

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ADMINISTRATIVE LAW COURT
Ralph King Anderson III, Administrative Law Judge

RECEIVED

MAY 31 2013

Docket No. 09-ALJ-07-0029-CC

Kiawah Development Partners II,

S.C. Supreme Court
Respondent,

v.

South Carolina Department of Health and Environmental
Control,

Appellant.

Docket No. 09-ALJ-07-0039-CC

South Carolina Coastal Conservation League,

Appellant,

v.

South Carolina Department of Health and Environmental
Control and Kiawah Development Partners II,

Of Whom South Carolina Department of Health and
Environmental Control is.....

Appellant,

and Kiawah Development Partners II, is.....

Respondent.

**MOTION TO FILE AMICUS BRIEF ON BEHALF OF
SAVANNAH RIVER MARITIME COMMISSION**

Pursuant to Rules 240 and 213 of the South Carolina Appellate Court Rules, Alan Wilson, in his official capacity as the Attorney General for the State of South Carolina (“Attorney General”) and as the statutory representative for the Savannah River Maritime Commission (“Commission”) as provided by S.C. Code Ann. § 54-6-10(D), respectfully request the permission of this Court to file an *amicus curiae* brief in the above captioned matter currently pending rehearing before this honorable Court. This Court issued its original opinion in this matter on November 21, 2011. On December 6, 2011, Respondent Kiawah Development Partners, II filed a petition for rehearing with this

Court. While the petition for rehearing was pending the Commission moved for leave to file an *amicus curiae* brief in support of rehearing. On February 3, 2012, the Court granted the petition for rehearing and separately endorsed the Commission's request to file its brief. On April 17, 2012, the Court reheard arguments by the parties and on February 27, 2013, issued its second opinion in the case. Thereafter, Appellant South Carolina Coastal Conservation League filed a petition for rehearing of the second opinion of this Court. On May 1, 2013, the Court granted the petition for rehearing and argument on rehearing is scheduled for June 5, 2013.

As provided by Rule 213, SCACR, the Attorney General states that his interest in this matter derives from the General Assembly's requirement that "[p]rofessional and clerical services for the [Savannah River Maritime] commission must be provided by the staff of the Attorney General's office and supplemented by the staffs of other public officials serving on the commission as required by the commission." S.C. Code Ann. § 54-6-10(D). This is an area that the Commission is frequently involved in because of the nature of permitting requests under its authority under section 54-6-10 and confirmed by the Court in *Savannah Riverkeeper v. S.C. Dep't of Health & Envtl. Control*, 400 S.C. 196, 733 S.E.2d 903 (2012). Further, the Attorney General and his office represent the State in matters related to similar permitting issues as demonstrated by section 54-6-10 and, therefore, request permission to file a brief in the matter currently pending rehearing before the Court.

As an *amicus curiae* to the original rehearing in this case, the Commission seeks leave to file this second brief in light of the Court's February 27, 2013 Opinion, in order to address the issues raised by the Court and the additional request for oral argument.

An *amicus* brief from the Commission is desirable because it will assist this Court in considering the complexities of administrative law and practice which have been at the core of the Court's previously-issued opinions in this case. These issues predominately relate to the varying levels of review and deference afforded agency decisions in the course of *de novo* review by the Administrative Law Court and then subsequently on appeal in our courts.

Consequently, the Attorney General respectfully submits the enclosed *amicus curiae* brief for the Court's consideration and review and moves the Court for leave to file the same.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

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Columbia, South Carolina
May 31, 2013

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South Carolina Department of Health and
Environmental Control and Kiawah Development
Partners II,
Of Whom South Carolina Department of Health and
Environmental Control is Appellant,
and Kiawah Development Partners II, is Respondent.

PROOF OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Savannah River Maritime Commission, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified to the following address(es):

Pleadings: **Motion to File Amicus Brief on Behalf of Savannah River Maritime Commission**

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May 31, 2013