



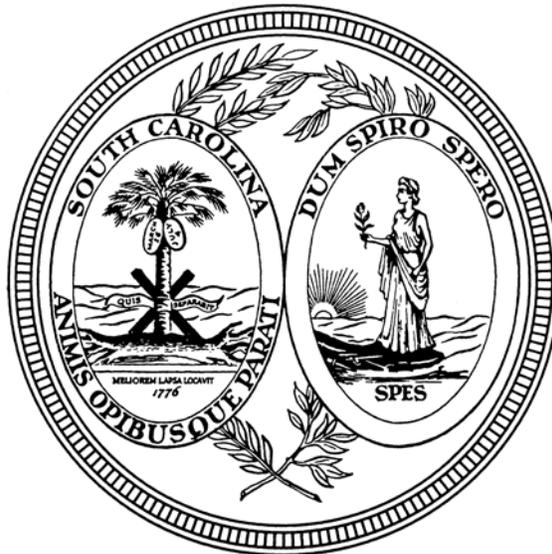
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SOUTH CAROLINA GENERAL ASSEMBLY

# Legislative Audit Council

June 2010

## A REVIEW OF COMMUNICATIONS BY DHEC WITH THE PUBLIC CONCERNING CORPORATE POLLUTION



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# Legislative Audit Council

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## A REVIEW OF COMMUNICATIONS BY DHEC WITH THE PUBLIC CONCERNING CORPORATE POLLUTION

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# Introduction and Background

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## Audit Objectives

Members of the General Assembly requested the Legislative Audit Council to conduct an audit of the South Carolina Department of Health and Environmental Control (DHEC). The requesters' concerns were DHEC's statutory duties and accountability to the public and local governments in cases of corporate pollution. Our audit objectives were to:

- Determine if DHEC's communications with the public and local governments about corporate pollution have complied with the law and agency policies and evaluate how effective these communications have been.
- Determine how DHEC involves and informs the public and local governments of its actions in cases of corporate pollution and evaluate the effectiveness of that process.
- Determine how other government entities communicate with the public and local governments about corporate pollution and identify possible improvements for DHEC's communications.

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## Scope and Methodology

We reviewed the operations of the department focusing on the Bureau of Land and Waste Management and the Environmental Community Health Division. We did not review operations related to permitting or rulemaking and focused on areas in the Divisions of Waste Management and Site Assessment Remediation and Revitalization. The period of our review was generally FY 07-08 and FY 08-09, with consideration of earlier and more recent periods when relevant.

To conduct the audit, we used evidence which included the following:

- DHEC files of site cleanups and community contacts.
- Federal and state laws and regulations.
- DHEC policies and procedures.
- Interviews with DHEC employees, employees of other states' environmental agencies, and other interested parties.
- Information about community involvement activities in other states and the federal government.
- Records concerning DHEC task force meetings.

Criteria used to measure performance included federal and state laws and regulations, agency policy, and the practices of other states. We used several nonstatistical samples, the results of which cannot be applied to the whole population. These samples are described in the audit report. We reviewed internal controls in the documentation of public participation activities in environmental cleanup files. The use of the computerized data was not central to our audit objectives. We tested the reliability of DHEC's computerized data about cleanup files and did not identify concerns about its accuracy.

We conducted this performance audit in accordance with generally accepted government auditing standards with the exception of the general standard concerning quality control. Due to LAC budget reductions, funding was not available for a timely external quality control review. In our opinion, this omission had no effect on the results of the audit.

Those generally accepted government auditing standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

The South Carolina Department of Health and Environmental Control (DHEC) is the state's public health and environmental protection agency. The agency's mission is to promote and protect the health of the public and the environment. The agency is governed by a board whose members are appointed by the Governor, and approved by the Senate. The board selects a commissioner as chief executive of the agency and the executive management team advises and supports the commissioner and the board. As of September 2009, the agency employed 3,925 full-time employees (FTE) in offices throughout the state. Table 1.1 shows the agency's appropriations and expenditures for FY 07-08 and FY 08-09 and its FY 09-10 appropriation.

DHEC's duties are described in both federal and state statutes including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act and the South Carolina Hazardous Waste Management Act. The agency is organized into four areas — Environmental Quality Control (EQC), Health Services, Health Regulations, and Ocean and Coastal Resource Management. The scope of this audit is limited to EQC, which is responsible for the enforcement of federal and state environmental laws and regulations, and for the issuing of permits, licenses, and certifications for activities which may affect the environment.

EQC is divided into four bureaus — Air Quality, Environmental Services, Land and Waste Management, and Water. The Bureau of Land and Waste Management is responsible for:

- Management and coordination of mining and waste related activities including solid waste, hazardous waste, infectious waste, radioactive waste, and recycling activities.
- Implementation of corrective action for contaminated sites.
- Coordination of statewide environmental emergency response activities.

For FY 09-10, the General Assembly allocated \$33.6M in total funds and \$2.9M in general funds to the Bureau of Land and Waste Management, with a total of 313.23 FTEs. Though portions of this review address EQC as a whole, the Bureau of Land and Waste Management was the subject of more in-depth review.

