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A review of water quality permits and certifications issued by DHEC, follow-up report

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A Review of Water Quality Permits and Certifications Issued by DHEC

INTRODUCTION

In February 2007, the Legislative Audit Council published an audit of South Carolina's process for issuing water quality permits and certifications, as administered by 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. We did not review permits and certifications for industrial construction or development.

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.

In our follow-up review, we found that 4 of 17 recommendations to DHEC had been implemented, 5 had been partially implemented, and 8 had not been implemented. Of our six recommendations to the General Assembly, none had been implemented.

RECOMMENDATIONS AND CURRENT STATUS

1. *DHEC should ensure that its water quality permitting and certification data is reported in an accurate and consistent manner.*

DHEC has not implemented this recommendation.

In our 2007 review, we found that DHEC published a quarterly "environmental permit status report" with inaccurate and inconsistent data regarding the number of permits and certifications issued and the degree to which they were issued within the required time frame.

In our follow-up review, we found that, while improvements had been made, the data remained inadequate. For example:

- *Construction in Navigable Waters Permits*
In FY 05-06, DHEC's quarterly reports indicated the department made 182 permit decisions. The supporting documentation indicated 66 decisions. In the second quarter of FY 09-10, DHEC reported 13 decisions. The supporting documentation indicated 10 decisions.
- *Section 401 Certifications**
In FY 05-06, DHEC's quarterly reports indicated the department made a total of 402 Section 401 certification decisions, 5 of which were late. The supporting documentation indicated 406 decisions, 68 of which were late. In the second quarter of FY 09-10, DHEC reported 51 decisions, none of which were late. The supporting documentation indicated 56 decisions, 1 of which was late.
- *Stormwater Permits*
In neither FY 05-06 nor the second quarter of FY 09-10 did DHEC indicate the percentage of state stormwater permit decisions made within the required time period for projects outside the coastal zone.

Without reliable data, DHEC's ability to measure and improve its timeliness is limited. Unreliable data also makes determining appropriate staffing levels more difficult.

* Section 401 of the federal Clean Water Act allows state governments to review applications for federal permits to conduct an activity that may result in discharges into "waters of the United States." When reviewing a Section 401 certification application, DHEC determines whether the proposed activity is in compliance with the state's water quality standards.

FOLLOW-UP REPORT

2. DHEC should promulgate a regulation that limits the time DHEC is allowed to review applications for construction in navigable waters permits.

DHEC has not implemented this recommendation.

In our 2007 review, we found that there was no law or regulation that limited the time DHEC was allowed for reviewing construction in navigable waters permit applications. If there were a legal limit to the time allowed for reviewing these applications, there would be better assurance of having timely and efficient reviews by DHEC.

3. DHEC should promulgate a regulation that limits the time DHEC is allowed to review applications for coastal zone consistency certifications issued in conjunction with state permits.

This recommendation has not been implemented.

In our 2007 review, we found that DHEC was authorized by state and federal law to review all state and federal permit applications for construction projects within South Carolina's eight coastal counties and certify whether the projects were consistent with the state's coastal management program. There was no maximum time limit for reviewing applications for coastal zone consistency certifications when issued in conjunction with a state permit only.

If there were a legal limit to the time allowed for reviewing these applications, there would be better assurance of having timely and efficient reviews by DHEC.

4. DHEC should implement an e-permitting system that gives applicants for water quality permits and certifications the option of submitting applications and supporting documents electronically through the Internet.

DHEC has not implemented this recommendation.

In our 2007 review, we found that DHEC did not give applicants for water quality permits and certifications the option of filing permit applications electronically through the Internet, a process known as e-permitting. As a result, the application process may have been less efficient, less consistent, and more prone to error.

We found that applicants for water quality permits and certifications were required to submit paper applications and paper supporting documents. DHEC manually transferred some of the information from the applications to a computerized database. The paper applications and supporting documents were kept on file by DHEC.

If DHEC adopted e-permitting:

- There would be increased assurance that applications are complete when submitted.
- Transcription errors would be eliminated.
- Contact with DHEC staff would be reduced because the public would be able to check the status of applications online.
- Mailing delays and costs would be reduced or eliminated.
- Up-to-date and accurate data reports regarding the permitting process could be produced more efficiently.

In our follow-up review, DHEC stated that it agrees with this recommendation, but has not implemented it due to cost. Although establishing and maintaining an e-permitting system requires the expenditure of resources, these costs can be at least partially offset by an increase in efficiency.

5. DHEC should establish written policies and procedures that require its staff to use specific methods for calculating and documenting the time it takes DHEC to review applications for water quality permits and certifications.

DHEC has partially implemented this recommendation.

In our 2007 review, we found that DHEC did not have written policies or procedures that specified its methods for calculating the time spent reviewing applications (from the time DHEC received the application to the time DHEC made a decision) for water quality permits and certifications.

