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DHEC under fire

State regulators have given polluters breaks, withheld information from the public and pushed development over the protection of natural resources. Has the agency that's supposed to safeguard the environment and our health lost its way?

Stories BY JOHN MONK AND SAMMY FRETWELL
jmonk@thestate.com and sfretwell@thestate.com

EXCLUSIVE

Imagine a state agency that helps developers build in fragile areas close to the ocean — at taxpayer expense.

Imagine an agency that oversees homes for the disabled in which at least three people have died from neglect in two years.

Imagine an agency posting one of the nation's worst records for cleaning up leaks from underground gasoline tanks — in a state where more than a quarter of residents drink from wells.

Imagine an agency that regulates garbage landfills helping to turn the state into a trash mecca for the Southeast.

Stop imagining.

That agency exists.

Its name is DHEC — the S.C. Department of Health and Environmental Control.

When it comes to decisions that stand to affect millions of people, DHEC has become known as an uneven watchdog for health and the environment. It often sides with companies it regulates during disputes with residents. It often shares crucial information slowly or not at all. And it sometimes remains silent rather than alerting the public to dangers.

"DHEC doesn't need to promote business — we have other state agencies that do that," said Rep. Joe Neal, D-Richland, who said he was shocked that DHEC failed to protect a Richland County community from a private utility's lead-laced drinking water for 20 years. "DHEC was just as culpable as that utility."

Such criticism does not apply to all of DHEC's 4,200 employees. It focuses on the agency's top management, whose major policy decisions have been challenged repeatedly in recent years by lawmakers, judges, environmentalists, doctors and residents.

Top DHEC officials say the agency does its best to protect South Carolina's people and land.

"I'm thoroughly convinced our staff is committed to try to do the best they possibly can," said DHEC Commissioner Earl Hunter. "Sometimes there are limitations æ.æ.æ. to what we can do; sometimes the laws or regulations restrict us."

He added, "I feel that anybody put in the same positions that we are will a lot of times arrive at the very same conclusions that we do."

South Carolina's fifth largest agency, with a \$578 million annual budget, DHEC manages more than 150 programs in a growing state.

DHEC regulates the use of land, air and water. Checks tattoo parlors and hog farms. Tracks rabies outbreaks. Oversees prescription drugs and dialysis centers. Promotes flu shots. Monitors shellfish beds. Helps test for HIV.

Decides whether hospitals can expand. Runs health departments in each county. Records marriages, births and deaths.

DHEC's staff includes welltrained scientists, engineers, nurses, lab technicians and investigators. For legal affairs, the agency has 16 staff attorneys.

No other state agency affects so many lives in so many ways.

But missteps — and frustrated residents — are mounting.

BROAD UNEASE

Four recent incidents have brought DHEC greater scrutiny — and stepped up questions of how well the agency does its job:

- DHEC in 1985 found dangerous amounts of lead in the drinking water of Richland County's Franklin Park neighborhood. But it didn't get the lead removed until 2005, as The State newspaper was going to press reporting that residents had lead in their blood.
- Not until earlier this year did DHEC post signs at rivers to warn residents of the dangers of eating mercury-laced fish at hundreds of fishing spots across the state. DHEC knew the health threat had been expanding since the early 1990s and had put notices out to the media. But the signs, placed where they can be seen by river users, went up only after Charleston's Post and Courier newspaper reported on mercury found in residents' blood.
- For years, DHEC kept records secret that showed the magnitude of a radiation leak from a low-level nuclear waste dump in Barnwell County. DHEC had long acknowledged a leak. But at the landfill operator's request, it withheld details, not even telling lawmakers last year as they debated whether to close the facility to the nation. When The State obtained the documents using open records laws, the newspaper discovered levels of radioactive tritium in some places as high as those at the nearby Savannah River nuclear weapons complex. State Attorney General Henry McMaster scolded DHEC for failing to produce the records.
- DHEC failed to closely monitor a Columbia sewer plant it knew had malfunctioned. Later, the plant was found spilling partially sewage into the popular Saluda River. Swimmers and waders complained of nausea and ear, eye, nose and throat infections. Some kayakers and canoers say they fell ill. DHEC waited six days to take water samples and seven days to notify the public. The agency says it and federal officials are investigating. Columbia environmental lawyer Bob Guild said "the community is watching" DHEC to see how much it fines the utility and how it explains what he says is a slowness to act. The agency's water bureau chief David Wilson said last week DHEC could have been, if not faster, at least more thorough in notifying the public.

Those actions and others — on shoreline development, gas tank leaks, the rise of large landfills and the safety of group homes — have brought DHEC under increased scrutiny.

CUMULATIVE EFFECT

Taken separately, DHEC's actions seem unconnected.

Taken as a whole, they form a pattern: DHEC falls short in its role as the public's chief protector.

Even some business lobbyists say DHEC could be more aggressive.