This review focuses on DHEC’s statutory duties and accountability to the public in cases of corporate pollution. In its mission/vision/values statement, DHEC lists customer service as a core agency value. The agency involves the public in the planning and assessment of agency programs, using information received from the public to reevaluate and sometimes change processes, services, and programs. EQC fulfills this agency value generally through all staff involving the public in EQC operations and specifically through its public participation coordinators and community liaisons. EQC’s perspective on public participation is that the public is a partner in protecting the environment and that its mission of protecting public health and the environment will be improved through enhanced public involvement.

**Table 1.1: Appropriations and Expenditures**

FY 07-08		
Appropriation	\$567,797,236	\$144,112,613
Expenditure	\$521,670,806	\$164,364,980
FY 08-09		
Appropriation	\$572,035,280	\$142,540,737
Expenditure	\$534,551,970	\$126,988,501
FY 09-10		
Appropriation	\$555,503,163	\$107,442,179

Source: Appropriations acts and agency accountability reports.

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**Chapter 1**  
**Introduction and Background**

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# Audit Results

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## Compliance with Laws and Regulations

We reviewed the Department of Health and Environmental Control (DHEC)'s compliance with both state and federal laws and regulations regarding community participation activities at hazardous waste cleanup sites and how effective those communications were. We found that DHEC generally complied with the public participation requirements in the law and agency policies. However, we found that there was no documentation describing how the level of community participation activities were determined and that documentation of public participation activities was not consistent.

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## Laws and Regulations

DHEC administers the hazardous waste cleanup sites in compliance with federal and state laws. The Bureau of Land and Waste Management (bureau) is responsible for operating these programs. Hazardous waste cleanup programs are governed by the following laws:

- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as Superfund — addresses abandoned hazardous waste sites.
- Resource Conservation and Recovery Act (RCRA) — governs the management of non-hazardous solid wastes and hazardous waste from “cradle-to-grave.”
- S.C. Hazardous Waste Management Act — provides regulations such as those involving the requirements for the issuance of permits and standards of reporting and record keeping for hazardous waste sites and short-term actions in response to immediate threats.

DHEC modeled its internal guidelines for community participation activities on both state and federal laws and regulations. The state Superfund program, which adopted the community involvement values of the federal CERCLA program, finances cleanup of uncontrolled waste sites that do not qualify for federal assistance by the Environmental Protection Agency (EPA) through the Hazardous Waste Contingency Fund (state Superfund sites) or by the responsible party (voluntary Superfund sites). Both of these types of sites follow the same public participation guidelines with some exceptions; however, activities may vary for each site depending on a variety of factors.

The following are some of the activities in DHEC's internal established guidelines:

- Establish an agency spokesperson/project manager and an administrative record in the bureau file available for public review.
- Notify the public of the administrative record in a local newspaper and provide an opportunity for public comment and respond to significant comments.
- Conduct public meetings/availability sessions if requested and obtain community input in order to prepare a formal community relations plan.

Finally, another type of voluntary Superfund program site DHEC administers involves non-responsible party cleanup contracts. DHEC issues non-responsible party cleanup contracts to those that demonstrate financial viability to return to use of the property. The only community participation activities for these sites is for DHEC to provide the public notice of the contract in a local newspaper and a 30-day comment period.

In addition to the state Superfund program sites, DHEC conducts community involvement activities for active and permitted hazardous waste sites, or RCRA sites. According to a DHEC official, DHEC models much of the policies and procedures for these sites after the state Superfund program sites. Internal agency public participation activities exceed those required by state regulations. Similar to state Superfund program sites, a variety of factors contribute to the types of community activities conducted for each site. However, state regulations, depending on the type of permit, require certain activities to include:

- Sending notice of permit modification to all persons on the site mailing list.
- Providing notice of a public comment period through a major local newspaper and over local radio, in some cases.
- Responding to public comments and holding public meetings upon request.

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## File Review

To determine how the bureau notifies the public, local governments, and other interested parties about hazardous waste cleanups, we reviewed a sample of files documenting cleanup activities at RCRA sites, state Superfund sites, and voluntary Superfund sites. Superfund sites governed by CERCLA were not included in our review as they are conducted by the federal government. Our findings are summarized below.

### **State Superfund Sites**

We reviewed the records of 7 of 35 state Superfund sites which had started and finished work between January 1, 2000, and October 9, 2009. We generally found that the bureau had complied with community participation requirements. We did note that the documentation of activities was not consistent among the sites, the level of community involvement activities varied among similar sites, and the organization of documentation varied among sites. For example:

- One site file which had been initiated due to community complaints had no documentation of community involvement activities other than internal e-mails.
- One site file which had been investigated based on a local resident's complaint had no documentation of any public participation. According to a DHEC official, they did not conduct many community involvement activities due to the rural nature of the waste site.
- Two sites contained numerous files spanning over 20 years of activities. However, different files contained information from the same time-period, making it difficult to locate documentation.

### **Voluntary Superfund Sites**

We reviewed the records of 13 of 63 voluntary Superfund sites which had started and finished work between January 1, 2000, and October 9, 2009. According to the Hazardous Waste Management Act, those entering into responsible party contracts must follow the same public participation procedures as the state Superfund program sites. DHEC conducted all activities for two of the eight responsible party contract sites sampled. However, it did not conduct as many community participation activities for the remaining six responsible party sites as specified for the state Superfund program sites. For example:

- Four of the eight site files had no documentation verifying any community involvement. According to DHEC officials, certain factors, such as funding, affected these sites' priority for DHEC's level of community participation.
- The remaining two site files had documentation of public participation conducted; however, the activities should have been performed earlier in the cleanup process.

