

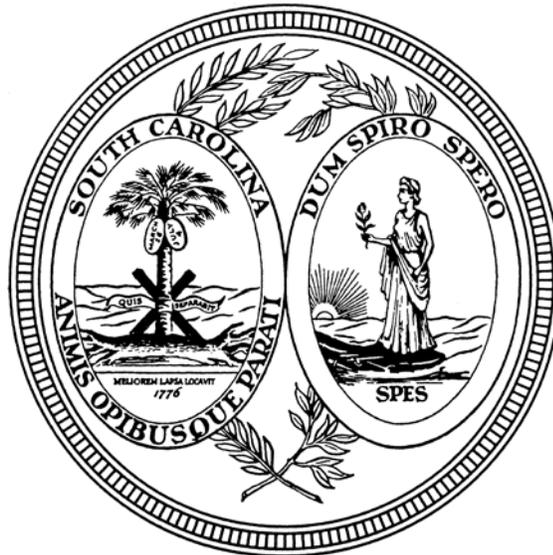


SOUTH CAROLINA GENERAL ASSEMBLY

Legislative Audit Council

February 2007

A REVIEW OF WATER QUALITY PERMITS AND CERTIFICATIONS ISSUED BY THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL



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South Carolina Department of Health and Environmental Control*
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In Memory

Dill B. Blackwell
Chairman, Legislative Audit Council
1995 – 2007

In honor of his service and dedication to the State of South Carolina,
the Legislative Audit Council remembers Dill Blackwell, our chairman,
who died on February 1, 2007.

Legislative Audit Council

A REVIEW OF WATER QUALITY PERMITS AND CERTIFICATIONS ISSUED BY THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

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Synopsis

Members of the General Assembly asked us to review 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 (see p. 2). 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 economic growth.

Our findings are summarized as follows:

- Property owners seeking water quality permits and certifications in South Carolina have not been given the option of submitting their applications electronically through the Internet, a process known as e-permitting. E-permitting could make the process more efficient, more consistent, and less prone to error. E-permitting has been implemented to varying degrees in other states, such as Florida, Minnesota, Texas, Utah and West Virginia.
- DHEC has reported 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, DHEC's ability to measure and improve its timeliness will be limited.
- The department has not developed written policies and procedures that:
 - Specify its methods for calculating and documenting the time it takes to review applications for permits and certifications.
 - Require supervision and documentation of supervision of permitting and certification decisions.
 - State the circumstances under which staff should visit a proposed construction site prior to the issuance of a permit or certification.
 - Establish requirements for conducting compliance inspections. The department has some policies and procedures in draft form.

The department also has not consistently provided formal training for new staff. Without written policies and procedures as well as formal training, there is reduced assurance that applications will be reviewed efficiently, thoroughly, and equitably.

- DHEC has not established 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 in the application review process and would make it easier for applicants to understand the process.
- State regulations do 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.
- DHEC does not enforce the Section 401 certifications or construction in navigable waters permits it issues, reducing the likelihood of compliance. According to DHEC staff, the department is not authorized by state law to implement enforcement action.
- DHEC's annual accountability report includes a single measure of the condition of South Carolina waters, without showing 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. Without riparian buffers, rain and other precipitation will cause greater runoff of sediment and pollutants into surface waters. Riparian buffers are required by state law in Georgia and North Carolina and by some local governments in South Carolina.
- 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.
- Members of DHEC's Coastal Zone Management Appellate Panel did not consistently file statements of economic interests with the South Carolina Ethics Commission. As a result, there was an increased potential for unknown conflicts of interest.

Introduction

Audit Objectives

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

After a preliminary review and communication with the legislators who requested the audit, we determined that we would focus on water quality permits and certifications issued for residential, commercial, and institutional construction and development. We did not review permits and certifications for industrial construction and development. Our objectives are listed below:

- Determine if processing times for water quality permits and certifications are adequate and comply with state and federal requirements regarding timeliness.
- Determine whether there is excessive overlap or duplication in the review process for permits and certifications.
- Determine whether DHEC has adequate standards for issuing water quality permits and certifications.
- Determine whether DHEC has complied with its standards when issuing water quality permits and certifications.
- Determine whether DHEC has adequate performance measures of the cost and effectiveness of its water quality programs.
- Determine whether DHEC adequately monitors activities that occur in violation of the required water quality permits and certifications.
- Review the appeals process for DHEC decisions on water quality permits and certifications.
- Examine hiring of consultants, who formerly worked for DHEC, by persons applying for water quality permits and certifications.

Scope and Methodology

We reviewed DHEC's processes for issuing and ensuring compliance with Section 401 water quality certifications, construction in navigable waters permits, stormwater permits, critical area permits, and coastal zone consistency certifications. The period covered by our review was, generally, FY 05-06. Examples of areas not covered during this review include DHEC's regulation of industrial discharges, drinking water, and waste water.

Our methodology included:

- An examination of DHEC’s water quality permitting and certification records and human resource records.
- An examination of federal laws, South Carolina laws, and laws in other states.
- Communication with officials from DHEC, the United States Army Corps of Engineers, the South Carolina Administrative Law Court, the South Carolina Ethics Commission, other state governments, the business community, and environmental groups.

We conducted extensive analysis of the internal controls used by DHEC to ensure consistency, thoroughness, and accuracy in its work. The criteria we used during this review included good business practice, operations in other states, and academic research.

When addressing some of our objectives, we relied on computer-generated data maintained by DHEC. We performed audit tests to confirm the reliability of data when it was significant to our findings. We found that permitting and certification data was not reliable for determining the timeliness of DHEC’s application review process.

This audit was conducted in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States.

Background

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 economic growth.

Description of Permits and Certifications

Section 401 Certifications

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. The department may then certify the activity, certify it with conditions, waive certification, or deny certification. If DHEC does not issue or waive a Section 401 certification for an activity, there is no authority for the federal permit to be issued.

Examples of construction activities for which Section 401 certifications may be required include:

- The discharge of dredge or fill material into navigable waters of the United States when the activity requires a federal 404 Permit from the United States Army Corps of Engineers (USACE).
- Building and operating a hydroelectric facility when a license is required by the Federal Energy Regulatory Commission

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 by South Carolina law before an individual may begin construction, dredging, filling, or alterations “in, over, or under” navigable waters.

