

STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

Appeal from the Administrative Law Court
Honorable Ralph King Anderson, III, Administrative Law Judge
Case No. 04-ALC-07-0126-CC

Sierra Club,

RECEIVED Appellant,
JUN 24 2013

v.

SC Court of Appeals

South Carolina Department of Health and
Environmental Control and Chem-Nuclear
Systems, LLC,

Respondents.

**RESPONDENTS' MOTION TO STRIKE OBJECTIONABLE MATERIAL,
REQUIRE A CORRECTED/REVISED/AMENDED RECORD ON APPEAL,
AND FOR AN EXTENSION OF TIME TO FILE FINAL BRIEFS**

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Chem-Nuclear Systems, LLC*

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*Attorneys for the Respondent,
South Carolina Department of Health and
Environmental Control*

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

COMES NOW the Respondents, Chem-Nuclear Systems, LLC ("Chem-Nuclear") and the South Carolina Department of Health and Environmental Control ("SCDHEC"), pursuant to Rule 240 of the South Carolina Appellate Court Rules, and jointly respectfully request this Court of Appeals to issue an order striking certain objectionable material from the Record on Appeal (the "ROA"), requiring the Appellant to submit a Corrected/Revised/Amended ROA, and grant Chem-Nuclear and SCDHEC an additional extension of time in which to file their joint Final Briefs in this appellate matter until such time as the Appellant files a corrected/revised/amended ROA.

The basis for this motion is as follows:

1. The Appellant submitted its original Designation of Matter to be Included in the Record on Appeal (the "DOM") on 11 January 2013. *(A copy of the original DOM is attached hereto as Exhibit "A" and incorporated herein by reference).*
2. The Appellant's original DOM contained 12 separate entries of matter which the Appellant proposed to include in the ROA.
3. Chem-Nuclear and SCDHEC filed their joint Respondents' Initial Brief and DOM on 28 February 2013.
4. On 29 April 2013, the Appellant submitted its Amended DOM on 29 April 2013. *(A copy of the amended DOM is attached hereto as Exhibit "B" and incorporated herein by reference).*

5. The Appellant's amended DOM contained an additional entry (No. 13) of matter which the Appellant proposed to include in the ROA consisting of eight pages of CNS Site Inspection photographs.
6. This Court of Appeals, by letter dated 6 May 2013, advised the Appellant that its amended DOM had been filed untimely and the Appellant would need to file a motion seeking permission for the late filing by 16 May 2013. *(A copy of the COA's 6 May 2013, letter is attached hereto as Exhibit "C" and incorporated herein by reference).*
7. The Appellant did not file the required motion either before or after 16 May 2013.
8. The Appellant, by letter dated 14 May 2013, filed the original and 15 copies of the ROA with this Court of Appeals and provided a copy of the ROA to Chem-Nuclear and SCDHEC. *(A copy of the Appellant's 14 May 2013, letter is attached hereto as Exhibit "D" and incorporated herein by reference).*
9. The ROA, as served, contained the eight pages of CNS Site Inspection photographs.

The Appellant has served a ROA which contains matter which was not timely noticed and for which this Court of Appeals required the Appellant to specifically seek permission to include by motion. Had the Appellant filed the motion as this Court of Appeals directed, Chem-Nuclear and SCDHEC would have had the opportunity to object to inclusion of the improperly included eight pages of CNS Site Inspection photographs. Unfortunately, Chem-Nuclear and SCDHEC did not have the option of voicing their joint objection until now.

Chem-Nuclear and SCDHEC respectfully request this Court of Appeals to strike the objectionable material (eight pages of CNS Site Inspection photographs) and require to Appellant to file a corrected/revised/amended ROA without the objectionable material. Additionally, Chem-Nuclear and SCDHEC respectfully requests this Court of Appeals to grant them an extension of time in which to file their joint Final Briefs until such time as the Appellant files the corrected/revised/amended ROA without the objectionable material.

Finally, Chem-Nuclear and SCDHEC also respectfully request this Court of Appeals to hold the briefing time in abeyance until such time as this motion may be considered and ruled upon.

Respectfully submitted:

NEXSEN PRUET, LLC

By: 

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Additional Appellate Counsel on Following Page

*SOUTH CAROLINA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL*

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Charleston, South Carolina

21 June 2013

NPCOLI:3416810.1-MO-(SPG) 049893-00002

Exh. A

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

Case No. 04-ALC-07-0126-CC

Sierra Club Appellant,

vs.

South Carolina Department of Health and Environmental Control
and Chem-Nuclear Systems, LLC Respondents.