For non-responsible party cleanup contracts, DHEC provides some public participation activities. We found DHEC conducted all activities suggested in its internal guidelines for the five sampled non-responsible party contract sites.

### **Resource Conservation and Recovery Act (RCRA)**

We reviewed the records of 5 of 26 sites that had RCRA permit modifications and/or permit renewals between October 2004 and October 2009. For these sites, we found that generally the bureau had conducted all of the required community participation activities such as:

- All required community involvement activities were conducted at four of the five sites. However, for one of those sites, DHEC's file documentation did not include verification of all activities.
- For the remaining site, we found DHEC conducted all required activities with the exception of notifying the public via radio.

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## File Documentation

When reviewing the files of cleanup activities, we noted three areas where the bureau could improve the documentation of community involvement activities.

- The filing system makes it difficult to locate documentation of community involvement activities. Many sites have multiple files covering overlapping time periods. By keeping that documentation in a separate folder with the site files, there would be increased assurance that the required activities have been done.
- Community participation activities are not documented in the same manner. DHEC site files vary greatly in organization and documentation of community involvement activities. The lack of uniformity makes it unclear if the required activities have been conducted.

- None of the files contained documentation addressing how project managers decided the level of community involvement activities. The level of public participation activities can vary depending on a number of factors such as location, community interest, permit type, cleanup action, etc. Each site file should include formal documentation of the decision on the level of community involvement activities.

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## Recommendations

1. The Department of Health and Environmental Control should ensure that all required public participation activities are conducted for every hazardous waste cleanup site.
2. The Department of Health and Environmental Control should improve its documentation of community involvement activities by:
  - Including formal documentation in each site file of how it decided the level of community involvement activities for each site.
  - Uniformly documenting in the site file all community involvement activities.
  - Placing all community involvement participation documentation in a separate file from other documents.

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## Public Participation Process

We reviewed EQC's Environmental Community Health Division (ECH) and the Bureau of Land and Waste Management's public participation coordinators' responsibilities to determine how DHEC involves and informs the public and local governments and to evaluate the effectiveness of the process. We found that the staff resources assigned to the Office of Environmental Community Health are not adequate and that the office lacks a cohesive case management system.

According to an EQC management directive, all staff are to facilitate public participation in appropriate ways as part of their normal job assignments. However, the Office of Environmental Community Health is specifically charged with communicating with stakeholders about EQC activities. The community liaisons are the key contacts for citizens who have questions or concerns about activities in their communities with possible environmental and/or health effects. This office also staffs the EQC Public Participation Task Force and other committees.

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## EQC Public Participation Task Force

The EQC Public Participation Task Force consists of staff from all bureaus of the agency, including some bureau chiefs. The task force was initially charged with reviewing employee use of “plain language.” This role has expanded to reviewing employee public participation activities, recommending how public participation can be improved, and determining what resources are required for those improvements. Currently the task force is addressing comments from 2007 and 2008 listening sessions designed to bring together stakeholders such as citizens, grassroots organizers, and industry representatives and to learn from them how EQC could improve public participation. The task force distilled all of the comments down to two primary issues — early, consistent, and effective notification; and public education and interaction.

The task force also conducted a benchmark employee survey which found, among other things:

- Most EQC staff try to minimize use of technical language when communicating with the public and that some staff desire more training and time to incorporate public participation into their daily work.
- Many staff do not use the resources available to them; the community liaisons are the most used public participation resource.

At the time of the survey, other available resources included the public participation video and intranet sites, the public participation task force, each bureau work group, the public meeting debriefing guide and survey, and the public participation training.

Since receiving the results of the survey, ECH staff have developed and refined an interactive training protocol for staff. As of November 2009, the protocol had been tested, evaluated, and retested. This training justifies and describes public participation, introduces available tools, describes the roles of the community liaisons and the bureau-level public participation coordinators. The training also incorporates case studies to allow staff to work through how they would implement public participation into their work.

During our review, we examined a sample of files to obtain evidence of the different methods ECH staff use to communicate with the public. ECH staff selected and provided 14 files and we randomly selected 16 additional files.

The sample files contained documentation of citizen meetings, phone calls, e-mails, mail, industry-initiated community groups, public notices, fact sheets, community advisory boards, and website updates with pages on specific sites. DHEC uses two additional methods to communicate directly with local governments — local government council presentations and status reports.

Resident responses and internal staff communications demonstrated that, though DHEC communications were generally clear and timely, improvements could be made to increase effectiveness. Most e-mail exchanges in the sample contained timely responses to resident inquiries. However, there were a few instances where DHEC staff responded a month or more later, after prompting from the resident. Also, the sample included a few comments about the ability of DHEC staff to communicate clearly, with those few being mostly internal comments about a document for release to the public or staff performance at a public meeting. However, when looking for evidence of effective communication, we noted that many residents were not clear on the roles and powers of DHEC. Also, where DHEC staff facilitated discussions between industry and residents, DHEC intervention appeared to improve communications. The task force's current Public Education and Interaction subcommittee is investigating methods to increase resident understanding of DHEC roles and duties.