When a construction in navigable waters permit is not required because another DHEC water quality permit is applicable, DHEC is still responsible for ensuring compliance with conditions necessary for a construction in navigable waters permit.

A dock built on a lake or river outside the critical area of the coast is an activity for which a construction in navigable waters permit may be required.

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 the runoff of sediment and chemicals in the event of precipitation. The clearing of land for subsequent construction is an activity for which a stormwater permit may be required.

Critical Area Permits

A critical area permit from DHEC is required by state law before an individual may begin construction, dredging, filling, or draining in tidelands, coastal waters, or the beach/sand dunes system. An activity regulated by critical area permits is the building of docks.

Coastal Zone Consistency Certifications

DHEC is authorized by state and federal law to review all state and federal permit applications for construction projects within South Carolina’s eight coastal counties to ensure compliance with the state’s coastal management program. These counties include Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry, and Jasper. When DHEC determines that the proposed project will be consistent with its Coastal Management Program, it issues a coastal zone consistency certification in conjunction with the other required permit(s).

Organizational Structure

The DHEC permits/certifications we reviewed are issued by two separate organizational offices within the department.

The Office of Environmental Quality Control (EQC) in Columbia reviews applications for:

- Section 401 certifications throughout South Carolina.
- Construction in navigable water permits except in the critical area of the coastal zone.
- Stormwater permits except for projects in the coastal zone.

The Office of Ocean and Coastal Resource Management (OCRM), with locations in Charleston, Beaufort, and Myrtle Beach, reviews applications for:

- Critical area permits.
- Coastal zone consistency certifications.
- Stormwater permits in the coastal zone.

Number of Applications Issued and Denied

As shown below, DHEC approves significantly more applications than it denies. DHEC reports that it often adds conditions to the permits/certifications it issues, requiring applicants to reduce the effects of construction projects on the environment.

Table 1.1: Number of DHEC Decisions in FY 05-06 Regarding Water Quality Permit and Certification Applications

PERMIT OR CERTIFICATION	NUMBER	
	APPROVED	DENIED
Section 401 Certifications	403	3
Construction in Navigable Waters Permits	65	1
Stormwater Permits *	2,920	1
Critical Area Permits	1,437	17
Coastal Zone Consistency Certifications	3,235	19

* Unduplicated count of federal and state stormwater permit applications.

Source: DHEC permitting and certification sections.

DHEC's Process for Reviewing Applications

In this chapter we make recommendations regarding DHEC's efficiency in its review of applications, technical review of applications, and organizational structure.

Ensuring Efficient Reviews of Applications

We analyzed the administrative processes used by DHEC to ensure efficient and timely review of applications for Section 401 certifications, navigable waters permits, stormwater permits, critical area permits, and coastal zone consistency certifications. We reviewed DHEC's methods for:

- Receiving applications.
- Ensuring that applications contain the required information.
- Tracking the time it takes to review applications.
- Ensuring consistency in its administrative processes.

The following are areas in which improvements could be made:

- DHEC has reported inconsistent data regarding the timeliness of its permitting and certification processes. In addition, we found that we could not rely on the department's application files to determine the extent to which it complied with timeliness requirements.
- State regulation does not include a limit on 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.
- Property owners do not have the option of submitting applications electronically through the Internet, a process known as e-permitting.
- DHEC does not have written policies and procedures that specify its methods for calculating and documenting the time it takes to review applications for permits and certifications.
- The department does not have formal training programs for new staff in the administrative processes used to review applications.
- DHEC has not established annual performance goals regarding the timeliness of its application reviews.

Required Time Limits

For most of the water quality permits and certifications we reviewed, various laws and regulations limit the time DHEC is allowed for reviewing applications:

Section 401 Certifications

South Carolina regulations 61-30.H and 61-101 (A) (6) require DHEC to make its certification decision within 180 “calendar days” after the application has been deemed “administratively complete,” not counting the days during which DHEC is awaiting additional information from the applicant. Federal law 33 USC 1341 (a) (1) requires that DHEC make its decision within a period “which shall not exceed one year.”

Construction in Navigable Waters Permits

There is no law or regulation that limits the time DHEC is allowed for reviewing applications. However, the department has published a document entitled “A Guide to Permitting in Navigable Waters of South Carolina” that states, “most applications can be processed within 45-70 days.”

Stormwater Permits

Prior to September 1, 2006, DHEC was required by:

- State Regulations 72-305 (B) (3) and 72-305 (M) to make a decision (or request additional information) regarding a state stormwater permit application within 20 working days of receiving a completed application for a land disturbance of five acres or more.
- State Regulation 72-305 (B) (2) to make a decision (or request additional information) regarding a state stormwater permit application within 10 working days for a land disturbance of greater than two and less than five acres.
- A general permit authorized by the federal Environmental Protection Agency (EPA) to issue stormwater coverage within a period of up to 22 calendar days following notification from the applicant for land disturbances of one acre or more or within ½ mile of a “receiving water body.”

Since September 1, 2006, applications for coverage under the EPA general permit, when reviewed solely by DHEC, must be processed within 20 days of notification from the applicant. For those applications, DHEC no longer issues a state permit. If, however, a project is initially reviewed by a delegated local government, DHEC has seven days to make a decision regarding coverage under the federal permit.

Critical Area Permits

South Carolina regulation 61-30.H requires that DHEC make its permitting decision within 30 or 90 calendar days after an application has been deemed "administratively complete," not counting the days during which DHEC is awaiting additional information from the applicant.

Coastal Zone Consistency Certifications

Time limits vary for reviewing applications for coastal zone consistency certifications, which are always issued in conjunction with other permits or certifications.

If a construction project requires a federal license or permit, federal regulation 15 CFR 930.62 (a) states that DHEC must make its certification decision "within six months following commencement of State agency review." If a construction project is being undertaken by a federal agency, 15 CFR 930.41 (a) requires a maximum review period of 60 days. There is no maximum review period in South Carolina law or regulation when a coastal zone consistency certification is issued in conjunction with a state permit only.

