they can challenge  
16 it and if they want notice, the app says that  
17 they can request notice of any current decision  
18 and we give it. Even if they didn't request  
19 notice and we didn't provide it because they  
20 didn't request notice, they still have --  
21 anybody that is the affected party has the  
22 ability to challenge any Department decisions  
23 within 30 days pursuant to that new provision,  
24 48-6-30. So, those are the points I want to  
25 follow. We'll listen to their Argument,



1 knowing we'll get a chance to follow up if  
2 there's a new issue based on what they say,  
3 Your Honor. Thank you so much.

4 **THE COURT:** Alright.

5 **REPLY MS. ARMSTRONG:** Thank you. With me on the  
6 counsel's table are Monica Whalen, counsel to  
7 the case, and Jeff Weed, he a licensed  
8 attorney, and with the Coastal Conservation  
9 League, here on behalf of the Petitioner. Your  
10 Honor, there's no disagreement that septic tank  
11 permits are state permits, and that the  
12 Department of Environmental Services issues  
13 those state permits, and as Ms. Martinez just  
14 said, they don't review them for consistency  
15 with the Coastal Management Program. That we  
16 have the Coastal Tidelands and Wetlands Act  
17 that we've been discussing already, and that  
18 Act applies to the eight coastal counties,  
19 specifically. And what the General Assembly  
20 did was they created specific mandates and  
21 rules that are applicable within those eight  
22 coastal counties. In other words, they treated  
23 the eight coastal counties differently than  
24 everywhere else in the state. And they achieve  
25 that by directing the Department to develop



1 this Coastal Management Program. And so, 48-  
2 39-80 is designed to be comprehensive and  
3 address all waters and lands within the coastal  
4 zone. And the important language that's before  
5 the Court is this language in 80(B)(11) that  
6 says -- well, if we back up to B-1 it says, In  
7 devising management program, the Department  
8 shall. So, yeah, the word shall maybe. You  
9 get down to 80-(B)(11) and again it uses that  
10 word shall -- that the Department will develop  
11 a system whereby the Department shall have the  
12 authority to review all state and federal  
13 permit applications in the coastal zone. So  
14 that the key words here are shall review all.  
15 Shall review all state and federal permits.  
16 And then, importantly, right after that  
17 sentence, saying that the Department shall  
18 review all state and federal permits in the  
19 coastal zone, the General Assembly knew -- they  
20 know how to create exemptions. They know how  
21 to say, We want you to do -- this is the rule.  
22 We want you to review all state and federal  
23 permits, except for these. And they did it  
24 here with respect to the Coastal Zone  
25 Consistency Certification, because the very



1 next sentence in that provision is that  
2 individual, navigable waters permits for docks  
3 in the eight coastal counties outside of the  
4 critical area, a Coastal Zone Consistency  
5 Certification is deemed approved if  
6 certification review is not completed within 30  
7 days of a completed application. So, the  
8 Legislature absolutely knew how to carve out an  
9 exemption, it did that for navigable -- for  
10 docks, in navigable waters, and the Legislature  
11 carved out exemptions many places in the  
12 Statute under -- for critical area permits. In  
13 48-39-30(B), the Legislature, it explicitly  
14 provides exemptions for critical area  
15 permitting for a variety of activities, carved  
16 out exemptions for emergency orders, for dredge  
17 and fill activities by the Corp of Engineers in  
18 connection with maintenance dredging, for  
19 construction of walkways over dunes. So, in  
20 the Act itself, the Legislature has, with  
21 respect to both critical area permitting and  
22 Coastal Zone Consistency Certification said,  
23 We're gonna exempt certain things from these  
24 requirements. They knew how to do it and they  
25 did it. There is no exemption in the Statute



1 for septic tank permits, at all. The  
2 Respondents seem to rely on this word system --  
3 they have developed a system. That's true.  
4 They have developed a system. What does that  
5 system have to do? It has to give the  
6 Department authority to review all state and  
7 federal permits, with that exception regarding  
8 navigable waters permits. Now, if you take the  
9 Respondents' Argument to a logical conclusion  
10 that all they have to do is develop a system  
11 and that system can say whatever it wants about  
12 different state and federal permits, then the  
13 conclusion that you're gonna land with the  
14 Department who developed this system and say,  
15 You know what, we thought about this and we're  
16 gonna just not do certain certification review  
17 for any state or federal permit, or any  
18 classification thereof. And that would lead to  
19 an illogical result where the Department's not  
20 reviewing any state or federal permits, when  
21 you take it to its local conclusion. But  
22 that's just clearly a rule would materially  
23 alter or add to the Statute. And I think  
24 that's really what we're talking about here.  
25 It's not -- Ms. Martinez suggested that we go