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## Staffing

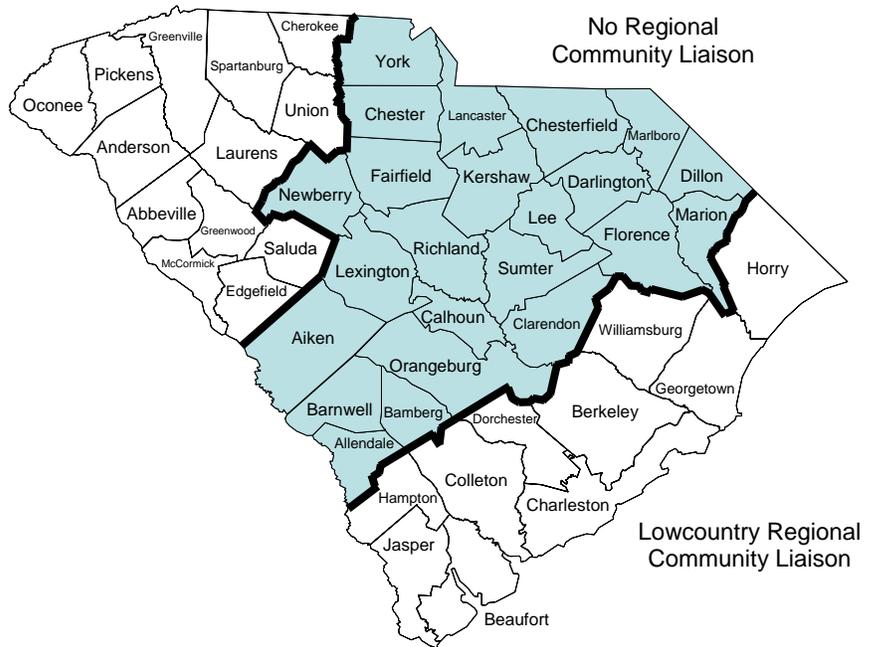
### **Office of Environmental Community Health**

The Office of Environmental Community Health is not sufficiently staffed. Currently, there is one statewide EQC Community Liaison, an Upstate Regional Community Liaison, a Lowcountry Regional Community Liaison, and a Community Program Coordinator. There is no coordinator for the Midlands region. The community liaisons address citizen concerns/complaints, facilitate public meetings/hearings, and mediate discussions with stakeholders. The Community Program Coordinator staffs two committees and also assists the EQC Community Liaison. In practice, the statewide EQC Community Liaison and the Community Program Coordinator share the function of a third regional community liaison serving the regions not considered a part of the Upstate or Lowcountry (Map 2.1). Neither person can dedicate all of her time to this function, as each has other responsibilities and one works part-time. When asked why there was not a third regional community liaison, agency officials offered two reasons — (1) insufficient funding and (2) initially there were more environmental issues in the Upstate and Lowcountry requiring the attention of a community liaison who could build relationships in those areas.

Though the funding has not improved, the volume of issues in the regions not served by a regional community liaison has increased. The current office structure has a reduced capacity to focus on issues in these regions because of a lack of a position dedicated to this function.

**Map 2.1: Regional Community Liaisons**

Upstate Community Liaison



Source: DHEC and LAC analysis.

### **Bureau Public Participation Coordinators**

EQC's bureaus do not have sufficient staff positions dedicated to public participation. In addition to the community liaisons located in the Office of Environmental Community Health, the Bureaus of Air and Land and Waste Management each have a public participation coordinator. These coordinators advise bureau staff in their public participation efforts, assist in planning public meetings/hearings, and serve as liaisons between state office and regional staff. They also have leadership roles on the public participation task force. The public participation role differs from the community liaison role in that they primarily work with staff people in specific bureaus, as opposed to more citizen contact across all areas.

The Bureau of Water had a public participation coordinator. According to an agency official, the staff person in the Bureau of Water public participation coordinator position was reassigned due to budget cuts. Agency staff have noted the void and the difficulty in not having a public participation person within the Bureau of Water. Also, this potentially slows response time to citizens.

**Community Liaisons and Public Participation Coordinators as a Team**

The public participation coordinators report to the assistant bureau chiefs of their respective bureau, but also look to Office of Environmental Community Health staff for guidance and partnership. The community liaisons and public participation coordinators often function as a group. Table 2.2 delineates community liaison and public participation coordinator roles.

**Table 2.2: Duties of Community Liaisons and Public Participation Coordinators**

COMMUNITY LIAISONS	SHARED DUTIES	PUBLIC PARTICIPATION COORDINATORS
<ul style="list-style-type: none"> <li>▪ Address citizen concerns and complaints.</li> <li>▪ Mediate discussions with stakeholders.</li> <li>▪ Build relationships with stakeholders in communities.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Consult with and advise DHEC staff on public participation efforts.</li> <li>▪ Work with each other to coordinate public participation efforts.</li> <li>▪ Plan and facilitate public meetings/hearings.</li> <li>▪ Provide training for staff on public participation.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Lead EQC public participation initiatives.</li> <li>▪ Consult with staff on plain language of written and oral presentations.</li> </ul>

Source: DHEC and LAC analysis.

Though the two groups have distinct roles within EQC, the nature of their shared roles could make joining the groups a more efficient way to operate. According to an agency official, placing all ECH and public participation personnel under one umbrella would provide the flexibility to give certain regions or bureaus more or less attention, as needed.