Data Regarding Timeliness

DHEC has reported 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 reliable data, DHEC's ability to measure and improve its timeliness will be limited. It will also be difficult to determine appropriate staffing levels.

Environmental Permit Status Report

Each quarter, DHEC's Office of Environmental Quality Control (EQC) produces an "environmental permit status report," indicating the percentage of permits and certifications issued within the time period required by regulation. The FY 05-06 reports were incomplete and not always consistent with other DHEC reports. For example, the reports:

- Did not indicate the percentage of state stormwater permit decisions that were made by DHEC within the required time period for projects outside the coastal zone.

- Indicated that there were 182 decisions for construction in navigable waters permit applications. Data we received from the Section 401 certification / construction in navigable waters permit section indicated 66 decisions.
- Indicated that there were 714 decisions for coastal zone consistency certification applications reviewed by OCRM. Staff from OCRM reported an estimate to us of 3,254 decisions.
- Indicated that 5 of 402 decisions regarding applications for Section 401 certifications were late. The report did not indicate whether the standard being evaluated was the 180-day limit in state regulation or the federal one-year limit. On a database we received from DHEC's Section 401 certification section, 68 of 406 decisions were made after the state's 180-day limit.

Review of DHEC's Files

During our audit, we reviewed a limited random sample of 59 individual application files from FY 05-06, covering the five categories of permits and certifications in our scope. We found that DHEC's files could not be relied on to determine the extent to which the department complied with timeliness requirements. For example:

- For none of the permits and certifications we reviewed did DHEC have written policies or procedures that specified its methods for calculating and documenting the time spent reviewing applications (see also p. 10).
- In none of the individual files for the five types of permits and certifications we reviewed were there figures or calculations summarizing the time DHEC staff spent reviewing the application.

DHEC's staff were not consistent in describing how to calculate the time spent reviewing applications. For example, in Columbia, DHEC's stormwater permitting staff reported that the review clock should begin when an application is received and should be restarted at zero when additional information is received from the applicant. In Charleston, DHEC's stormwater permitting staff reported that the clock should begin when an application is determined to be "administratively complete." Charleston staff reported that, while awaiting additional information from the applicant, the clock should be suspended and restarted at the point it was suspended when the information is received. It is important to note that DHEC's stormwater permitting staff in Columbia works under a different chain of command than its stormwater permitting staff in Charleston (see p. 15).

E-Permitting

DHEC does not give applicants for 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 be less efficient, less consistent, and more prone to error.

Currently, applicants for water quality permits and certifications are required to submit paper applications and paper supporting documents. DHEC manually transfers some of the information from the applications to a computerized database. The paper applications and supporting documents, however, are kept on file by DHEC.

Based on reviews of documents from other states and interviews with officials from other states, we found that e-permitting can provide the following benefits:

- There would be increased assurance that applications are complete when submitted. The system could be designed to not accept an incomplete application.
- Transcription errors would be eliminated.
- Telephone contact with DHEC staff would be reduced because applicants and 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.

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.

Table 2.1 contains a list of examples of e-permitting initiatives being implemented in other states. Some of these states are making plans to expand e-permitting to additional categories of permits and certifications.

Table 2.1: Examples of States That Have Begun to Implement E-Permitting

STATES	E-PERMITTING ACTIVITIES
West Virginia	Applications for Section 401 certifications and stormwater permits
Florida (in 1 of its 5 water management districts)	Applications for stormwater permits
Texas	Applications for stormwater permits
Minnesota	Applications for stormwater permits
Utah	Applications for stormwater permits

Written Policies and
Procedures Regarding
Documentation of
Timeliness

DHEC does not have written policies or procedures that specify its methods for calculating the time spent reviewing applications for water quality permits and certifications, or that require staff to formally calculate and document the review period.

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

Employee Training
Regarding Administrative
Processes

For newly hired staff, DHEC does not provide formal training in the administrative processes used to review applications for water quality permits and certifications. DHEC has an informal process in which new hires are trained by more experienced staff. As with written policies and procedures, formal training would provide increased assurance that applications are reviewed efficiently.

Annual Performance
Goals

As described on pages 6 – 7, state law and regulation limit the number of days DHEC is allowed to review applications for all of the water quality permits and certifications we analyzed except construction in navigable waters permits and coastal zone consistency certifications issued in conjunction with a state permit only. DHEC, however, does 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 have annual timeliness goals for reviewing applications.

New Expedited Permitting
Program

The South Carolina General Assembly amended §44-1-165 of the South Carolina Code of Laws in 2006 to require that DHEC create an expedited permitting program. Under this program, DHEC will make permit and certification decisions more quickly for eligible applicants.

The expedited permitting program is required to be kept separate from the regular permit application review process. The program will be optional for applicants, and will require a higher application fee.

Recommendations

1. DHEC should ensure that its water quality permitting and certification data is reported in an accurate and consistent manner.
2. DHEC should promulgate a regulation that limits the time DHEC is allowed to review applications for construction in navigable waters permits.
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.
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.
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.
6. DHEC should implement formal training in the administrative processes used to 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.

Technical Reviews of Applications

We analyzed the processes used by DHEC for conducting technical reviews of applications for Section 401 certifications, construction in navigable waters permits, stormwater permits, critical area permits and coastal zone consistency certifications. A technical review consists of ensuring that the proposed construction project complies with the permitting and certification laws and regulations that protect water quality.

DHEC does not have written policies and procedures requiring supervision of its technical reviews or specifying when to conduct site visits of proposed construction sites. The department also does not consistently provide formal training to new staff regarding technical reviews. With written policies and procedures as well as formal training, there would be increased assurance that applications are reviewed in a thorough and equitable manner.

Written Policies and Procedures

DHEC does not have written policies and procedures that:

- Require supervision and documentation of supervision of permitting and certification decisions made by DHEC staff.

Independent of written policies or procedures, DHEC documents supervisory review of staff decisions regarding Section 401 certifications, construction in navigable waters permits, and critical area permits. We found no systems, however, for documenting supervisory review of staff decisions regarding stormwater permits or coastal zone consistency certifications issued in conjunction with stormwater permits.

- Specify the circumstances under which staff should visit a proposed construction site prior to the issuance of a permit or certification.

