



SUMMARY



A Review of Water Quality Permits and Certifications Issued by DHEC

INTRODUCTION

Members of the General Assembly asked us to review South Carolina's programs for issuing water quality permits and certifications through the Department of Health and Environmental Control (DHEC).

We reviewed five types of permits and certifications that are required before residential, commercial, and institutional construction and development may begin (see next page). We did not review permits and certifications for industrial construction and development.

Our areas of concentration included efficiency, organizational structure, compliance inspections, water quality standards, and ethics.

DHEC's permitting and certification staff is comprised of engineers, biologists, and other professionals. Their work is aimed at protecting rivers, streams, lakes, and wetlands, while not imposing excessive delays on property owners. This can be a challenging task for an environmental regulatory agency, particularly during periods of rapid growth.

DHEC'S PROCESS FOR REVIEWING APPLICATIONS

Property owners seeking water quality permits and certifications in South Carolina do not have the option of submitting their applications electronically through the Internet, a process known as e-permitting. An e-permitting system could make the review of applications more efficient and less prone to error. Various forms of e-permitting have been implemented in Florida, Minnesota, Texas, Utah, and West Virginia.

The department has inconsistent data regarding the timeliness of its permitting and certification processes. In addition, we reviewed a sample of individual application files and found that they could not be relied on to determine the extent to which the department complied with timeliness requirements. Without consistent and reliable data, the department's ability to measure and improve its timeliness will be limited.

DHEC does not have adequate written policies and procedures that:

- Specify its methods for calculating and documenting the time it takes to review applications.
- Require supervision and documentation of supervision of permitting and certification decisions.
- Indicate the circumstances under which staff should visit a proposed construction site prior to the issuance of a permit or certification.

DHEC also has not consistently provided formal training to new staff in the administrative processes used to review applications or in the technical review of applications. Without written policies and procedures as well as formal training, there is reduced assurance that applications will be reviewed efficiently, thoroughly, and equitably.

The department has not managed its operations using annual performance goals regarding the timeliness of its reviews of applications.

DHEC's organizational structure for issuing permits and certifications is complex and includes two separate chains of command. Reducing the complexity of the organizational structure would increase the ability of DHEC to ensure consistency and would make it easier for applicants to understand the process.

State regulation does not limit the time DHEC is allowed to review applications for construction in navigable waters permits or coastal zone consistency certifications issued in conjunction with a state permit only.

COMPLIANCE, PERFORMANCE MEASURES, AND RIPARIAN BUFFERS

DHEC does not enforce the Section 401 certifications or construction in navigable waters permits it issues. According to DHEC staff, the department is not authorized by state law to implement enforcement action.

DHEC has not established written policies and procedures with requirements for conducting compliance inspections. The department has some policies and procedures in draft form.

DHEC has not consistently provided formal training for new staff who conduct stormwater permit compliance inspections.

DHEC's annual accountability report includes a single measure of the condition of South Carolina's surface waters but does not show the trend over time or performance targets. It also does not address the department's efforts to protect wetlands.

South Carolina law does not require "riparian buffers," which are permanent areas of vegetation and forestland along the banks of rivers, streams, lakes, and other surface waters. Riparian buffers are required by state law in Georgia and North Carolina and by some local governments in South Carolina.

ETHICS-RELATED ISSUE

South Carolina law does not adequately restrict former DHEC employees from representing clients seeking regulatory decisions from DHEC. As a result, there is an increased potential for conflicts of interest. Other jurisdictions, such as Alabama, California, Florida, and the federal government, place greater restrictions on former government employees than South Carolina.

AUDITS BY THE LEGISLATIVE
AUDIT COUNCIL CONFORM TO
GENERALLY ACCEPTED
GOVERNMENT AUDITING
STANDARDS AS SET FORTH BY
THE COMPTROLLER GENERAL
OF THE UNITED STATES.

FOR MORE INFORMATION

Our full report, including
comments from DHEC, and this
document are published on the
Internet at

LAC.SC.GOV

Copies can also
be obtained by calling

(803) 253-7612

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WATER QUALITY PERMITS AND CERTIFICATIONS REVIEWED BY THE LAC

SECTION 401 CERTIFICATIONS

When construction includes a discharge into "navigable waters of the United States" within South Carolina and requires a federal permit, the applicant must obtain a Section 401 certification. This certification indicates that the project is in compliance with state water quality standards. The discharge of dredge or fill material into wetlands is an activity for which a Section 401 certification may be required.

CONSTRUCTION IN NAVIGABLE WATERS PERMITS

When no other DHEC water quality permit or certification is required, a state construction in navigable waters permit is required before an individual may begin construction, dredging, filling or alterations "in, over, or under" navigable waters.

STORMWATER PERMITS

A stormwater permit from DHEC or a local government in South Carolina is required by federal and state law before an individual may begin construction activity that could lead to runoff of sediment or chemicals in the event of precipitation.

CRITICAL AREA PERMITS

A critical area permit is required by state law before an individual may begin construction, dredging, filling or draining activities in coastal waters, beaches, dunes, marshes, or any other area influenced by ocean tides.

COASTAL ZONE CONSISTENCY CERTIFICATIONS

When a separate state or federal permit application is being reviewed for a project in the coastal zone, a coastal zone consistency certification is also required to ensure consistency with the state's coastal management program.