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## Recommendations

3. The Department of Health and Environmental Control should ensure that a full-time position is dedicated to the community liaison function in all areas of the state.
4. A public participation coordinator should be assigned to each Environmental Quality Control bureau.
5. The Department of Health and Environmental Control should investigate and determine whether or not the Office of Environmental Community Health should be the umbrella for both the community liaisons and the public participation coordinators.

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## Record Management System

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The Office of Environmental Community Health should develop a record management system so that current and future staff can easily determine what work has occurred within communities.

The community liaisons work as a team. Some have more expertise in certain environmental issues and are called on by their colleagues to assist in areas outside of their assigned region. Currently community liaisons maintain their own files using electronic and hard copy methods of record-keeping. There is not an office-wide standard, nor is there office-wide access. During our file review mentioned above, we observed that the files were not ordered in any consistent manner, nor were they indexed or cataloged. A person filling in is handicapped by not having an efficient way to review what has occurred within a particular community. Staff are also unable to identify best practices for addressing community issues by seeing what has been effective in previous situations.

DHEC's various site management systems can assist in determining what has happened in each community, because each site may have regulatory requirements related to public participation. Project staff can enter anything related to public participation into the site file. However, these files do not tell the entire public participation story for the sites. Also, not all of the Office of Community Health's work is with DHEC regulated sites.

A record management system could be developed for ECH staff to include all communications for each site. This system could be as simple as a written or electronic docket and note system. An example is the status document maintained by one municipality for an issue with DHEC involvement. The document contained a record of actions and assignments related to a particular site. A person becoming involved later only had to look at that document to get an idea of what had been done and future plans. This system could also be used to ensure that DHEC responds in a timely manner to all communications.

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## Recommendation

6. Office of Environmental Community Health staff should develop and implement a file management system to track communications with the public and local governments.

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## Other States' Practices

We reviewed how other states involve communities in their environmental agencies' cleanup activities to identify practices which could be followed in South Carolina. We found that other states had detailed policies and responsibilities for their public participation staff, additional information available on their websites, early involvement with communities, and more extensive efforts at the regional levels.

We reviewed states which had been suggested by a DHEC official as having good public participation efforts such as California and Virginia and also reviewed the other seven states in the southeastern Environmental Protection Agency region 4 which includes South Carolina. We reviewed information on their websites and contacted employees with public participation responsibilities to obtain additional information. After comparing this information, we identified common themes or effective practices for community involvement.

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## Policies and Procedures

Other states have detailed policies and procedures which describe how they will include the public in the cleanup process. The California Department of Toxic Substances Control has a public participation manual which details how the agency will communicate with the public. It includes responsibilities for staff members, checklists to ensure all tasks are completed, and examples of communications. This manual is posted on the

agency's website so that the public can know how the agency will communicate with them. By describing in detail how the public participation process works, the public has greater assurance that they will be informed and the agency staff knows what their responsibilities are.

In addition to a policy manual for staff, other states have guides for public participation for citizens. These publications include detailed descriptions of how citizens can become involved in or informed about environmental cleanup activities. The guides include information such as:

- Contact persons at the agency by subject area.
- Contact persons for issues for which the agency is not responsible.
- Descriptions of cleanup processes with lists of opportunities for public participation for each process.

These guides explain in understandable language how the public can participate and what the environmental agency's responsibilities are. The public can hold the agency accountable for its responsibilities and be aware of available opportunities.

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## Website Information

Other states have detailed information concerning public participation on their websites. They post a link to public participation information on the home page for their agencies. They include calendars of public meetings, lists of information by sites, descriptions of the public participation process, and contact information. Some websites include more detailed information for sites which have a greater interest to the public. For example, the Ohio Environmental Protection Agency includes the agency's response to comments made by persons interested in specific cleanup sites. By collecting this information in an easily accessible place, the information is more likely to reach the public and encourage their involvement.

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## Regional Involvement

In other states, the public participation efforts are focused more on the regional level rather than on a statewide basis. The regional offices have a greater familiarity with the communities and could more easily identify interested parties or have established relationships with local governments. The state office establishes the policies to ensure compliance with the law and uniformity in efforts, but the regional offices develop their own plans to involve the public. There are contact persons in each region and much of the information is maintained locally so the public has easier access to

information. For example, in Virginia, public participation information is organized on the website by region so residents can more easily identify sites in their area. One of the challenges identified by other states was determining whom the interested parties might be. The public has expressed concerns about being informed of potential problems with sites. By focusing efforts on the regional area, these relationships would already be established to identify who to contact and give a source to find out about potential problems.

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## Early Involvement

States have recommended that the public be involved early and frequently. This allows agencies to establish positive relationships and clearer communication. DHEC's public participation task force focused on early involvement as a result of its surveys and feedback from the public. California stressed that early communication and involvement of the public is important, especially with potentially complex or high interest sites. By involving the public early in the process, the agency can more readily identify and address concerns. It also allows the agency to tailor its communications to answer those concerns and potentially focus the cleanup efforts to not only address the problem but also to alleviate the community's concerns.

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## Conclusion

DHEC should adapt some of the practices from other states to improve its public participation efforts. The agency had already identified some areas as needing improvement and is working to address these issues, such as early involvement of the public (see p. 10). By including more information on its website and developing publications describing the responsibilities of DHEC and other entities, as well as detailing opportunities available to the public, DHEC can be more responsive to the public and local governments.