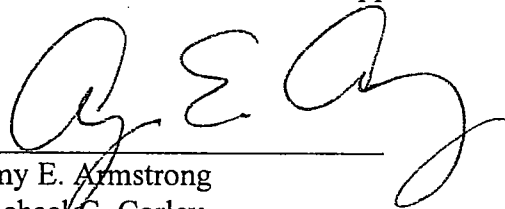
**APPELLANT'S DESIGNATION OF
MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL**

The Appellants propose the following material to be included in the Record on Appeal:

1. Final Order and Decision on Remand, dated July 20, 2012
2. Order of the Supreme Court Denying Petition for Certiorari, dates July 21, 2011
3. Order of the Court of Appeals, dated March 10, 2010
4. Final Order and Decision of the Administrative Law Court, October 13, 2005
5. Order Denying Motion for Reconsideration, November 1, 2005
6. Order Granting Partial Summary Judgment, February 15, 2005
7. DHEC's Notice of License Renewal, March 15, 2004

8. Petition for Administrative Review, March 30, 2004
9. Prehearing Statement of Respondent DHEC
10. Prehearing Statement of Respondent Chem-Nuclear
11. Prehearing Statement of Sierra Club
12. Petition to DHEC Board, cover page with recording stamp only, November 29, 2005

I certify that this Designation contains no matter which is irrelevant to the appeal.



Amy E. Armstrong
Michael G. Corley
SOUTH CAROLINA ENVIRONMENTAL
LAW PROJECT

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Attorneys for the Appellant Sierra Club

Georgetown, South Carolina

January 11, 2012

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

Case No. 04-ALJ-07-0126-CC

Sierra Club Petitioner/Appellant,

vs.


South Carolina Department of Health and Environmental Control and
Chem-Nuclear Systems, Respondents.

CERTIFICATE OF SERVICE

I hereby certify that on this date I served the foregoing Initial Brief and Designation of Matter upon counsel for the Respondents, by placing copies of same in the United State Mail, addressed to:

Jaquelyn S. Dickman, Esquire
Claire H. Prince, Esquire
DHEC Legal Office
2600 Bull Street
Columbia, SC 29201

Mary D. Shahid, Esquire
Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, SC 29401



Amy E. Armstrong

Georgetown, South Carolina

January 11, 2013

Exh. B

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

Case No. 04-ALC-07-0126-CC

Sierra Club Appellant,

vs.

South Carolina Department of Health and Environmental Control
and Chem-Nuclear Systems, LLC Respondents.

**APPELLANT'S AMENDED DESIGNATION OF
MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL**

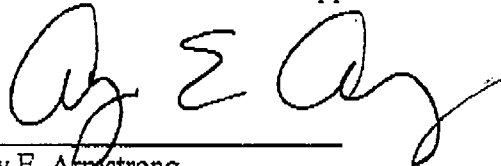
The Appellants propose and amend the following material to be included in the Record on Appeal:

1. Final Order and Decision on Remand, dated July 20, 2012
2. Order of the Supreme Court Denying Petition for Certiorari, dates July 21, 2011
3. Order of the Court of Appeals, dated March 10, 2010
4. Final Order and Decision of the Administrative Law Court, October 13, 2005
5. Order Denying Motion for Reconsideration, November 1, 2005

- 6. Order Granting Partial Summary Judgment, February 15, 2005
- 7. DHEC's Notice of License Renewal, March 15, 2004
- 8. Petition for Administrative Review, March 30, 2004
- 9. Prehearing Statement of Respondent DHEC
- 10. Prehearing Statement of Respondent Chem-Nuclear
- 11. Prehearing Statement of Sierra Club
- 12. Petition to DHEC Board, cover page with recording stamp only, November 29, 2005
- 13. Petitioner's Exhibit 10.

Deleted

I certify that this Designation contains no matter which is irrelevant to the appeal.



Amy E. Armstrong
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Attorneys for the Appellant Sierra Club

Georgetown, South Carolina

April 29, 2013

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

Case No. 04-ALJ-07-0126-CC

Sierra Club Petitioner/Appellant,

vs.

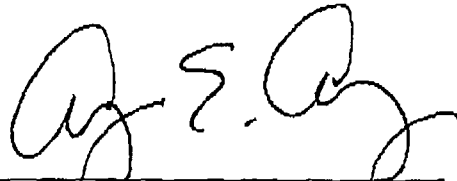
South Carolina Department of Health and Environmental Control and
Chem-Nuclear Systems, Respondents.