FOLLOW-UP REPORT

Written policies and procedures would be useful for training new staff. They would also provide increased assurance that applications are reviewed efficiently.

In our follow-up review, we found that DHEC's Office of Ocean and Coastal Resource Management (OCRM) had established written policies and procedures requiring its staff to use specific methods for calculating and documenting the time they used to review applications for permits and certifications. We found similar policies and procedures in place for the Bureau of Water's stormwater permitting process, but not for Section 401 certifications or construction in navigable waters permits.

6. DHEC should implement formal training in the administrative processes used to review applications for water quality permits and certifications.

This recommendation has been implemented.

In our 2007 review, we found that DHEC did not provide formal training in the administrative processes used by staff to review applications for water quality permits and certifications.

In our follow-up review, we found that DHEC's records indicate that training in the administrative processes had been provided for staff who review applications for water quality permits and certifications.

7. DHEC should establish annual performance goals regarding the timeliness of its reviews of applications for water quality permits and certifications.

DHEC has not implemented this recommendation.

In our 2007 review, we found that DHEC did not have annual performance goals regarding the timeliness of its application reviews. An effective system of managing the processes for reviewing applications would include annual timeliness goals, which, in some instances, could be shorter than the maximum limits imposed by state law. The states of Virginia, Washington, and Wisconsin had annual timeliness goals for reviewing applications at the time of our 2007 review.

These annual timeliness goals could help DHEC achieve continuous yearly improvement of processing applications.

During our follow-up review, DHEC did not provide evidence that it had established annual performance goals regarding the timeliness of its processing of applications for water quality permits and certifications.

8. DHEC should establish written policies and procedures that require supervision and documentation of supervision of the water quality permitting and certification decisions made by DHEC staff.

DHEC has partially implemented this recommendation.

In our 2007 review, we found that DHEC did not have written policies and procedures that required supervision and documentation of supervision of permitting and certification decisions made by DHEC staff.

In our follow-up review, DHEC provided us with written policies and procedures for supervision and documentation of supervision for Section 401 certifications, construction in navigable waters permits, OCRM critical area permits, OCRM coastal zone consistency certifications, and OCRM stormwater permits. We found no written policies or procedures for stormwater permit decisions outside the coastal zone.

These policies and procedures should provide greater consistency among permitting and certification decisions, and provide greater assurance that these decisions have been supervised by the proper DHEC officials.

FOLLOW-UP REPORT

9. DHEC should establish written policies and procedures that specify the circumstances under which its staff should visit a proposed construction site prior to the issuance of a water quality permit or certification.

This recommendation has been partially implemented.

In our 2007 review, we found that the department had not specified in writing the circumstances under which staff should visit proposed construction sites prior to the issuance of a permit or certification.

In our follow-up review, DHEC provided standard operating procedures that outline various conditions that require site visits before permits or certifications are issued for the projects in the coastal zone. DHEC provided no written policies or procedures for projects outside the coastal zone. According to DHEC officials, the Office of Coastal Resource Management and the Bureau of Water conduct inspections and hold information meetings, which include discussions of when site visits should be made.

10. DHEC should implement formal training for all new water quality permitting and certification staff on how to conduct technical reviews of applications for water quality permits and certifications.

This recommendation has been implemented.

In our 2007 review, we found that DHEC did not consistently provide formal training for its newly hired staff on how to conduct technical reviews of applications for water quality permits and certifications.

In our follow-up review, we found that the stormwater, Section 401, construction in navigable waters, critical area, and coastal zone consistency permitting and certification sections of DHEC provided training sessions for its technical staff during our test period of February 2007 through July 2009. We found that 20 of 22 staff (91%) hired and retained during our test period had attended departmental training on how to conduct technical reviews of applications for water quality permits and certifications.

11. DHEC should reduce the complexity of its organizational structure for issuing water quality permits and certifications.

12. The General Assembly should amend §1-30-45 of the South Carolina Code of Laws to allow DHEC to place the Office of Ocean and Coastal Resource Management and the Office of Environmental Quality Control within the same chain of command.

13. If given the authority under state law, DHEC should place the Office of Ocean and Coastal Resource Management and the Office of Environmental Quality Control within the same chain of command.

These recommendations were not implemented.

In our 2007 review, we found that DHEC's organizational structure for issuing water quality permits and certifications was complex and included two separate chains of command. Reducing the complexity of the organizational structure would increase the ability of DHEC to ensure consistency in the application review process. In addition, it would be easier for applicants to understand the process and to seek help in the event of a problem. We found that DHEC did not have authority under state law to place these functions under a single chain of command.

14. The General Assembly should amend state law to give DHEC specific authority to enforce the Section 401 certifications it issues.

The General Assembly has not implemented this recommendation.

