

Upstate Forever

Promoting Sensible Growth and
Protecting Special Places in the Upstate

July 31, 2009

Andrea Truitt
Audit Manager
Legislative Audit Council
1331 Elmwood Ave., Ste 315
Columbia, SC 29201

Ms. Truitt,

We are pleased that the Legislative Audit Council is evaluating DHEC's current policies on informing, and seeking input from, the public on issues and concerns relating to environmental pollution.

Upstate Forever is a nonprofit, membership-based organization working on conservation, air and water quality, and land use issues in the Upstate region of South Carolina. Supported by over 2,400 members, we have three main programs: Land Trust, Clean Air and Water, and Sustainable Communities.

Within each of our programs, we have actively participated in DHEC's permitting process on a wide range of activities and projects, including landfills, wastewater discharges, certifications of federal dredge and fill permits, and air emissions. We have seen first hand that DHEC's public notice and comment policies are seriously flawed. In this letter we describe each deficiency and then offer a specific recommendation for change.

1. The public is not informed about a proposed discharge or activity until very late in the process.

Typically, DHEC does not issue a public notice about a proposed discharge or activity until a draft permit has already been written. This is often preceded by several months of discussions and negotiations between the agency and the applicant. By the time the public even finds out about the proposal, it is very late in the process. The discussions and negotiations have already occurred, and an actual permit has already been drafted. In many cases, it seems that DHEC has already made up its mind to issue the permit and is only "going through the motions" of allowing limited public input.

P.O. Box 2308 Greenville, SC 29602

Phone: (864) 250-0500 Fax: (864) 250-0788 E-mail: info@upstateforever.org

Recommendation: DHEC should notify the public when a permit application is submitted and allow for meaningful public input and involvement at that time, including the opportunity to participate in discussions and negotiations relating to the draft permit.

2. Public notices typically contain little useful information about the proposed discharge or activity.

Most public notices issued by DHEC contain only the following information: (1) the name of the applicant; (2) the location of the proposed discharge or activity; (3) an extremely limited summary of the proposal; and (4) boilerplate language about the process. We have enclosed the public notice of a permit application to discharge wastewater, which is typical of the minimal amount of information provided to the public. There is no information about the types and amounts of pollutants that are proposed to be discharged. Without that information it is impossible to evaluate and comment on the application.

Thus, in most cases, the public is forced to file a Freedom of Information request with DHEC to obtain the necessary information. It typically takes DHEC two to three weeks to process the request and send the documents, and when the information is finally obtained, there is very little time left before the deadline for public comments (usually only 30 days after the public notice). Under these circumstances, it is extremely difficult, if not impossible, to review the documents and prepare comments on the application.

Recommendation: At the time DHEC notifies the public of the permit application, it should provide detailed information about the proposed discharge or activity, including a fact sheet with the proposed types and levels of pollutants. If and when DHEC decides to issue a draft permit, another public notice should be issued which includes the draft permit and fully explains the basis for the decision.

3. Monitoring data from permittees is not easily and readily available to the public.

DHEC typically requires permittees to sample their discharges and emissions and report the results to the agency. This information is not readily and easily

available to the public. In many cases, it can be obtained only by filing Freedom of Information Act requests.

Recommendation: DHEC should develop a searchable online database of the monitoring results submitted by permittees.

4. There is no program for promptly notifying the public of environmental violations.

DHEC collects and receives a tremendous amount of information about environmental conditions in the state. This information comes from the monitoring reports of permittees, from DHEC's own network of monitoring stations, and from companies and persons involved in studying or cleaning up contaminated sites. While some of the information eventually finds its way into reports, such as the annual list of impaired waters, the agency has no program for promptly notifying the public of violations. Thus, in most cases, the public either never finds out about the violation or learns about it long after it occurred.

Recommendation: DHEC should develop a real-time and user-friendly online database of environmental violations (of both permits and ambient standards) and a frequent (at least monthly) notification system for informing the public of these violations on a per-resource and per-county basis. For example, a citizen could request and receive electronic notification of all wastewater discharge permit violations in Greenville County.

5. Current notification procedures use paper mailings, which are expensive and cause delays.

DHEC continues to use paper mailings to provide notifications to the public. This is expensive, is inconsistent with the agency's mission, and causes substantial delays.

Recommendation: DHEC should provide an electronic notification option in addition to the current paper notification system.

Conclusion

On its website, DHEC states that it “views the public as its partner in protecting the environment. We value public opinion and believe that our mission of protecting the environment and public health will be improved through enhanced public involvement.” DHEC Website, *Environmental Quality Control—Public Participation*.

Regrettably, DHEC’s current policies fall far short of achieving this goal. The agency provides very little information to the public about proposed discharges and activities and very little time for public comment and review. Yet, permit applicants are afforded ample time and extensive opportunities to meet with DHEC staff and discuss and negotiate the permits they are seeking. It is an unfair and unequal playing field. In addition, DHEC’s extensive database on environmental conditions is not readily and easily available to the public, and there is no program for promptly notifying the public when violations of permits and ambient standards occur.

Implementation of our recommendations will make DHEC more transparent and accountable and will go a long way toward making the public a true and effective partner with the agency.

We appreciate the Audit Council’s consideration of our comments and recommendations. Please let us know if you have any questions or need any additional information.

Sincerely,

A handwritten signature in black ink that reads "Brad Wyche". The signature is fluid and cursive, with the first letter of "Brad" being a large, stylized capital "B".

Brad Wyche
Executive Director

P.O. Box 2308 Greenville, SC 29602

Phone: (864) 250-0500 Fax: (864) 250-0788 E-mail: info@upstateforever.org