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## Recommendation

7. The Department of Health and Environmental Control should incorporate practices from other states into its public participation efforts. These practices should include developing a policies and procedures manual, including public participation information on the home page of the agency's website, focusing more efforts at the regional level, and becoming involved earlier in the cleanup process.

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**Chapter 2**  
**Audit Results**

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# Agency Comments

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June 16, 2010

Thomas J. Bardin, Jr., Director  
South Carolina General Assembly Legislative Audit Council  
1131 Elmwood Avenue, Suite 315  
Columbia, South Carolina 29201

Dear Mr. Bardin:

The South Carolina Department of Health and Environmental Control (DHEC) is pleased to provide the enclosed comments on the Legislative Audit Council's June 2010 report, *A Review of Communications by DHEC with the Public Concerning Corporate Pollution*.

Please note that our current response document, while similar to our May 25, 2010, submission to the Council concerning the initial draft report, includes updated references to page numbers, eliminates previously included attachments, and adds both a recommendation response (see Pages 7-8) and an editing remark.

We would like to reiterate that there are few statutory requirements applicable to state regulatory agencies regarding public participation and communication activities. However, even in difficult budget times, our Environmental Quality Control staff exceed regulatory requirements to ensure citizens affected by site contamination are well informed and given the opportunity to interact with us on remedial actions. We will continue to implement improvements to our system of communications as more funding becomes available.

Again, thank you for allowing us the opportunity to provide comments on both the draft and final reports.

Kindest regards,

C. Earl Hunter, Commissioner

Enclosure:  
DHEC Response to June 2010 Legislative Audit Council Report



# **Response to June 2010 Legislative Audit Council Draft Report**

## **A Review of Communications by DHEC with the Public Concerning Corporation Pollution**

*Prepared by: South Carolina Department of Health Environmental Control  
June 16, 2010*

The following items are presented by the South Carolina Department of Health & Environmental Control (DHEC) in response to issues addressed in the June 2010 final draft report by the Legislative Audit Council (LAC) on DHEC's public participation activities. Our responses are presented in accordance with the chronological order of the LAC's observations and recommendations in the draft report.

### **CHAPTER 2: AUDIT RESULTS**

#### **COMPLIANCE WITH LAWS AND REGULATIONS**

#### **FILE REVIEW – STATE SUPERFUND SITES, PAGE 7**

**LAC Observation:** *“One site file which had been initiated due to community complaints had no documentation of community involvement other than internal emails.”*

**Response:** While our Bureau of Land & Waste Management (BLWM) files did not have the complete record of public involvement, we were in compliance with the South Carolina Hazardous Waste Management Act (SCHWMA), the National Contingency Plan (NCP), and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as there is documentation the public was properly engaged.

**File Reviewed:** Palmetto Antique Flooring Site (File 57365)

1. Due to community complaints, DHEC performed a time-critical removal action in response to contaminated sawdust blowing onto adjacent properties. Typically, a time critical removal is similar to an emergency response, and the time frame does not afford the agency time to fully engage the public. The NCP provides for flexibility here, as well.
2. Following the emergency removal, DHEC provided door-to-door notice to nearby property owners and held two public meetings.
3. Nancy Whittle (our Environmental Quality Control Community Liaison) and staff from the Bureau of Air Quality (BAQ) were involved. We are uncertain if the LAC reviewed their files.

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**CHAPTER 2: AUDIT RESULTS  
COMPLIANCE WITH LAWS AND REGULATIONS  
FILE REVIEW – STATE SUPERFUND SITES, PAGE 7**

**LAC Observation:** *“One site which had been investigated based on a local resident’s complaint had no documentation of any public participation.”*

**Response:** We reviewed the file in question and determined this was another removal action not requiring public participation.

**File Reviewed:** Powderhouse Road Pesticide Shack Site (File 56291)

1. DHEC removed approximately 14 cubic yards of soil from the footprint of a former pesticide storage building (the “shack”). The owner had previously removed the building.
2. The Site is in a very rural area and was part of a 180-acre farm.
3. The property owner was notified of the activities.

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**CHAPTER 2: AUDIT RESULTS  
COMPLIANCE WITH LAWS AND REGULATIONS  
FILE REVIEW – STATE SUPERFUND SITES, PAGE 7**

**LAC Observation:** *“Two sites contained numerous files spanning over twenty years of activities. However, different files contained information from the same time-period, making it difficult to locate documentation.”*

**Response:** While our staff quickly found the information in the files, we agree it may have been difficult for the LAC to find the information. For these two sites, we did comply with the requirements.

**File Reviewed (1 of 2):** Suffolk Chemical Company Site (File 52199)

1. Late winter 1995 - The Site was referred to the State Superfund Program.
2. March 1995 - A scope of work was developed, and the Site was assigned to a State Contractor to develop and implement a work plan.
3. Late April 1995 - The DHEC project manager contacted nearby property owners to obtain access for sampling.
4. Late April 1995 - Letters were sent to nearby residents announcing a public meeting.
5. May 11, 1995 - DHEC held a public meeting to discuss the upcoming Site investigation.
6. November 1995 - A notice of an upcoming public meeting was mailed out.
7. December 12, 1995 - DHEC held a second public meeting to update residents on the status of the investigation.