Independent of written policies and procedures, DHEC's staff report that they sometimes visit proposed construction sites before issuing permits and certifications. They report that large and/or environmentally sensitive sites are more likely to be visited. If DHEC were to enact written policies and procedures that specified the circumstances under which staff should conduct site visits before issuing permits and certifications, there would be increased assurance that sites were selected in an objective and equitable manner.

Employee Training Regarding Technical Reviews

For newly hired staff, DHEC does not consistently provide formal training on how to conduct technical reviews of applications for water quality permits and certifications.

DHEC has a system in which new staff are trained by more experienced staff through an informal process. In addition, the department reported that staff who review applications for stormwater permits have received training and been certified as "erosion and sediment control inspectors." DHEC, however, reported no formal staff training regarding other water quality permits and certifications.

Recommendations

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.

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.
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.

Complex Organizational Structure

DHEC's organizational structure for issuing water quality 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 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.

Complexity From the Perspective of an Applicant

As shown in Table 2.2, the process for obtaining a DHEC-issued water quality permit or certification may be difficult to understand from the perspective of an applicant. When construction projects require more than one of the following permits or certifications, understanding the application and approval process can become more difficult:

- Applications for Section 401 certifications are reviewed for all projects in the state by staff from DHEC's Office of Environmental Quality Control (EQC) who work out of Columbia.
- Applications for construction in navigable waters permits are reviewed for all projects in the state, except the critical area of the coastal zone (tidelands, coastal waters, and the beach/sand dunes system), by EQC staff who work out of Columbia.
- Stormwater permit applications are reviewed by multiple organizational units, operating within and outside of DHEC, depending on the location of the project:
 - For projects in the coastal zone, stormwater permit applications are reviewed by staff from DHEC's Office of Ocean and Coastal Resource Management (OCRM), who work out of Beaufort, Charleston, and Myrtle Beach.
 - For projects in certain South Carolina communities, stormwater permit applications are reviewed by staff from local governments.
 - For all other projects, permits are issued by EQC staff who work out of Columbia.

- Critical area permit applications are reviewed for projects in the tidal areas of the coastal zone, and are issued by OCRM staff working out of Beaufort, Charleston, and Myrtle Beach.
- Coastal zone consistency certification applications are reviewed for projects in the coastal zone by OCRM staff working out of Beaufort, Charleston, and Myrtle Beach.

In some instances when construction projects need more than one permit or certification, they are issued in combined form, as required by state regulation.

Table 2.2: DHEC Water Quality Permits and Certifications and the Offices Where Applications are Reviewed

PERMIT OR CERTIFICATION	LOCATION OF	
	CONSTRUCTION PROJECT	APPLICATION REVIEW OFFICE
Section 401 Certifications	Anywhere in South Carolina	EQC (Columbia)
Construction in Navigable Waters Permits	Anywhere in South Carolina, except the critical area of the coastal zone, which includes tidelands, coastal waters, and the beach/sand dunes system	EQC (Columbia)
	The critical area of the coastal zone	Neither EQC nor OCRM requires a permit
Stormwater Permits Issued by DHEC	Anywhere in South Carolina except the coastal zone, which includes Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry, and Jasper Counties	EQC (Columbia)
	The coastal zone	OCRM (Beaufort, Charleston and Myrtle Beach)
Stormwater Permits Issued by Local Governments	Various local communities	Local government offices
Coastal Zone Consistency Certifications	The coastal zone	OCRM (Beaufort, Charleston and Myrtle Beach)
Critical Area Permits	The critical area of the coastal zone	OCRM (Beaufort, Charleston and Myrtle Beach)

Permits and Certifications are Issued Through Two Separate Chains of Command

Reducing the complexity of the application process described above may be difficult, in part, because DHEC's water quality permits and certifications are currently issued through two separate chains of command within DHEC.

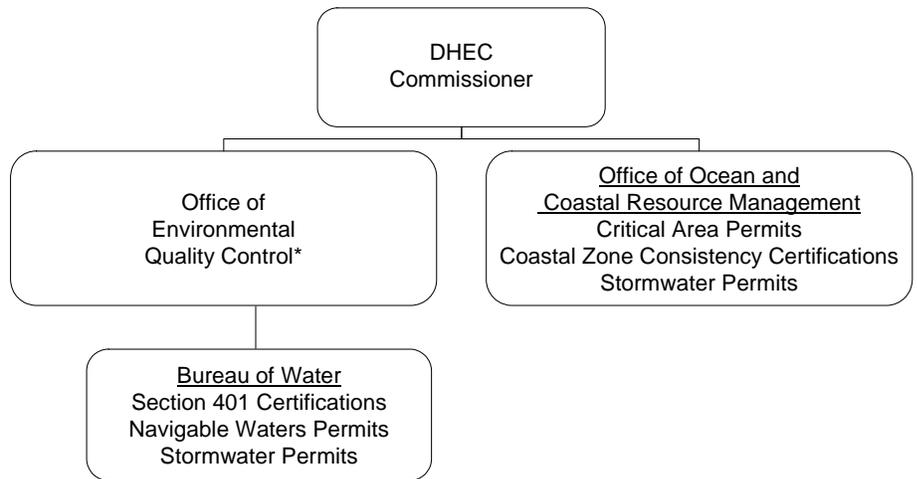
As shown in the simplified organizational chart on page 16, the EQC office issues Section 401 certifications, stormwater permits, and construction in navigable waters permits. OCRM, through a separate chain of command, issues stormwater permits, critical area permits, and coastal zone consistency certifications. As a result, any efforts by DHEC to reduce the complexity of its application process will be more difficult to enact and manage than they would under a single chain of command.

Consistency is also less likely under a system with separate chains of command. We found that these two chains of command used different methods for calculating the time that staff spends reviewing stormwater permit applications (see p. 8).

Without an amendment to state law, however, DHEC may not have the authority to place OCRM and EQC within a single chain of command. In 1996, following an effort by DHEC to place OCRM within EQC, the South Carolina Attorney General issued an opinion stating that such an action was not consistent with §1-30-45 of the S.C. Code of Laws. He concluded that:

DHEC's placement of the Office of Ocean and Coastal Resource Management under the Environmental Quality Control Division as a bureau must have the approval of the General Assembly prior to its becoming effective.