Michael Fields, director of the S.C. Petroleum Marketers Association, said DHEC's lack of aggressive action to secure more funding to clean up old leaky underground gasoline tanks has jeopardized the environment and his members' profits.

"My members are going to be hurt and the environment is going to be hurt because DHEC can't find it in their regulatory heart to ask (lawmakers) for the money," Fields said.

DHEC says it has done all it could.

Meanwhile, the agency is grappling with several issues as important as any in recent memory. Two in particular will affect future generations:

- DHEC is deciding whether to issue a permit to Santee Cooper, the state's largest utility, to build a giant \$2.2 billion coal-fired electricity plant in Florence County. Coal plants are among the nation's biggest air polluters. Airborne mercury, which falls back to earth and is ingested by fish, is of special concern. Eating mercury-laced fish can cause neurological problems, birth defects and damage children's brains. In many states, coal plants have been cut back or shelved.
- DHEC has granted permits for one of the biggest — and potentially most-polluting — projects Charleston will see for decades: a new cargo ship terminal at the city's port. Conservation groups have appealed DHEC's decision in state court. They note that ports are major sources of truck and ship pollution and that Charleston's air quality is increasingly compromised.

TOO PERMISSIVE?

A frequently heard criticism is that DHEC isn't tough enough upfront with industries that have the potential to

pollute.

In Charleston, some environmentalists, doctors and residents are criticizing DHEC for approving the port expansion before receiving the results of three air quality studies.

Judges rebuke DHEC, too.

In August, for example, a judge revoked permission DHEC had given for a 3,500-hog swine farm to open in Dillon County. The judge ruled DHEC failed to make sure hog waste — 33 tons a day — wouldn't pollute the Little Pee Dee River.

"The law gives DHEC wide latitude to require more rigorous standards to protect water quality, but often it ends up choosing the most lax standard," said David Freedman, a Clemson University environmental engineer who has testified against DHEC in a half-dozen cases. He was an expert witness in the hog farm case.

For Sen. Phil Leventis, D-Sumter, long a DHEC critic, one issue is especially roiling. He disputes the agency's assertion that it can't check pollution histories of out-of-state companies that want to operate in South Carolina.

"There's something wrong here," said Leventis, who said current law gives DHEC the authority to examine pollution histories. "Past performance reflects on future behavior. That's not only common sense — it's a responsibility the agency has."

Hunter said DHEC's attorneys say the agency does not have such power. If people want to challenge a company's pollution history they are welcome to do so in court, he said.

Critics say the Legislature, with its sensitivity to property rights and business interests, has a grip on DHEC.

Former DHEC supervisor Debra Hernandez, now a consultant, said that grip is so pervasive that DHEC's top management is hesitant to take risks. Public criticism and media scrutiny contribute to that, said Hernandez, who worked at the agency's coastal division for two decades.

"It's difficult to foster a culture of innovation and risk-taking if an agency does not reward and foster that," she said. "You end up with an agency that is mediocre."

Some of DHEC's problems are related to structure. Board members are appointed by the governor. But after they are confirmed by the Senate, the governor has no direct authority over them.

And, unlike in many states, environmental and health regulations need legislative approval.

DHEC has more challenges than its counterparts in North Carolina and Virginia, said David Farren, a lawyer who is familiar with the three states. South Carolina is a smaller state whose constitution emphasizes a weak governor and a strong legislature.

"It's seen as constituent service to grease the skids for permits in a locality, which makes it harder for the agency to stand up," said Farren, an attorney with the Southern Environmental Law Center.

In Myrtle Beach, five area lawmakers persuaded the state's Legislative Audit Council to investigate whether DHEC adequately notifies the public of pollution threats.

In a letter, the lawmakers noted a "growing concern" over DHEC's "accountability to the public."

The Audit Council agreed Oct. 23 to scrutinize DHEC's notification procedures as well as its handling of cleanups and fines.

The controversy grows out of a lawsuit and stories in The Sun News about toxic-laced groundwater that spread from AVX, a major electronic parts manufacturer. Although DHEC knew of the contamination since 1995 — and its potential to move off the property — it took a private landowner doing his own test in 2007 to discover the pollution had spread. The contamination has made surrounding homes "worthless," according to the suit.

DHEC has said it tries to be upfront about pollution threats, but many city residents, including Mayor John Rhodes, say it hasn't.

"When we have a problem like this within the city, our city needs to be aware of what is going on and not find out from somebody else," Rhodes said.

DHEC said it welcomes the audit.

THEIR OWN MONEY

In many cases, residents are spending their money to offset what they see as DHEC's lax oversight of polluters.

Among them is Wayne Windham, an Orangeburg County landowner. Windham served legal notice in September

that he will employ a littleknown federal law that enables citizens to get justice when a state environmental agency won't act.

Windham says animal waste from a nearby farm has contaminated his land and pond. He said he has spent \$5,000 on attorneys and lab tests to document the pollution in recent years.

"DHEC has not done their job," Windham said. "My tax dollars go to pay this government department to protect our drinking water and our environment. They don't do a damned thing."