CERTIFICATE OF SERVICE

I hereby certify that on this date I served the foregoing Amended Designation of Matter upon counsel for the Respondents, by placing copies of same in the United State Mail, addressed to:

Jaquelyn S. Dickman, Esquire
Claire H. Prince, Esquire
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Amy E. Armstrong

Georgetown, South Carolina

April 29, 2013

Exh. C



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MAY 7 2013

The South Carolina Court of Appeals

DHEC

OFFICE OF GENERAL COUNSEL

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
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FAX: (803) 734-1839
www.sccourts.org

May 06, 2013

Ms. Amy Elizabeth Armstrong
PO Box 1380
Pawleys Island SC 29585

Mr. Michael Gary Corley
PO Box 1380
Pawleys Island SC 29585

Re: Sierra Club v. SCDHEC & Chem-Nuclear(2)
Appellate Case No. 2012-212791

RECEIVED

MAY 07 2013

DHEC
OFFICE OF GENERAL COUNSEL

Dear Counsel:

Upon reviewing your amended designation of matter, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The document has not been timely filed. A motion to allow the late filing will have to be made.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Mary Duncan Shahid
Jacquelyn Sue Dickman
Claire Harley Prince
Robert Guild
Stephen Peterson Groves, Sr.
Sara S. Rogers

Exh. D

South Carolina Environmental Law Project

Lawyers for the wild side of South Carolina

a 501c3 non-profit organization

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OUR MISSION

To protect the natural environment of South Carolina by providing legal services and advice to environmental organizations and concerned citizens and by improving the state's system of environmental regulation.

April 29, 2013

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MAY 1 2013

DHEC
OFFICE OF GENERAL COUNSEL

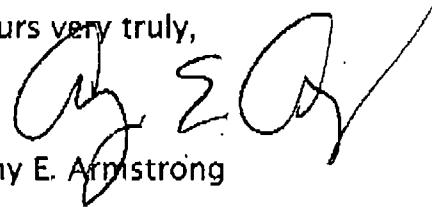
Honorable Jenny Abbott Kitchings
Clerk, S. C. Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

RE: Sierra Club v. SCDHEC & Chem-Nuclear Systems
Admin. Law Court Case No. 04-AJ-07-0126-CC
Appellate Case No 2012-212791

Dear Ms. Kitchings:

Enclosed please find the Appellant Sierra Club's amended designation of matter in the above-referenced matter. Kindly return a clocked-in copy in the envelope provided.

Yours very truly,



Amy E. Armstrong

cc: Mary D. Shahid, Esquire
Jaquelyn S. Dickman, Esquire

STATE OF SOUTH CAROLINA
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JUN 24 2013

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PROOF OF SERVICE
for the
**RESPONDENTS' MOTION TO STRIKE OBJECTIONABLE MATERIAL,
REQUIRE A CORRECTED/REVISED/AMENDED RECORD ON APPEAL,
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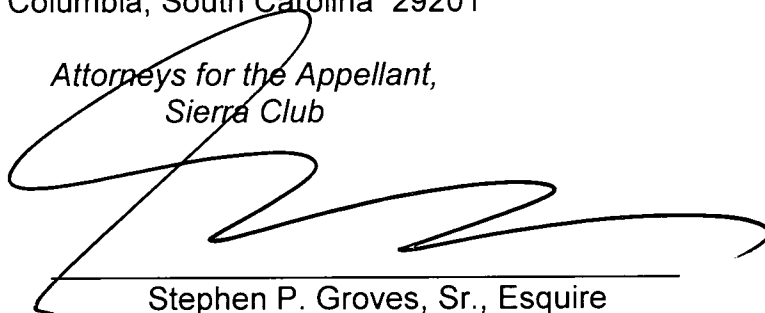
*Attorneys for the Respondent,
South Carolina Department of Health and
Environmental Control*

I, Stephen P. Groves, Esquire, hereby certify that on 21 June 2013, I served a copy of the **Motion To Strike Objectionable Material, Require A Corrected/Revised/Amended Record On Appeal, And For An Extension of Time in Which to File Final Briefs** submitted on behalf of the Respondents, Chem-Nuclear Systems, LLC, and the South Carolina Department of Health and Environmental Control, on all counsel of record herein via United States Mail, postage pre-paid, and addressed as follows:

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Robert Guild, Esquire
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*Attorneys for the Appellant,
Sierra Club*



Stephen P. Groves, Sr., Esquire

Charleston, South Carolina

21 June 2013

NPCOL1:3416810.1-MO-(SPG) 049893-00002