1 about amending the Coastal Management Program.  
2 I mean, that's not -- the policies of the  
3 Management Program are not at issue. I was  
4 involved with the Spectre case. I argued it  
5 before this court. I argued it before the  
6 Supreme Court. What was at issue in that case  
7 was whether the Coastal Management Policies  
8 were binding. Were they binding norms? The  
9 question wasn't about this characterization  
10 about how it treated Table 1. That's not --  
11 the Court didn't get to that level of detail.  
12 They didn't talk about whether the whole thing  
13 itself reports with the statutory requirement.  
14 They just looked at, did it follow -- did the  
15 Department follow the proper procedure in  
16 passing the CMP. They found that it did. They  
17 found that the policies apply. What they're  
18 talking about -- what the Respondents are  
19 talking about in Table 1, those aren't  
20 policies. Those are exemptions. And that  
21 brings us back to the line of cases statements,  
22 like *Brown v Bilo* where the Courts have  
23 repeatedly said, When you have a regulation  
24 that materially alters or adds to a Statute,  
25 that is the struck down -- that is invalid.



1 Now this Court -- we're not -- of course, we  
2 aren't bringing a facial challenge. This is an  
3 as-applied challenge to these specific 44  
4 permits. And we believe that if the Court  
5 looks at the Statute, notwithstanding what the  
6 CMP says, because the Statute is what really  
7 controls here, as applied the Department has  
8 failed to implement those statutory  
9 requirements in 48-39-80(B)(11), requires it to  
10 review all state and federal permits. This is  
11 a state permit. No review was had. So, the  
12 Court doesn't need to strike down the CMP as a  
13 matter of law. It just needs to determine  
14 that, as applied in this case, the Department  
15 failed to apply the statutory requirements.

16 Now, there's been some Arguments about  
17 this idea that we are -- we need to streamline  
18 and simplify. If you look at that specific  
19 provision in 48-39-80(B)(10), what it says is  
20 devise a method by which the permitting process  
21 shall be streamlined and simplified so as to  
22 avoid duplication. The focus areas are not  
23 doubling down -- not doing something twice.  
24 You don't want to duplicate efforts. But  
25 that's not what we're talking about here,



1           because you've got one system that applies --  
2           there's no duplication of coastal zone  
3           consistencies for septic tanks because it's not  
4           done. We have septic regulations that are  
5           applied throughout the whole state and they're  
6           applied the same way, looking at making this  
7           septic tank permit decision. But again, the  
8           Legislature said, when you take coastal  
9           counties, we're gonna treat the lands and  
10          waters differently. And, there's a lot of  
11          information in the Coastal Management Program  
12          about why that's a concern. There's  
13          information that we cited in our response and  
14          motion that cites DHEC's own information about  
15          the hazards that septic tank permits can cause  
16          because a rise in water tables, inundation.  
17          There are know risks that the Department's  
18          aware of and those risks are compounded when  
19          you're talking about a coastal system, which is  
20          exactly why the Legislature created this  
21          requirement for a Coastal Management Program  
22          and a certification program and process for all  
23          state and federal permits.

24                 Now, I want to also just clarify         some  
25          thing. It's in our request for a contested



1 case hearing, I'm taking -- in the light of  
2 what's favorable to us, what the Respondent  
3 Pulte Homes has said is planned is 204 houses,  
4 actually, not just these 44. This is part of  
5 a larger 204-home development, and those lots  
6 are ranging from one-third of an acre, a little  
7 less than a third of an acre, to less than half  
8 than an acre. And, so when you look at the  
9 system that we're not just talking about one  
10 septic tank that's 1500 gallons per day, we're  
11 talking about all of these systems compounded  
12 all together. And, so, what would happen if  
13 the Department actually utilized the policies  
14 of the Coastal Management Program, it would  
15 look -- there are a lot of different policies  
16 that apply. One of them is looking at the  
17 long-range and cumulative impacts of a project  
18 in the context of other development. And, so,  
19 looking at the fact that one of these septic  
20 tank permits is just one of 204 that's planned.  
21 And, how might that affect the coastal eco  
22 system. And, so, those are the kinds of things  
23 that if the Department was conducting a  
24 certification review, it would be required to  
25 look at those kinds of activities. Also, when