Agency spokesman Thom Berry said DHEC is investigating the incident. DHEC discussed potential violations with the attorney for Windham's neighbor on Thursday.

The S.C. Coastal Conservation League is spending about \$100,000 in grant money this year to study whether there's a need for Santee Cooper's proposed coal-fired plant, expected to emit millions of tons of pollutants over its projected 50-year life.

The Conservation League, the state's preeminent activist environmental group, is going around DHEC and negotiating directly with Santee Cooper, which is cooperating with the study.

"DHEC has the broad statutory authority to do this kind of analysis, but they don't," said Dana Beach, the Conservation League's director. "Over the last 20 years, we have spent millions trying to overturn, prevent or scale back their bad environmental decisions."

In Greenville County, conservationists have challenged DHEC's decision to permit a Gary Player-designed resort golf course that will extend 16 bridges across the North Saluda River.

Upstate Forever, led by former DHEC board chairman Brad Wyche, spent more than \$10,000 on nationally known consultants who concluded less damage would be done if golfers could play with only two or three bridges instead of 16.

DHEC's board said staffers had made sufficient studies and rejected a plea by Wyche's group to examine his consultants' findings. The group is appealing in court. That will cost the group more money.

TOUGH OR SOFT?

DHEC often argues it doesn't have the legal authority to be aggressive. Critics, though, say the agency does in some cases.

Earlier this year, the General Assembly debated how much water industries can draw from a river or lake. DHEC officials told legislators they needed a law to regulate withdrawals to protect river levels. Pollution can concentrate in the water that remains, particularly during a drought.

But critics — including a former employee — say state regulations already give DHEC clear authority to oversee withdrawals.

"The intent of that part of the regulation — and I wrote it, so I should know — was to allow DHEC to be able to control a water withdrawal when that withdrawal would affect water quality," says Bob Gross, a former DHEC water quality official. Gross now runs an environmental consulting firm in Beaufort.

The water bill died, even though all involved agree that water supplies are one of the state's major long-term problems.

"DHEC's interpretation of the law is disgusting," Leventis said. "I can't imagine a doctor saying he didn't have the authority to treat your broken bones. He would find a way to do it. Their charge is to find a way to protect the public."

Once industries have permits and begin operating, DHEC also isn't tough enough in overseeing how they operate, say some citizens groups, attorneys and lawmakers.

DHEC says it is tough on polluters. Last year, it took 418 actions resulting in \$3 million-plus in fines — an average of \$7,200.

But being soft on serious violators is part of the agency's unspoken culture, said Jerry Paul, a former upper-level DHEC health licensing official, now retired.

Agency regulators are pushed to "work things out" with violators, Paul said. "The truth of the matter is that a lot of the people we sit down with are repeat offenders. But you ought to show people when they cross a certain line, there are consequences."

CONTRADICTORY MISSIONS?

A recurring criticism of DHEC is that it has a cozy relationship with businesses it regulates.

“Businesses do have an inside track,” said Ben Gregg, executive director of the S.C. Wildlife Federation and a former board member for the state Department of Natural Resources.

“When a company needs a permit for pollution, they go one on one with DHEC. By the time the public gets involved, the company and DHEC already have a relationship. Industry gets first bite of the apple,” Gregg said.

For years, DHEC’s motto “Promote, Protect, Prosper” was on agency letterheads.

The three words reflect the policy statement in the state’s Pollution Control Act, which says “maximum employment” and “industrial development” should be weighed when considering purity standards for air and water.

These days, as the state’s growing population means people live closer to one another, DHEC’s Hunter insists health and environmental protection are the agency’s top goals.

But not all DHEC employees get that message.

“Protection of the environment cannot come at the expense of agricultural business,” DHEC lawyer Stephen Hightower said during a court hearing on the Dillon County hog farm, attended by reporters from The State last spring. He was arguing against neighbors who were challenging DHEC’s OK of the hog farm.

Hightower told Judge Paige Gossett that business profits should be given high consideration in environmental cases. DHEC has a duty to “protect a valuable industry that the Legislature has determined is important.”

Hightower lost the argument.

In August, Gossett ruled DHEC wrongly granted a permit to the 3,500-hog swine farm and its 33 tons of daily hog waste. She noted DHEC hadn’t produced an expert witness to support its probusiness arguments.

Guild, the lawyer who won the case, wasn’t surprised DHEC argued business interests should trump a clean environment.

“That’s been their behavior,” said Guild, who has won environmental cases against DHEC for more than a decade. “It’s disturbing that our state environmental agency trims its sails in favor of polluters.”

Hunter said DHEC does the best it can in interpreting and executing laws the General Assembly — “the extension of the people” — enacts. “Our primary job is to implement those laws as they are written,” he said.

He also said, “It is easy to sit on the sidelines and criticize us.”

Reach Monk at (803) 7718344. Reach Fretwell at (803) 7718537.