Chart 2.3: DHEC's Organizational Structure for Issuing Water Quality Permits and Certifications



* The Office of Environmental Quality Control also issues permits and certifications pertaining to air quality, land and waste management, and the operation of environmental laboratories.

Recommendations

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.

Compliance, Performance Measures Regarding S.C. Waters, and Riparian Buffers

In this chapter we make recommendations regarding compliance inspections, performance measures regarding South Carolina waters, and riparian buffers.

Ensuring Compliance With Permits and Certifications

We reviewed DHEC’s system for ensuring compliance with Section 401 certifications, construction in navigable waters permits, stormwater permits, critical area permits, and coastal zone consistency certifications.

We found that DHEC:

- May not have the legal authority to ensure compliance with Section 401 certifications and construction in navigable waters permits.
- Did not have written policies and procedures, during our review, regarding compliance inspections. The department had some policies and procedures in draft form.
- Has not provided formal training to all new compliance staff.

Because some types of permits and certifications are not enforced, compliance is less likely. Without written policies and procedures regarding compliance inspections or formal training of all new compliance staff, there is reduced assurance that the inspections will be conducted in an equitable and thorough manner.

South Carolina Law

Section 48-1-40 of the South Carolina Code of Laws states:

The Department ... shall adopt standards and determine what qualities and properties of water ... shall indicate a polluted condition and these standards shall be promulgated and made a part of the rules and regulations of the Department.

Section 48-1-330 states:

Any person violating any of the provisions of this chapter, or any rule or regulation, permit or permit condition, final determination or order of the Department, shall be subject to a civil penalty not to exceed ten thousand dollars per day of such violation.

Permits and Certifications Not Enforced by DHEC

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.

Section 401 Certifications

Before the Army Corps of Engineers may issue a federal permit for an activity that may result in a “discharge” into navigable waters in South Carolina, DHEC must issue (or waive) Section 401 certification, indicating that the project will comply with South Carolina water quality standards.

DHEC relies on the Corps of Engineers to enforce Section 401 certifications. An example of a potential certification violation is the filling of more acres of wetlands than authorized.

North Carolina and Virginia have statutory authority to enforce Section 401 certifications. Their enforcement efforts are sometimes coordinated with the Corps of Engineers. As a result, additional resources can be made available for enforcement. In addition, the priorities of a state government and the Corps of Engineers may not always coincide.

Construction in Navigable Waters Permits

Unlike Section 401 certifications issued by the department, construction in navigable waters permits are not components of federal permits. Examples of potential permit violations include docks that are longer than authorized and encroachments into wetlands.

Written Policies and Procedures Regarding Compliance Inspections

During our review, DHEC did not have written policies and procedures regarding compliance inspections. Thoroughness and consistency are less likely without written policies and procedures.

DHEC’s Office of Ocean and Coastal Resource Management has developed draft written policies and procedures regarding compliance inspections pertaining to critical area permits and stormwater permits issued for projects in the coastal zone.

We found no other written policies and procedures pertaining to compliance inspections.

Formal Employee Training Regarding Compliance Inspections

DHEC has not provided formal training for all new staff who conduct stormwater permit compliance inspections, reducing the likelihood of thoroughness and consistency.

DHEC has developed formal training for new staff on how to conduct compliance inspections regarding critical area permits, coastal zone consistency certifications, and stormwater permits issued for projects in the coastal zone.

DHEC does not have formal training for new staff who conduct compliance inspections for stormwater permits issued outside the coastal zone. The department uses a system in which new staff are trained by more experienced staff through an informal process.

Recommendations

14. The General Assembly should amend state law to give DHEC specific authority to enforce the Section 401 certifications it issues.
15. The General Assembly should amend state law to give DHEC specific authority to enforce the construction in navigable waters permits it issues.
16. DHEC should ensure that it has written policies and procedures for conducting compliance inspections regarding each of its water quality permits and certifications.
17. DHEC should implement formal training for all new staff who conduct compliance inspections for water quality permits and certifications.

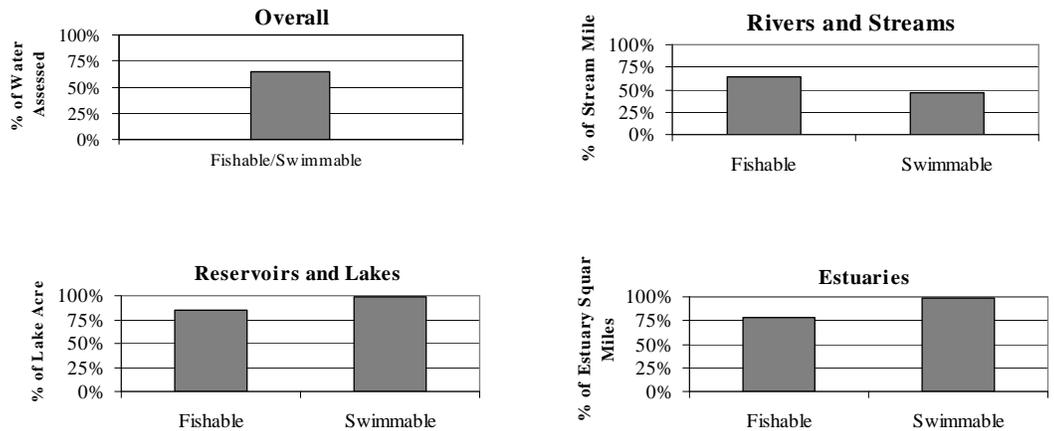
Performance Measures Regarding South Carolina Waters

DHEC's annual accountability report is not adequate for assessing the department's success in protecting South Carolina waters. DHEC reports a single measure for different categories of waters, without showing the trend over time or performance targets. In addition, the report does not have a performance measure addressing the department's efforts to protect wetlands.

Chart 3.1 contains DHEC's performance measure regarding the quality of South Carolina waters in its FY 05-06 accountability report.

Chart 3.1: Excerpt From DHEC's
FY 05-06 Annual Accountability
Report

Percentage of Assessed Waters Supporting Fishable and Swimmable Uses



Source: 2006 South Carolina Integrated Report, Section 305(b).