8. August 1997 - DHEC developed a proposed plan for remedial action, notified the public of an upcoming meeting (August 14), and announced a comment period ending September 15, 1997.
9. August 14 1997 - DHEC held a proposed plan public meeting and solicited comments from the public.
10. March 2, 1999 - DHEC attended the Chapin Town Council meeting to discuss the status of the Site and answer questions.
11. January 2000 - Notices of Settlement were published, and Responsible Parties (RPs) were required to publish an apology in *The State* as a condition of the settlement.

**File Reviewed (2 of 2): South Lake Drive/Old Orangeburg Road Groundwater Contamination Site (File 56304)**

1. The Bureau of Water (BOW) referred this Site to the BLWM State Superfund Program in late August 1998 due to known groundwater contamination in close proximity to private drinking water wells. The State Superfund Program immediately developed a plan for providing safe drinking water in the area. DHEC also provided bottled water to numerous residents where contamination was identified in their wells.
2. September 1, 1998 – Potentially-Responsible Party (PRP) letters were sent to several businesses/property owners who were potential sources of groundwater contamination.
3. September 3, 1998 - DHEC sent a letter to nearby residents explaining DHEC's proposed plan for ensuring a safe supply of drinking water. This letter also announced a 30-day public comment period ending October 5, 1998, and included a notice of a September 14, 1998, public meeting where DHEC would explain the situation and solicit public comments.
4. September 4, 1998 - DHEC sent a slightly modified letter to additional residents who lived in nearby mobile home parks.
5. September 5, 1998 - DHEC published a notice of the September 14 public meeting in *The State*.
6. September 8, 1998 - DHEC hand-delivered information packets to residents near the Site.
7. Early September 1998 - DHEC established an information repository in the Lexington Branch Library near the Site. Pertinent documents were included for ease of public access.
8. Early September 1998 - DHEC went to several nearby businesses and posted notices of the upcoming public meeting.
9. September 14, 1998 - DHEC held a public meeting to discuss the proposed plan and to solicit public comments.
10. October 21, 1998 - Follow-up letters were sent to residents regarding DHEC's offer to provide a water tap.
11. December 2, 1998 - DHEC sent letters to residents notifying them of a December 12 availability session where DHEC would discuss expanding the offer for public

- water taps. DHEC also planned to discuss details of an upcoming remedial investigation at the Site.
12. December 14, 1998 - DHEC held two availability sessions to meet one-on-one with nearby residents and other interested parties.
  13. March/April 2003 - DHEC provided public notice of its proposed cost recovery settlements with several RPs.
  14. November 2005 - DHEC published a notice in *The State* announcing a public comment period on another proposed cost recovery settlement agreement.
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**CHAPTER 2: AUDIT RESULTS**  
**COMPLIANCE WITH LAWS AND REGULATIONS**  
**FILE REVIEW – VOLUNTARY SUPERFUND SITES, PAGE 8**

**LAC Observation:** *“Four of the eight site files had no documentation verifying any community involvement.”*

**Response:** Each of the files reviewed do not have documentation, each for different reasons. However, we do not believe that any governing statutes were violated.

**File Reviewed (1 of 4):** Industrial Metals Processing/Hampton Avenue Site (File 56378) The program determined that public participation for this Site was unnecessary.

**File Reviewed (2 of 4):** Robert Bosch Site (File 52309) - We reviewed the NRP file on this Site and found that on July 15, 2005, a notice of a proposed NRP VCC was run in *The Greenville News*. This newspaper notice also mentioned that the Robert Bosch Tool Corporation was entering into an RP Voluntary Cleanup Contract (VCC) to address contamination at the facility. This documentation was missing from the RP Site file that the LAC apparently reviewed.

**File Reviewed (3 of 4):** Charleston Wood Industries/Buck Lumber (File 51460) - The RP stopped working before a planned removal action that would have had public notice per the contract.

**File Reviewed (4 of 4):** Colonial Heights Packaging Site (File 57324) - The files do not reflect public participation. Extensive activities were performed at this Site in the 1990s while under the BOW's oversight. The work under the VCC has been limited to the collection of samples from existing monitoring wells, which does not require public participation.

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**CHAPTER 2: AUDIT RESULTS**  
**COMPLIANCE WITH LAWS AND REGULATIONS**  
**FILE REVIEW – VOLUNTARY SUPERFUND SITES, PAGE 8**

**LAC Observation:** *“The remaining two site files had documentation of public participation conducted; however, the activities should have been performed earlier in the cleanup process.”*

**Response:** The State Superfund Program has historically implemented public participation on a case-by-case basis for RP VCC sites, depending on the proximity of the site in question to neighboring populations as well as the severity of the contamination. However, no formal decision matrix has been placed in our files to document decisions not to publicize.

**File Reviewed (1 of 2):** IVAX Site (File 50776) - This Site is located in an industrial park. The file review found that a VCC was signed in 2002. DHEC provided public notice of a proposed remedy in 2010. We engaged the public in the IVAX Site investigation at the Record of Decision (ROD) stage and not at the Remedial Investigation (RI) stage. This was primarily a resource issue. We are planning to implement public notice once any future RP VCC contracts are signed in the future.