1           it comes to the system, it seemed as though the  
2           Respondents were suggesting that the system is  
3           Table 1. This report -- Ms. Shahid asked if  
4           you were familiar with the Coastal Management  
5           Program. This is the document itself. It's a  
6           very large. It's very detailed. It has  
7           specific provisions applied to septic tank  
8           permits. And it does have one page that the  
9           Courts have created for exemptions including  
10          for the septic tank permit. But that one page  
11          of exemptions is not the system -- I meant the  
12          system is developing the policies and how  
13          they're going to apply to different activities  
14          throughout the coastal zone.

15                 When it comes to -- I'm going to just  
16                 touch on the due process Argument relatively  
17                 briefly, because it is true that we are here  
18                 before the Court today. The problem is that  
19                 this Court has the ability to strike down a  
20                 decision if it's based on unlawful procedure,  
21                 and what's happened in this case is there is no  
22                 -- since there is no public notice of a permit  
23                 application -- the permit application is what  
24                 gives the public and any interested party the  
25                 opportunity to request notification of a permit



1 decision. And, that written request for  
2 notification is what triggers the affected  
3 person status in 44-1-60. So, that's the only  
4 way -- that's the way you become the affected  
5 person. By requesting from the Department. And  
6 you request because you have public notice.  
7 Now, the approach the Respondents are  
8 propounding are that we did -- we had to be  
9 very vigilant, stay on guard, and continually  
10 file a Freedom of Information Act request to  
11 find how had there been a permit application  
12 even submitted and/or have then been decisions  
13 made on the permit. And the reason it's  
14 problematic is because if you request -- if you  
15 submit a FOIA and there's no permit  
16 application, there's no way to find -- you  
17 don't get any information. They just say, no  
18 permit application. There hasn't been anything  
19 submitted. Nothing. And there isn't any way  
20 to find out when a permit application actually  
21 is filed. So you have to file multiple FOIA  
22 requests, one after the other, and hopefully  
23 you get lucky and find out before the 30 days  
24 -- well, it used to be 15; now 30 days lapses  
25 before you file an appeal. We're fortunate



1 that we had people that have been vigilant  
2 enough in this particular case, but how do we  
3 find out about the other remaining over one  
4 hundred septic tank permits there or anywhere  
5 else in the coastal zone? It creates an  
6 impossible situation because unlike all the  
7 other permits that are public that people can  
8 find out and therefore achieve affected person  
9 status. It cuts the public out of the process  
10 altogether. Because of the unlawful procedure,  
11 we think that's a basis for finding due process  
12 violations as applied to these permit  
13 decisions.

14 As far as flexibility on due process, it's  
15 the last point I wanted to address. In talking  
16 about the level of -- what does it mean to be  
17 heard? It doesn't mean -- the case we that  
18 cited, the Stono River case, the due process  
19 requires flexibility, but it does, at it's  
20 fundamental, at base, you actually have to have  
21 some sort of notice to even be able to exercise  
22 those due process rights, and when we're  
23 talking about liberty rights, of course, we're  
24 not talking about property rights here, and  
25 that due process doesn't require property



1 rights. In fact, it just requires rights of  
2 liberty and those have been interpreted in our  
3 state's courts to include things like access to  
4 public trust resources where the Supreme Court  
5 said that citizens have the inalienable right  
6 to recreate on high and territorial seats. So,  
7 those are liberty interests. The petitioners  
8 that are at stake when there are activities  
9 that are authorized by the Department without  
10 going through the process of reviewing those  
11 activities to insure that they are designed and  
12 created to protect sensitive coastal resources  
13 that members of the Coastal Conservation League  
14 utilize. So, for those reasons, we ask this  
15 court to perhaps seek judgement in our favor.

