

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

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

	Respondent,
Kiawah Development Partners II,	
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 FOR LEAVE TO JOIN THE AMICUS BRIEF
FILED ON BEHALF OF THE
SAVANNAH RIVER MARITIME COMMISSION**

Pursuant to Rules 240 and 213 of the South Carolina Appellate Court Rules, the South Carolina State Ports Authority ("Ports Authority"), through undersigned counsel, respectfully requests leave of this Court to join in the *amicus curiae* brief filed by the Savannah River Maritime Commission ("Commission") on May 31, 2013, in the above-

captioned matter currently pending rehearing before this Honorable Court. In support of this Motion, the Ports Authority states as follows:

1. This Court heard argument in the above-captioned case on January 18, 2011 and issued its original opinion on November 21, 2011. (Shearouse Ad. Sh. No. 41 at 24).

2. On December 6, 2011, Respondent Kiawah Development Partners, II, filed a petition for rehearing with this Court.

3. On December 13, 2011, the Commission filed a Motion with this Court seeking leave to file an *amicus curiae* brief in support of rehearing, and, on December 28, 2011, the Commission filed its brief.

4. On February 3, 2012, the Court granted the petition for rehearing and separately endorsed the Commission's request to file its brief.

5. On April 17, 2012, the Court reheard arguments by the parties and on February 27, 2013, issued its second opinion in the case. (Shearouse Ad. Sh. No. 9 at 28).

6. On March 24, 2013, Appellant South Carolina Coastal Conservation League filed a petition for rehearing of the second opinion of this Court.

7. On May 1, 2013, the Court granted the petition for rehearing and on May 21, 2013 scheduled the rehearing argument for June 5, 2013.

8. On information and belief, on May 31, 2013, the Commission filed a motion seeking leave to file a second *amicus curiae* brief addressing the issue of the appropriate standard of review and deference applicable by and between the appellate

courts, the Administrative Law Court, and Appellant South Carolina Department of Health and Environmental Control in these types of permitting cases.

9. On information and belief, as of the filing of this motion, the Court has not yet ruled upon the Commission's motion to file an *amicus curiae* brief.

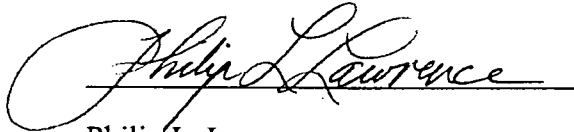
10. The Ports Authority joins in the Commission's concern over and analysis regarding the prospective change the Court's opinion represents within the practice of administrative law, including the permitting process of the South Carolina Department of Health and Environmental Control, which is of manifest importance to the Ports Authority, the State's business community, and the State's environmental interests. The Ports Authority seeks to join in the brief of the Commission, and not to file an additional, separate brief, and the granting of the motion herein will thus not delay the hearing of the matter.

11. The Ports Authority has the need to seek permits from DHEC regarding some public projects within the State's critical area, related to the marine terminals of South Carolina in Charleston, Georgetown and Jasper County, and to waterborne commerce benefitting the State, and is at this time engaged in litigation at the ALC over one such permit.

12. Additionally, the issues related to these changes have and will continue to have significant effects on the operation, development, construction and expansion of the State's ports, harbors, terminals, infrastructure and business administered by the Ports Authority, and will thus have a direct and lasting effect on the State's economic development through its maritime commerce.

The Ports Authority therefore respectfully requests that the Court grant this Motion for leave to join in the *amicus curiae* brief filed by the Commission in this matter.

Respectfully submitted,

A handwritten signature in cursive script that reads "Philip L. Lawrence". The signature is written in black ink and is positioned above a solid horizontal line.

Philip L. Lawrence
General Counsel
S.C. STATE PORTS AUTHORITY
Post Office Box 22287
Charleston, South Carolina 29413-2287
plawrence@scspa.com

*Attorney for the
South Carolina State Ports Authority*

May 31, 2013
Columbia, South Carolina