The “percentage of assessed waters supporting fishable and swimmable uses” reported by the department was based on a random sample of sites from 2001 through 2004. This statistic does not indicate whether the condition of South Carolina waters is improving or declining.

The Georgia Department of Natural Resources reports performance targets and results for the following measures every two years:

- “Number and percent of river/stream miles in Georgia assessed for water quality.”
- “Number and percent of river/stream miles assessed not meeting water quality standards.”
- “Number of stream miles where water quality has improved.”
- “Number and percent of total stream miles removed from the impaired water list.”

The results for the above measures are displayed for multiple-year periods.

If DHEC were to publish its annual accountability report with multiple-year data and performance targets regarding the condition of South Carolina waters as well as the number of acres of wetlands in the state, the public would be better able to learn whether DHEC’s efforts are succeeding.

Recommendations

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

Riparian Buffers Not Required by South Carolina Law

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. Without riparian buffers, rain and other precipitation cause greater runoff of sediment and pollutants into surface waters. Riparian buffers have been recommended by a South Carolina task force. They are currently required in Georgia and North Carolina and some local communities in South Carolina.

Task Force Study Coordinated by the University of South Carolina

In July 2000, a task force commissioned by DHEC and coordinated by the University of South Carolina recommended a minimum 35-foot riparian forest buffer statewide and incentives for landowners who establish buffers wider than the minimum. This task force was comprised of 46 members from state, federal, and local agencies as well private sector members from fields including agriculture, real estate, recreation, and energy.

Regarding water quality, the task force noted that riparian buffers provide the following benefits:

- Trapping and removal of sediment.
- Protection of streambanks from erosion.
- Trapping and removal of nitrogen.
- Trapping and removal of phosphorus. (The effectiveness of buffers regarding phosphorus removal can diminish over the long term.)

The task force recommended the following regarding a minimum riparian buffer width:

To protect water quality and to realize other benefits, South Carolina should require a riparian forest buffer with a minimum width of 35 feet of native vegetation on both sides of all perennial and intermittent streams and rivers, lakes, estuarine waters, and coastal marshes. Buffer widths should increase with increasing slope in the terrain. Buffer requirements on ephemeral channels [streams that form for short periods following rain events] and

non-coastal wetlands should be determined on a site-by-site basis. Buffers on ephemeral channels may be less than 35 feet in width and include other non-forested permanent vegetation types.

For landowners who establish riparian buffers wider than the state minimum, the task force recommended various monetary incentives, including property tax exemptions, tax credits, and the creation of a state fund with which local governments could purchase certain riparian buffers.

Riparian Buffer Requirements in Georgia and North Carolina

Georgia law requires 100-foot buffers along all large rivers in the state. For trout streams, 50-foot buffers are required. For all other rivers, streams, and lakes, a 25-foot buffer is required. Some local communities have enacted ordinances that exceed the state minimums.

North Carolina law requires 50-foot riparian buffers along the Catawba River, the Tar-Pamlico River, and the Neuse River. Within the first 30 feet, only “undisturbed forest vegetation” is allowed. Within the last 20 feet, “managed vegetation,” including grass or other plants, is allowed. Some local communities have enacted ordinances that exceed the state minimum.

Riparian Buffer Requirements of Local Governments in South Carolina

Some local governments in South Carolina have established riparian buffer requirements. For example:

- York County requires a buffer of 100 feet along the shore of Lake Wylie, the Catawba River below the Lake Wylie Dam, and along the banks of any perennial stream that flows directly into Lake Wylie or the Catawba River.
- The City of Rock Hill requires a buffer of 150 feet along the Catawba River, within the city. A buffer of 50 feet is required along all perennial tributaries to the Catawba River, extending 500 feet from the river.
- Chester County requires a buffer of 100 feet along the Catawba River, Fishing Creek Reservoir, and Cedar Creek Reservoir. A buffer of 50 feet is required along one other river and three creeks.
- Beaufort County requires a buffer of 50 feet along all tidal waters and wetlands.

Recommendation

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

Ethics-Related Issues

In this chapter, we note that:

- State law does not adequately restrict the activities of former employees of state regulatory agencies.
- Members of a DHEC appellate panel did not consistently file statements of economic interests.
- The permit and certification appeals process has been made more objective.

Inadequate Post-Employment Restrictions

South Carolina law does 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.

State Law

South Carolina law requires no waiting period before a former employee of a state regulatory agency may represent a client before that agency on matters in which the employee was not “directly and substantially” involved. If the former employee was “directly and substantially” involved in certain regulatory matters while employed by the state, he must wait one year before representing a client before his former agency regarding those matters.

Section 8-13-755 of the South Carolina Code of Laws states that a former public employee:

...may not for a period of one year after terminating his public service or employment: (1) serve as a lobbyist or represent clients before the agency or department on which he formerly served in a matter which he directly and substantially participated during his public service or employment....

Under §8-13-755 (2), according to a May 27, 1992, opinion from the South Carolina Ethics Commission:

...any employee engaged in such certification and permitting would be prohibited from seeking employment from an engineering firm for a period of one year, when the employment involves a certification or permitting matter in which the employee was directly and substantially involved.

Restrictions in Other Jurisdictions

We found other jurisdictions that place post-employment restrictions on former government employees. For example:

- In Alabama and Florida, former state employees are prohibited for two years from representing clients for compensation before their former agencies regarding regulatory matters. This ban includes matters in which the individuals did not participate while working for the government.
- Former state employees in California and former senior-level employees of the federal government are prohibited for one year from representing clients for compensation before or communicating with their former agencies regarding regulatory matters. This one-year ban, described by the federal government as a “cooling off period,” includes matters in which the individuals did not participate while working for the government. There is a lifetime ban on appearances and communications regarding matters in which the employees participated.

Conclusion

Because South Carolina law allows state employees who review environmental permit applications to resign and immediately begin representing clients seeking environmental permits, there is increased potential for conflicts of interest. For example:

- State environmental permitting employees may be tempted to show favoritism toward former coworkers who have recently left state government service.
- Companies who apply for environmental permits may be more likely to offer jobs to state environmental permitting employees. The increased potential of a job offer from a permit applicant can decrease the objectivity of the application review process.