16 **THE COURT:** Ms. Shahid, Ms. Martinez, anything else  
17 from y'all in reply?

18 **CONTINUED MOTION BY MS. SHAHID:** Yes, Your Honor.  
19 So, when Ms. Armstrong talks about all of the  
20 turmoil we have to go through and trouble we  
21 have to go through in the future to try to get  
22 these permits as public notice, I think she's  
23 made it clear that this due process challenge  
24 is a facial challenge, not an as-applied  
25 challenge. Is she referring to the future



1 effect and current effect of the lack of  
2 current notice. But, on the issue of due  
3 process, the Sierra Club case which is a little  
4 bit dated but still very applica- -- I'm sorry,  
5 the Laidlaw case, still very applicable. The  
6 Sierra Club got upset because Laidlaw and DHEC  
7 entered into a side agreement that sort of  
8 finalized the permit. And, the agency,  
9 effectively, went ahead and allowed Laidlaw to  
10 participate in a contested case here. And the  
11 Court ruled in the Laidlaw case that to prove  
12 the denial of due process in an administrative  
13 hearing, a party must show that it was  
14 substantially prejudiced by the process. And,  
15 here, the fact that Laidlaw was allowed to go  
16 ahead and pursue a contested case or get  
17 involved between the side deal between DHEC and  
18 Laidlaw, the Court found that there was no due  
19 process violation. They had a remedy. And, so  
20 those are speaking, specifically, to  
21 administrative issues. Also, Your Honor, and  
22 I can hand you this case if you like, and I've  
23 already talked about it once, but I think it  
24 addresses, directly, Ms. Armstrong's Argument  
25 in Spectre v SCDHEC, The Court, specifically,



1           says that 48-39(A)(B)11 requires only that DHEC  
2           develop a system for reviewing state and  
3           federal permit applications in the coastal  
4           zone. Having a system, Your Honor, would you  
5           like me to hand you this case?

6           **THE COURT:** No, I've got it.

7           **MS. SHAHID:** Okay. Thank you. Finally, Your Honor,  
8           I think that the point that we're trying to  
9           impress is that the General Assembly granted  
10          authority, but does not require BCM to always  
11          use that authority, and hence the need to  
12          develop a system. Yes, they have that granted  
13          authority. And then they created -- Coastal  
14          Zone Management Plan Program Document and  
15          within that Program Document, they define their  
16          authority, and they exempted these permits  
17          under 1500 gallons per day. And, that's all we  
18          have in response. I'm sure Ms. Martinez can  
19          follow-up.

20          **MS. MARTINEZ:** Very, very briefly, Your Honor.

21          **THE COURT:** Okay.

22          **FURTHER RESPONSE BY MS. MARTINEZ:** You know, just to  
23          emphasize what Mary was saying with a little  
24          bit different point, I mean, she quoted to you  
25          as she said they shall review, that the Statute



1 said it shall review. But, there's a little  
2 ellipsis in there: shall develop a system that  
3 gives -- to have the authority to review. You  
4 can't leave that out there. You can't jump and  
5 say they shall review. That's not what the  
6 Statute says. It says, We shall develop a  
7 system. And to add a little bit onto what Ms.  
8 Shahid said on the document -- I mean, they're  
9 asking you to stretch an intent of what the  
10 Legislators meant when they wrote that, what  
11 they meant when they wrote the whole Act, that  
12 Legislature approve that document two years  
13 later. So, if you're trying to know what the  
14 Legislators' intent was, that's the clear  
15 intent of the Legislature and the Governor  
16 signing off on that document which included  
17 these provisions. The last point I'll make is  
18 with the Comprehensive Program -- it must  
19 include this or -- the whole Statute is about  
20 having this Comprehensive Program and that's  
21 different than Part 11 where it says at the  
22 very top, the Comprehensive Program, and I  
23 pointed to the Statutes earlier all throughout  
24 the Act, they have the Comprehensive Program.  
25 Then, within that program, it shall develop a