In our 2007 review, we found that DHEC may not have the legal authority, under state law, to ensure compliance with Section 401 certifications and construction in navigable waters permits. Without this authority, permit violations, such as the filling of more acres of wetlands than authorized, are more likely.

15. The General Assembly should amend state law to give DHEC specific authority to enforce the construction in navigable waters permits its issues.

The General Assembly has not implemented this recommendation.

In our 2007 review, we found that DHEC may not have the legal authority, under current state law, to ensure compliance with construction in navigable waters permits. Without this authority, permit violations, such as excessive dock size, are more likely.

16. DHEC should ensure that it has written policies and procedures for conducting compliance inspections regarding each of its water quality permits and certifications.

This recommendation has been partially implemented.

In our 2007 review, we found that DHEC did not have written policies and procedures regarding compliance inspections.

In our follow-up review, we found that DHEC's Office of Coastal Resource Management had developed written operating procedures for conducting compliance inspections for the permits and certifications it issues. DHEC's Bureau of Water had written policies and procedures for conducting compliance inspections for stormwater permits, but not for Section 401 certifications or construction in navigable waters permits. DHEC officials indicate that they will review the potential for conducting Section 401 compliance inspections when resources become available.

17. DHEC should implement formal training for all new staff who conduct compliance inspections for water quality permits and certifications.

This recommendation has been implemented.

Our 2007 audit disclosed that DHEC did not provide formal training for all new staff who conducted stormwater permit compliance inspections.

In our follow-up review, we analyzed DHEC records pertaining to five compliance inspection staff hired and retained from February 2007 through July 2009. Each of these staff received training in conducting compliance inspections.

18. DHEC should publish, in its annual accountability report, multiple-year data and performance targets regarding the condition of South Carolina waters.

This recommendation was partially implemented.

In our 2007 review, we found that DHEC's annual accountability report was not adequate in assessing the department's success in protecting South Carolina waters. The report did not show water quality trends over time or performance targets. Protecting water quality is a core function of DHEC.

In our follow-up review, we found that DHEC had not published in its annual accountability report multiple-year trend data regarding the condition of South Carolina waters. The department did, however, report that "[t]he state's goal is for 75 percent of its surface waters to meet fishable/swimmable uses by 2015."

19. DHEC should publish, in its annual accountability report, multiple-year data and performance targets regarding the number of acres of wetlands in South Carolina.

This recommendation was not implemented.

In our 2007 review, we found that DHEC's annual accountability report did not include multiple-year data or performance targets regarding the number of acres of wetlands in South Carolina.

FOLLOW-UP REPORT

In our follow-up review, we found that DHEC had not published in its annual accountability report multiple-year data or performance targets regarding the number of acres of wetlands in South Carolina.

20. The General Assembly should amend state law to require riparian buffers along South Carolina streams, rivers, and lakes.

The General Assembly has not implemented this recommendation.

In our 2007 review, we found that South Carolina law did not require riparian buffers, which are permanent areas of vegetation and forestland along the banks of rivers, streams, lakes, and other surfaces. Without riparian buffers, rain and other precipitation causes greater runoff of sediment and pollutants into surface waters.

21. The General Assembly should amend §8-13-755 of the South Carolina Code of Laws to prohibit former state employees from being compensated to appear before or communicate with their former state agency employers for the purpose of influencing agency action for a period of at least one year after termination, regardless of the matters in which they participated while employed by the state.

22. The General Assembly should amend §8-13-755 of the South Carolina Code of Laws to prohibit former state employees from being compensated to appear before or communicate with their former state agency employers for the purpose of influencing agency action regarding matters in which they "directly and substantially" participated while employed by the state. This should be a lifetime prohibition.

The General Assembly has not implemented these recommendations.

In our 2007 review, we found that South Carolina law did not adequately restrict former employees of state regulatory agencies from representing clients before those agencies. DHEC employees who review environmental permit applications are allowed to resign and immediately begin representing clients seeking environmental permits from DHEC. As a result, there is an increased potential for conflicts of interest.

23. The members of public boards and panels of DHEC should submit statements of economic interests to the South Carolina Ethics Commission as required by state law.

This recommendation has been implemented.

In our 2007 review, we found that members of the DHEC governing board submitted statements of economic interest to the SC Ethics Commissions, as required by state law. Coastal Zone Management Appellate Panel members, however, did not consistently submit statements of economic interest forms to the Ethics Commission.

In our follow-up review, we found that all eight of DHEC's board members filed their statements of economic interest forms prior to their deadlines in 2008 and 2009. House Bill 3560 for FY 09-10 suspended operation of the Coastal Zone Appellate Panel.

This follow-up was limited to the issues in the 2007 audit for which we made recommendations. We received information from relevant agencies regarding the implementation of the recommendations in the audit. We reviewed this and other information, and verified evidence supporting the agency information as appropriate.

SOUTH CAROLINA GENERAL ASSEMBLY
Legislative Audit Council
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