

THE STATE OF SOUTH CAROLINA

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In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

RECEIVED

Ralph King Anderson, III, Administrative Law Judge

JUL 01 2013

SC Court of Appeals

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

Sierra Club Appellant,

vs.

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

APPELLANT'S RETURN TO RESPONDENTS' MOTION TO STRIKE AND APPELLANT'S MOTION FOR LEAVE TO FILE AN AMENDED DESIGNATION OF MATTER AND FINAL BRIEFS OUT OF TIME

TO: ALL PARTIES AND THE COURT OF APPEALS:

PLEASE TAKE NOTICE that the Appellant Sierra Club hereby moves the Court of Appeals for an Order granting leave to file an amended designation of matter and leave to file final briefs out of time. Appellant further opposes Respondents' motion to strike material and require an amended record on appeal. The basis of this joint motion and return is as follows:

The Appellant timely filed its Designation of Matter on January 11, 2013. When compiling the Record on Appeal some months later, counsel for the Appellant discovered that it had inadvertently excluded an exhibit that is relevant to this appeal and should have been included in its Designation of Matter pursuant to SCACR Rules 209 and 210. On April 29, 2013,

the Appellant filed an Amended Designation of Matter to include this exhibit, Petitioner's Exhibit 10. Petitioner's Exhibit 10 was cited by the Administrative Law Court's 2005 Final Order and Decision in support of its findings that rainfall is common in Barnwell County and that the photographs demonstrate "the potential for ground and surface water contamination caused by the collection of rainwater in the open disposal trenches and on the radioactive waste waiting to be buried at the site." (Record on Appeal, p. 58, 2005 ALC Order, Finding of Fact # 115). Evidence in support of the ALC's findings are particularly relevant on this point because the Respondents have suggested that current waste disposal practices discourage and prevent ground and surface water contamination and "isolate" waste from man's biosphere. (Resp. Brief pp. 12-13, 16). The Appellant filed the Record on Appeal on May 14, 2013, which included Petitioner's Exhibit 10.

There is no basis under SCACR Rules 209 or 210 for objecting to inclusion of evidence that was properly admitted before the ALC, was cited in the Court's 2005 Opinion, and is relevant to the issues before this Court. However, Appellant acknowledges that it failed to first seek the Court's leave to file the amended. Appellant is seeking to remedy this failure through the present motion. The Appellant hereby moves this Court to accept the amended Designation of Matter it filed on April 29, 2013.

As a separate matter, under SCACR Rule 211, Appellant's final briefs were due June 3, 2013. Counsel for Appellant is embarrassed to have missed this filing deadline, but a number of factors contributed to missing the deadline. First, the briefing deadline line was inadvertently left off the office calendar. Next, counsel for Appellant was in trial preparations the week of May 27-31 for a trial that took place on June 3-4. And counsel had oral arguments before the S.C.

Supreme Court on June 5. Counsel was distracted from giving the filing deadlines attention during the week leading up to and including the filing deadline. The Appellant respectfully requests the Court's consideration of counsel's long history with the Court and consistent adherence to filing deadlines in determining whether to grant this motion to file Appellant's briefs out of time.

Appellant is enclosing an original unbound and 16 bound copies of its Final Brief and Final Reply Brief should the Court grant its motion to file out of time.

WHEREFORE, the Appellant Sierra Club requests that the Court of Appeals deny Respondents' motion to strike and grant Appellant's motion for leave to file its Amended Designation of Matter and Final Briefs out of time.

Respectfully submitted,



Amy E. Armstrong
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June 27, 2013

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Ralph King Anderson, III, Administrative Law Judge SC Court of Appeals

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

Sierra Club Petitioner/Appellant,

vs.

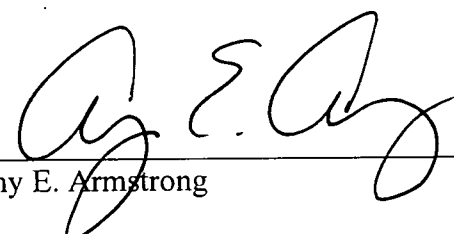
South Carolina Department of Health and Environmental Control and
Chem-Nuclear Systems, Respondents.

CERTIFICATE OF SERVICE

I hereby certify that on this date I served the foregoing **Return to Respondents' Motion to Strike and Appellant's Motion for Leave to File Amended Designation of Matter and Final Briefs Out of Time** upon counsel for the Respondents, by placing copies of same in the United State Mail, addressed to:

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June 27, 2013