1 system, so just the distinction there between  
2 when she said that we're pointing to this table  
3 as being the system and when the Statute  
4 requires a whole program, it does a whole  
5 conference of program. That's this book that  
6 she's showing you, right here, this whole CZMC  
7 document. Well, we're honing in on here for  
8 these septic tanks as Ms. Shahid pointed out  
9 earlier, they're two entirely different things  
10 in that Act. One where we have the direct  
11 common gray in a critical area. This is a  
12 second piece where we're supposed to have this  
13 authority to review. It's a piece of this  
14 large document and we satisfied it, Your Honor.  
15 That's why we're here. Because they're  
16 claiming that we have not satisfied our legal  
17 requirements under this Act, when I think it's  
18 very clear we have. They are claiming that the  
19 public notice is unconstitutional. As Ms.  
20 Shahid pointed out, if that's suspected of  
21 abuse, we do have a Circuit Court case over  
22 that, but, you know, they say that we don't  
23 public notice any of these and we never will.  
24 We might, you know, at some point. It says to  
25 the max where possible. We always developed



1 and changed our public noticing as technology  
2 develops, we have this new economy system that  
3 we're working on, but there's no statutory  
4 requirement, and so we try to -- this agency  
5 prides itself on being transparent.  
6 Transparency is a -- not just a buzz-word. It  
7 means something in our Department. And, we do  
8 want to public notice to the max as possible.  
9 But, I'll say that it's not required for these  
10 septic permits.

11 **THE COURT:** All right. I will say that with respect  
12 to the due process Argument, I'm not gonna  
13 speak to anything else, probably, but with  
14 respect to the due process Argument, I do feel  
15 like through extraordinary effort on your part,  
16 you have gotten due processes in this case. I  
17 would say, though, Ms. Martinez, this whole  
18 system concerns me and I think in a different  
19 case, you know, if they had not taken those  
20 steps and actually been able to be involved, it  
21 could be a big problem. And it's a -- I've  
22 always had a little bit of concern about the  
23 way that it's structured by our Legislature and  
24 whether concerned parties are getting the  
25 proper notice. The increase to 30 days is



1 definitely a big step in the right direction,  
2 I think, but, it's just I'd encourage you -- I  
3 don't think that it's -- there's been a due  
4 process violation as applied in this case. But  
5 I do think that there's certainly -- the system  
6 is fraught with opportunity for that in other  
7 cases. So, I just encourage you as y'all are  
8 looking at your processes as a new agency, to  
9 maybe look at that notice process, as you  
10 indicated, you plan to do.

11 **MS. MARTINEZ:** Yes. I understand and I'll pass it  
12 along.

13 **THE COURT:** All right. Anything else? Do you have  
14 something else, Ms. Armstrong?

15 **FURTHER REPLY BY MS. ARMSTRONG:** One more minute,  
16 and part of it's responding to what you just  
17 indicated. And, I would agree that if there is  
18 a concession that there is no challenge to time  
19 limit, the appeal process was followed that  
20 we've met, that we are timely, then I would  
21 agree that we don't have that substantial  
22 prejudice, but that risk still remains out  
23 there, and that was certainly a concern for us  
24 and so I understand and appreciate your  
25 comments on that point. I think -- I just



1 wanted to make sure that we're -- that I'm  
2 really clear that if there was some confusion  
3 about this word shall and the shall develop the  
4 system, the word shall in 48-39-80(D) is -- the  
5 word shall is used twice. And I started my  
6 Argument saying that. So, the first time that  
7 the word shall is used, the department shall  
8 develop a system. Then, later on, the word  
9 shall is used again to say that the Department  
10 shall -- shall develop a system where the  
11 Department shall have the authority to review.  
12 So, there's the shall develop a system and  
13 shall review all state and federal permits.  
14 The word's in there twice. It's not just about  
15 the system. It's about, you develop the system  
16 and what are you -- what is the Legislature  
17 telling you, you must do with that system? And  
18 they're telling you, you shall review all state  
19 and federal permits. And that's really what  
20 we're about here before you today and I  
21 appreciate the extra two minutes.

22 **THE COURT:** Okay. All right. Well, thank y'all.  
23 Thank you for your good briefs and that you for  
24 your good Argument today. We will take all of  
25 that in consideration and try to get out a



1 decision as quickly as possible given the real  
2 gravity of the case and the important issues  
3 that are at stake here.

4 **MS. SHAHID:** There's nothing else we can provide  
5 you to help you on?