Another area of potential conflict of interest exists because, just one year after termination from state government, a former state regulator is allowed to represent a client on a matter in which the employee was “directly and substantially” involved. When an environmental permit is extended or appealed, the time period within which the state makes decisions regarding the permit may exceed one year.

Recommendations

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.

Inconsistent Filing of Statements of Economic Interests

We reviewed statements of economic interests filed with the South Carolina Ethics Commission by members of DHEC’s governing board and its Coastal Zone Management Appellate Panel. Both of these DHEC entities were responsible for hearing appeals of permitting and certification decisions.

In 2005 and 2006, members of the Coastal Zone Management Appellate Panel did not consistently file statements of economic interests with the Ethics Commission, as required by state law. As a result, there was an increased potential for unknown conflicts of interest.

Beginning July 1, 2006, a new law took effect that discontinued the appellate role of DHEC’s governing board and that of the Coastal Zone Management Appellate Panel.

State Law

Members of public boards are required by state law to file statements of economic interests with the Ethics Commission when they are appointed (S.C. Code §8-13-1110) and annually on April 15th (S.C. Code §8-13-1140). On these statements, each board member is required to report information that could indicate potential conflicts of interest, such as business interests, real or personal property interests, and income and benefits received from state and local government agencies.

State law (S.C. Code §8-13-1510) requires that:

... a person required to file a report or statement under this chapter who files a late statement or report or fails to file a required statement or report must be assessed a civil penalty as follows:

(1) a fine of one hundred dollars if the statement or report is not filed within five days after the established deadline provided by law in this chapter; or

(2) after notice has been given by certified or registered mail that a required statement or report has not been filed, a fine of ten dollars per day for the first ten days after notice has been given, and one hundred dollars for each additional calendar day in which the required statement is not filed.

Statements Filed in 2005 and 2006

According to records of the Ethics Commission and DHEC:

- The Coastal Zone Management Appellate Panel had 14 seats. One seat was vacant during 2006.

In 2005, four members filed their statements between one and eight months late, while two members did not file a statement.

In 2006, three members did not file statements.

- In 2005 and 2006, all members of DHEC's governing board filed statements on time.

Although we found nine instances in which statements were filed late by members of the Coastal Zone Management Appellate Panel, the Ethics Commission provided evidence that only two instances were penalized. In one instance, a member of the Coastal Zone Management Appellate Panel was fined in August 2005 by the Ethics Commission for a late filing of nearly four months. He paid \$100, but as of June 2006, there was an outstanding balance of \$1,600.

Recommendation

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.

State Law Amended to Improve Appeals Process

During our review, the General Assembly amended state law to make the process for appealing DHEC's water quality permits and certifications more objective.

Prior to the amendment in June 2006, state law required that initial appeals be filed with South Carolina's Administrative Law Court. State law required that appeals of Administrative Law Court decisions be filed with DHEC's governing board or its Coastal Zone Management Appellate Panel. Those decisions could be further appealed to the South Carolina Circuit Court.

Under the prior law, appealing Administrative Law Court decisions to DHEC's board or its Coastal Zone Management Appellate Panel lacked objectivity. DHEC was permitted to reject Administrative Law Court rulings regarding decisions initially made by DHEC.

The new law requires that appeals of DHEC's permitting decisions first be submitted to DHEC's board. Further appeals may be filed in the Administrative Law Court and then the South Carolina Court of Appeals.

Chapter 4
Ethics-Related Issues

Agency Comments

Appendix

BOARD:
Elizabeth M. Hagood
Chairman
Edwin H. Cooper, III
Vice Chairman
Steven G. Kisner
Secretary



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

BOARD:
Henry C. Scott
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Glenn A. McCall
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February 2, 2007

Mr. George L. Schroeder
Director, Legislative Audit Council
1331 Elmwood Avenue
Suite 315
Columbia, SC 29201

Dear Mr. Schroeder:

We have reviewed the final draft report entitled, "A Review of Water Quality Permits and Certifications by DHEC". We have attached our final comments to the recommendations and content of the report, along with one final clarification sheet. In addition, we have also attached the original affidavits signed by other staff members who reviewed the report.

We appreciate the professionalism displayed by the audit staff during their visits. If you or your staff have any questions, contact us at 898-3300.

Sincerely,

C. Earl Hunter
Commissioner

Attachments

cc: Bob King, Deputy Commissioner, DHEC Environmental Quality Control
Carolyn Boltin, Deputy Commissioner, DHEC Ocean and Coastal Resource Management

**DHEC Response to Legislative Audit Council report, entitled
A Review of Water Quality Permits and Certifications Issued by the
South Carolina Department of Health and Environmental Control.**

Summary Comments: First, DHEC would like to applaud the courtesy and professionalism displayed by the staff of the Legislative Audit Council (LAC) throughout this audit. Staff was routinely available to discuss any aspect of the audit and to spend the necessary time and effort to understand the sometimes complex interactions of federal, state and local laws in our certification and permitting activities.

The LAC recommendations are reasonable and represent good business practices to improve customer service. Without exception, we concur with the recommendations addressed to the Department and will make every effort to implement them, given the time and appropriate resources. Many of the recommendations involve the establishment of written procedures. Both prior to and during the establishment of audit objectives by the Legislative Audit Council on February 14, 2006, several activities were initiated within DHEC to improve our certification and permitting processes. Efforts are underway to develop or amend standard operation procedures (SOP's) for a number of technical review and permit process areas. These will be used as a training tool, enhance consistency of processes and actions, provide documentation for appeals and legal hearings, and will address a number of the LAC recommendations contained herein. We have provided increased staffing for the stormwater program, but are still struggling to keep up with the implementation of a new general permit effective in September 2006, and are faced with more changes in the fall of 2007. Improved training and SOP's will help immensely, but being fully prepared to meet the increasing demands will take time and resources. We have also instituted process improvement teams to address key stumbling blocks, and have made changes to EFIS, our environmental facilities information system, to increase automation and speed of our administrative processing of permits and certifications; additional improvements are underway.

Individual recommendations are addressed below:

Legislative Audit Council Recommendations and DHEC Responses:

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

DHEC agrees with this recommendation. Staff will ensure the procedure for gathering and reporting the data is captured in our standard operating procedures (SOP's).