**File Reviewed (2 of 2):** Uniform Rental Services Site (File 56939) - On or about May 16, 2005, DHEC ran a notice in *The Greenville News* stating DHEC’s intent to enter into a VCC. File documentation of the publication is limited to an invoice from the Greenville News for the publication. This information could not be verified because the staff person who prepared this document is no longer employed with DHEC.

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**CHAPTER 2: AUDIT RESULTS  
COMPLIANCE WITH LAWS AND REGULATIONS  
FILE REVIEW – RESOURCE CONSERVATION  
AND RECOVERY ACT, PAGE 8**

**LAC Observation:** *“All required community involvement activities were conducted...” and “...we found DHEC conducted all required activities with the exception of notifying the public via radio.”*

**Response:** We agree with these findings.

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**CHAPTER 2: AUDIT RESULTS  
COMPLIANCE WITH LAWS AND REGULATIONS  
RECOMMENDATIONS, PAGE 9**

**LAC Recommendation:** *“The Department of Health and Environmental Control should ensure that all required public participation activities are conducted for every hazardous waste cleanup site.”*

**Response:** We agree with this recommendation.

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**CHAPTER 2: AUDIT RESULTS  
COMPLIANCE WITH LAWS AND REGULATIONS  
RECOMMENDATIONS, PAGE 9**

**LAC Recommendation:** *“The Department of Health and Environmental Control should improve its documentation of community involvement activities by:*

- *Including formal documentation in each site file of how it decided the level of community involvement activities for each site.*
- *Uniformly documenting in the site file all community involvement activities.*
- *Placing all community involvement participation documentation in a separate file from other documents.”*

**Response:** We agree with this recommendation. Please reference our earlier responses concerning our review of specific files.

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**CHAPTER 2: AUDIT RESULTS  
PUBLIC PARTICIPATION PROCESS  
RECOMMENDATIONS, PAGE 14**

**LAC Recommendation:** *“The Department of Health and Environmental Control should ensure that a full-time position is dedicated to the community liaison function in all areas of the state.”*

**Response:** We acknowledge that having community liaison staff in the local areas is a best community involvement practice. Due to lack of funding, however, we have not been able to expand to the other regions in the state. We have been forced to direct positions and funding to meet the work that is required by law. When funding improves, additional positions remain a priority.

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**CHAPTER 2: AUDIT RESULTS  
PUBLIC PARTICIPATION PROCESS  
RECOMMENDATIONS, PAGE 14**

**LAC Recommendation:** *“A public participation coordinator should be assigned to each Environmental Quality Control bureau.”*

**Response:** As stated above, lack of state funding was the reason why the BOW reassigned the public participation coordinator to another position. The Environmental Quality Control (EQC) Community Liaison has offered to provide support to the Bureau

and will work with Bureau management and staff to continue building public participation capacity.

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**CHAPTER 2: AUDIT RESULTS  
PUBLIC PARTICIPATION PROCESS  
RECOMMENDATIONS, PAGE 14**

*LAC Recommendation: “The Department of Health and Environmental Control should investigate and determine whether or not the Office of Environmental Community Health should be the umbrella for both the community liaisons and the public participation coordinators.”*

**Response:** EQC will consider this recommendation.

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**CHAPTER 2: AUDIT RESULTS  
PUBLIC PARTICIPATION PROCESS  
RECOMMENDATIONS, PAGE 15**

*LAC Recommendation: “Office of Environmental Community Health staff should develop and implement a file management system to track communications with the public and local governments.”*

**Response:** We recognize that EQC does not have a consistent way to document both those public participation activities required by law and those activities we do that extend beyond those requirements. The Office of Environmental Community Health and the public participation coordinators will review existing documentation practices in other agencies and develop a method that can be used by all programs to track communication.

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**CHAPTER 2: AUDIT RESULTS  
OTHER STATES’ PRACTICES  
RECOMMENDATIONS, PAGE 17**

*LAC Recommendation: “The Department of Health and Environmental Control should incorporate practices from other states into its public participation efforts. These practices should include developing a policies and procedures manual, including public participation information on the home page of the agency’s website, focusing more efforts at the regional level, and becoming involved earlier in the cleanup process.”*

**Response:** Since receiving the LAC’s initial draft report on our public participation efforts, we have begun developing several initiatives that incorporate practices from other states. We will continue to evaluate other states’ programs and strive to implement similar best practices that are economically feasible.

1. EQC Public Participation Strategy - We conducted listening sessions with stakeholders in those areas that were identified as needing improvement. As a result, we drafted an EQC Public Participation Strategy, which addresses:
  - Raising public awareness of EQC activities and community involvement;
  - Improving access to information;
  - Enhancing public notifications; and
  - Creating a stakeholder advisory committee.
2. Public Participation Training Guide and PowerPoint Presentation - We have developed a public participation training guide (and associated PowerPoint presentation) to ensure our staff have set guidelines on interacting with the public. The U.S. EPA Region 4 Office has since asked that our public participation staff work with the Region's CERCLA/RCRA programs to arrange similar public participation training.
3. Public Participation Web Page - We are currently developing on an Internet web page for community involvement. This regulatory-public interface will soon be ready for implementation.

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**GENERAL EDITING NOTE:**

Page 3, Table 1.1, Appropriations and Expenditures – There appears to be a discrepancy in spacing and commas for some of the dollar amounts listed in this table.

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This report was published for a total cost of \$30.48; 65 bound copies were printed at a cost of 47¢ per unit.