6 **THE COURT:** If I think of anything, I will let you  
7 know. But, I know also that judges ask for  
8 proposed orders. I think that, frankly, I  
9 almost never just use somebody's proposed  
10 order, even if I'm going to rule for them. I  
11 find that I have to write my own order. I am  
12 planning to retire soon, and I want to make  
13 sure I get this order out. My retirement date  
14 is somewhat flexible at this point. It's gonna  
15 be controlled by when Robin finds a job. I'm  
16 looking after my assistant before I leave. She  
17 has been -- she is wonderful and she has been  
18 a wonderful assistant to me and so I don't want  
19 to leave her in the lurch. Really, as soon as  
20 Robin finds a job, I'm off in my camper van  
21 somewhere. Allo right y'all have a great day.

22 **(There being no further statements, the Motion**  
23 **concluded at 10:57 a.m.)**

24

25



**CERTIFICATE**

This is to certify that the within hearing consisting of forty-one (41) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on April 29, 2025.



---

Carla S. Dominick  
Court Reporter

Notary Public for South Carolina  
My Commission Expires: February 28, 2032



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June 24, 2024

Sara Martinez, Esq.  
SCDHEC  
2600 Bull Street  
Columbia, SC 29201

Re: Coastal Conservation League v. SCDHEC  
24-ALJ-07-0099-CC to 24-ALJ-07-0131-CC, Requests to Admit

Dear Sara:

Please find for service on you Petitioner's Requests to Admit in the above-referenced matter.

Yours truly,

/Leslie Lenhardt

Senior Managing Attorney

Attachment

cc: Mary D. Shahid, Esq.

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Coastal Conservation League,

Petitioner,

v.

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

Respondents,

In re: Lots #24 to 67.

Docket Nos.

24-ALJ-07-0088-CC to 24-ALJ-07-0131-CC

**PETITIONER'S REQUESTS FOR  
ADMISSION TO RESPONDENT SOUTH  
CAROLINA DEPARTMENT OF HEALTH  
AND ENVIRONMENTAL CONTROL**

TO: THE RESPONDENT DHEC AND THEIR ATTORNEYS

The Petitioner hereby submits, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure and Administrative Law Court Rule of Procedure 21, the following requests for admission to Respondent South Carolina Department of Health and Environmental Control ("DHEC").

You are instructed to serve on the undersigned counsel of record within thirty (30) days from service of these requests your answers and/or objections to these requests for admission. Pursuant to Rule 26 of the South Carolina Rules of Civil Procedure, you are further instructed to supplement your responses up to and through the trial of this matter. The definitions set forth below shall govern the following requests for admission as well as your responses to them:

**DEFINITIONS**

1. The term “documents” as used herein means all original writings of any nature whatsoever and all non-identical copies thereof in your possession, custody and control, regardless of where located, and regardless of whether printed or reproduced by any process, or written and/or produced by hand, or stored in any form of mechanical or electronic information retrieval system, and whether or not claimed to be privileged or otherwise excludable from discovery, and including, but is not limited to, contracts, agreements, records, tape recordings, correspondence, memoranda, communications, reports, studies, summaries, compilations, abstracts, minutes or records of all meetings including directors, staff, management, and executive officer meetings, notes, agenda, bulletins, notices, announcements, statements, instructions, charts, manuals, brochures, schedules, price lists, telegrams, teletypes, papers, books, accounts, letters, photographs, objects, transcripts of oral statements, court papers or any other tangible thing.

2. The term “concerning” or “concerns” as used herein means referred or referring to, alluded or alluding to, related or relating to, connected with, regarding, describing or reflecting.

3. The terms “you” or “your” as used herein shall mean the Respondent, South Carolina Department of Health and Environmental Control (“DHEC”) and all of DHEC’s present and former agents, employees, representatives, attorneys and all other persons acting on its behalf.

4. The terms “and” and “or” shall be both conjunctive and disjunctive.

#### **REQUESTS FOR ADMISSION**

1. Admit that the Coastal Management Program policies relating to septic tanks have not been updated since the policies were approved by the General Assembly in 1979.

2. Admit that DHEC is fully aware that septic tanks can and do malfunction.

3. Admit DHEC does not place on public notice of any kind individual septic tank permit applications of less than 1,500 gallons per day (gpd).