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

DHEC agrees with this recommendation and will establish review times. This would first be implemented and evaluated on a trial basis to ensure we have targeted the appropriate process time.

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.

DHEC agrees with this recommendation and will establish review times. This would first be implemented and evaluated on a trial basis to ensure we have targeted the appropriate process time.

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 agrees with this recommendation. Due to limited resources (funding and staffing), we have not been able to fully explore this as much as we would like. If resources become available we will certainly work with other states that have implemented similar programs to determine which of our program areas are well suited to e-permitting.

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 agrees with this recommendation. This will be accomplished by developing and amending policies and procedures in our standard operation procedures (SOP), such that review time can be consistently captured and documented for each project permit or certification.

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

DHEC agrees with this recommendation. We have established a formal training program for stormwater staff to become certified plan reviewers or inspectors. Most have obtained this certification. To fully implement this recommendation to other program areas additional resources would be necessary.

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

DHEC agrees with this recommendation. DHEC will work on establishing annual performance goals concerning the timeliness of reviews. DHEC's EFIS database will be used to track timeliness of processing to help measure success of goals.

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

DHEC agrees with this recommendation. Weekly staff permit review meetings currently accomplishes this object, but the procedures are not formalized in all programs. We will incorporate written policies and procedures into our SOP's.

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

DHEC agrees with this recommendation. We will establish written criteria that will determine when site visits are warranted and incorporate them into our SOP's. Weekly staff permit review meetings currently addresses needed site inspections, but the procedures are not formalized

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.

DHEC agrees with this recommendation. Additional resources would be necessary to support this activity. In addition to a two-week indoctrination period that is focused on DHEC and Deputy Area overview, all new technical staff are assigned to a senior staff member for training and oversight in their field of responsibility for a period of 2-4 months. This process needs to be formalized. It should also be noted that formal training currently takes place for stormwater permit reviewers and inspectors and has been ongoing for over ten years.

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

DHEC EQC and OCRM staffs are continuing to work on improvements to facilitate the processing and issuing of permits and certifications. Monthly joint permitting meetings, along with committed support from senior management, have improved the coordination over the past year. Improved training and development of standard operation procedures (SOP) for processes will also contribute to a smoother flow of permits and certification.

12. The General Assembly should amend § 1-30-45 of South Carolina Code of Laws to allow the Department of Health and Environmental Control to place the

Office of Ocean and Coastal Resource Management and the Office of Environmental Quality Control within the same chain of command.

This recommendation is directed at the General Assembly and we feel confident that they will appropriately consider this recommendation.

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

We feel confident that we can continue to improve our internal coordination. The merger of the two offices (EQC and OCRM) within the same chain of command, we feel, is not necessary. This reorganization was attempted once before and did not prove effective.

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

This recommendation is directed toward the General Assembly and we feel confident that they will appropriately consider this recommendation. DHEC supports any recommendation that enhances our enforcement capability. Current enforcement takes place through the permit for which the certification is issued.

15. DHEC should implement a process of enforcing construction in navigable waters permits.

DHEC agrees with this recommendation. We will work to develop and implement a process for this.

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

DHEC agrees with this recommendation. We will adopt written policies that will be incorporated into our SOP's.

17. DHEC should implement formal training for all new staff that conducts compliance for water quality permits and certifications.

DHEC agrees with this recommendation. We will work to develop and implement a formal training program for all new staff. Formal training has been established for stormwater compliance.

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

DHEC agrees with the recommendation. DHEC publishes several federally-mandated reports which address the conditions of the waters in South Carolina. However, due to page limit constraints imposed in the Annual Accountability Report, this could be a challenge. The Department will determine how best to incorporate some of this information.

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.

DHEC agrees with this recommendation. DHEC will look for data and performance targets to incorporate into its annual accountability report, space permitting.

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

This recommendation is directed toward the General Assembly and we feel confident that they will appropriately consider this recommendation. We do believe riparian buffers are an important part of water quality and habitat protection and should be included in SC law. In fact, as was noted, we attempted a change in our law several years ago without success.

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.

This recommendation is directed toward the General Assembly and we feel confident that they will appropriately consider this recommendation. The Department believes current restrictions are similar to those in other states. DHEC will ensure employees are aware of restrictions when leaving the agency for other employment.

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.

This recommendation is directed toward the General Assembly and we feel confident that they will appropriately consider this recommendation. The Department believes current restrictions are similar to those in other states. This recommendation, as stated, may impact the ability of all state agencies to recruit new staff. The department will ensure employees are aware of current restrictions.

23. The members of public board and panels of the Department of Health and Environmental Control should submit statements of economic interests to the South Carolina Ethics Commission as required by state law.

This recommendation is directed toward the SC Ethics Commission and we feel confident that they will take the necessary actions to address this ethics issue. DHEC will ensure Board and Panel members are made aware of this matter.

Clarification Sheet

* On page 8, the report states that, "there were 182 decisions for Construction in Navigable Waters permit applications. Data we received from the Section 401 certification/construction in navigable waters permit section indicated 66 decisions."

This falls under the recommendation regarding consistency of data and is used to make our data look inconsistent. We believe we should clarify that the reason for the discrepancy is because some navigable waters permit decisions are rolled into other permits such as 401 permits and other times, we issue individual navigable waters permits.

* Also on page 8, the report mentions how our database showed that 68 of 406 401 decisions were made after the 180-day limit. We would suggest the following clarification:

The report cites data received from the 401 certification section that indicates that 68 of 406 project decisions were made in excess of the state's 180 day limit for permit review. As a result of this finding, staff in the 401 section have begun pulling the permit files in question in order to determine where the problem lies. The most common problem that staff discovered to explain why the data indicates that the 180-day time limit was exceeded has to do with errors in recording information into the Environmental Facility Information System (EFIS) database. As the supporting documentation indicates, a common problem is that staff have neglected to stop the 180 day "clock" when they are waiting on information from applicants. Staff are continuing to correct these and other database problems to ensure that the EFIS can be relied on to determine if the Department is in compliance with timeliness requirements.

This report was published for a total cost of \$209; 75 bound copies were printed at a cost of \$2.78 per unit.