4. Admit that DHEC does not review individual septic applications that generate less than 1,500 gpd of domestic wastewater for consistency with the current Coastal Management Program.

5. Admit that DHEC is the state agency charged with processing permit applications to construct and operate onsite wastewater systems generating less than 1,500 gpd.

6. Admit that a permit to construct and operate any new, upgraded, or expanded onsite wastewater system must be obtained from DHEC prior to construction and operation of the system.

7. Admit that a permit to construct an onsite wastewater system is a state-issued permit.

**SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT**

s/ Leslie Lenhardt

Leslie S. Lenhardt  
Amy E. Armstrong  
Monica K. Whalen  
P.O. Box 1380  
Pawleys Island, SC

June 24, 2024

(843) 527-0078

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 Nos.

24-ALJ-07-0088-CC to 24-ALJ-07-0131-CC

**CERTIFICATE OF MAILING**

In re: Lots #24 to 67.

I hereby certify, as an employee of the SC Environmental Law Project, that on this date I have served Petitioner's Requests for Admission via U.S. Mail and electronic mail delivery by email to the parties addressed:

Mary D. Shahid  
Maynard Nexsen  
205 King Street Suite 400  
Charleston, SC 29401

Sara V. Martinez, Esq.  
South Carolina DHEC  
2600 Bull Street  
Columbia, SC 29201  
martinsv@dhec.sc.gov

Respectfully submitted,

SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT

  
Debbie Weiner

June 24, 2024

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Coastal Conservation League,

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**PETITIONER’S REQUESTS FOR  
ADMISSION TO RESPONDENT SOUTH  
CAROLINA DEPARTMENT OF  
ENVIRONMENTAL SERVICES**

TO: THE RESPONDENT DES AND THEIR ATTORNEYS

The Petitioner hereby submit, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure and Administrative Law Court Rule of Procedure 21, the following requests for admission to Respondent South Carolina Department of Environmental Services (“DES”).

You are instructed to serve on the undersigned counsel of record within thirty (30) days from service of these requests your answers and/or objections to these requests for admission. Pursuant to Rule 26 of the South Carolina Rules of Civil Procedure, you are further instructed to supplement your responses up to and through the trial of this matter. The definitions set forth below shall govern the following requests for admission as well as your responses to them:

**DEFINITIONS**

1. The term “documents” as used herein means all original writings of any nature whatsoever and all non-identical copies thereof in your possession, custody and control, regardless of where located, and regardless of whether printed or reproduced by any process, or written and/or

produced by hand, or stored in any form of mechanical or electronic information retrieval system, and whether or not claimed to be privileged or otherwise excludable from discovery, and including, but is not limited to, contracts, agreements, records, tape recordings, correspondence, memoranda, communications, reports, studies, summaries, compilations, abstracts, minutes or records of all meetings including directors, staff, management, and executive officer meetings, notes, agenda, bulletins, notices, announcements, statements, instructions, charts, manuals, brochures, schedules, price lists, telegrams, teletypes, papers, books, accounts, letters, photographs, objects, transcripts of oral statements, court papers or any other tangible thing.

2. The term “concerning” or “concerns” as used herein means referred or referring to, alluded or alluding to, related or relating to, connected with, regarding, describing or reflecting.

3. The terms “you” or “your” as used herein shall mean the Respondent, South Carolina Department of Environmental Services (“DES”) (formerly Department of Health and Environmental Control) and all of DES’s present and former agents, employees, representatives, attorneys and all other persons acting on its behalf.

4. The terms “and” and “or” shall be both conjunctive and disjunctive.

### **REQUESTS FOR ADMISSION**

1. Admit that DES did not review or certify the 44 individual septic tank permit applications which are the subject to this Contested Case, Permit No. OSWW010845 v1.0 through Permit No. OSWW010904 v1.0, for Consistency with the policies of the Coastal Management Program.

**SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT**

/s/ Monica K. Whalen

Leslie S. Lenhardt  
Amy E. Armstrong  
Monica K. Whalen  
P.O. Box 1380  
Pawleys Island, SC  
(843) 527-0078

August 8, 2024

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Coastal Conservation League,

Petitioner,

v.

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

Respondents,

In re: Lots #24 to 67.

Docket Nos.

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

**NOTICE OF MOTION HEARING**

These matters are before the South Carolina Administrative Law Court (ALC or Court) pursuant to requests for a contested case hearing filed by Coastal Conservation League relating to the determinations by the South Carolina Department of Health and Environmental Control (Department) to issue Permit Nos. OSWW010845 v1.0, OSWW010846 v1.0, OSWW010848 v1.0, OSWW010850, v1.0 OSWW010852 v1.0m OSWW010853 v1.0, OSWW010855 v1.0 through OSWW010865 v1.0, OSWW010869 v1.0 through OSWW010875 v1.0, OSWW010877 v1.0, OSWW010879 v1.0, OSWW010880 v1.0, OSWW010882 v1.0, OSWW010884 v1.0, OSWW010886 v1.0 through OSWW010895 v1.0, OSWW010897 v1.0, OSWW010900 v1.0, OSWW010901 v1.0, OSWW010903 v1.0, and OSWW010904 v1.0 to Respondent Pulte Homes, LLC to construct onsite wastewater systems. On June 5, 2024, this Court issued a Notice of Hearing, scheduling a hearing on the merits in these matters for Monday, November 4, 2024. On October 17, 2024, counsel for Respondent Pulte Homes, LLC sent an e-mail to this Court stating that all parties have filed motions for summary judgment and all parties agree that there are no material facts in dispute. The parties request that their motions be presented and argued, instead, on the previously scheduled hearing date.

**IT IS THEREFORE ORDERED** that a hearing on the parties' motions for summary judgment in these matters is scheduled to begin before the undersigned Judge at **10:00 a.m.** on



Monday, **November 4, 2024**, at the ALC, located at 1205 Pendleton Street, Edgar A. Brown Building, Second Floor, Suite 224, Columbia, South Carolina.

**AND IT IS SO ORDERED.**

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

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

October 21, 2024  
Columbia, South Carolina

**CERTIFICATE OF SERVICE**

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

*Robin Coleman*

Robin E. Coleman  
Judicial Aide to Judge Deborah Brooks Durden

October 21, 2024  
Columbia, South Carolina



**Table 1**

**State Agency Permits Subject to  
Council Review and Certification**

- |   |   |
|---|---|
| 1. Aeronautics Commission                         | —Certificates of approval for airports and other air traffic facilities.  |
| 2. Budget and Control Board                       | —Permits for activities below the ordinary high water mark which are within the coastal zone but out of the critical areas.   |
| 3. Department of Health and Environmental Control | <ul style="list-style-type: none"><li>—State permits to construct wastewater treatment systems or septic tanks handling either more than 1500 gallons per day or other than domestic waste.</li><li>—National Pollutant Discharge Elimination System (NPDES) permits (delegated by EPA).</li><li>—Section 401 of the Federal Water Pollution Control Act certification.</li><li>—Construction permits for air emissions.</li><li>—Water supply permits.</li><li>—Sanitary Landfill Design, Construction and Operation permits.</li><li>—Oil and Gas facilities registration certificates.</li></ul> |
| 4. Land Resources Conservation Commission         | —Mining operations permits.   |
| 5. Public Service Commission                      | —Certificates for major utility facilities.   |
| 6. Water Resources Commission                     | <ul style="list-style-type: none"><li>—Oil and gas facilities permits.</li><li>—Groundwater capacity use area permits.</li></ul>  |

**CERTIFICATE OF COUNSEL**

The undersigned counsel for Appellant certifies that, in accordance with Rule 210(c), SCACR, this **Record on Appeal** contains all material proposed to be included by any party that was presented to the lower court and not any other material. The undersigned also certifies that this **Record on Appeal** complies with the Supreme Court of South Carolina's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings issued April 15, 2014.

**RECEIVED**  
**Apr 08 2026**  
**SC Court of Appeals**

s/Leslie S. Lenhardt  
Leslie S. Lenhardt, Esq. (S.C. Bar No. 15858)  
Amy E. Armstrong, Esq. (S.C. Bar No. 70352)  
Monica Whalen, Esq. (S.C. Bar No. 106638)  
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FAX: (843) 527-0540

*Attorneys for Appellant*

Charleston, S.C.  
April 8, 2026