

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Appeal from the Administrative Law Court  
John D. McLeod, Administrative Law Judge

---

Appellate Case No. 2013-001521

---

RECEIVED

SEP 11 2013

S.C. Supreme Court

Town of Arcadia Lakes, Robert L. Jackson, Linda Z.  
Jackson, Robert E. Williams, Barbara S. Williams,  
Elizabeth M. Walker, Louis E. Spradlin, Mary Helen  
Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron  
Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr,  
Sanford T. Marcus, Ruth L. Marcus and Steve Brown,

Petitioners,

vs.

South Carolina Department of Health and Environmental  
Control and Roper Pond, LLC,

Respondents.

---

**RESPONDENT SOUTH CAROLINA DEPARTMENT  
OF HEALTH AND ENVIRONMENTAL CONTROL'S  
RETURN TO PETITION FOR WRIT OF CERTIORARI**

---

Jacquelyn S. Dickman  
Deputy General Counsel

Stephen P. Hightower  
Assistant General Counsel

South Carolina Department of Health  
and Environmental Control  
2600 Bull Street  
Columbia, South Carolina 29201  
TEL: 803-898-3350  
FAX: 803-898-3367

Attorneys for Respondent SCDHEC

**TABLE OF CONTENTS**

Table of Authorities .....3

Questions Presented .....5

Counterstatement of the Case .....6

Arguments in Reply .....10

I. THE COURT OF APPEALS CORRECTLY HELD THAT  
ROPER POND’S PROJECT MET ALL OF THE  
CONDITIONS APPLICABLE TO THE WATER QUALITY  
CERTIFICATION ISSUED BY THE DEPARTMENT FOR  
NATIONWIDE PERMIT 29 (“NWP 29”) .....10

A. The Court of Appeals reviewed and found meritless  
each of Petitioners’ claims challenging the water  
quality certification for NWP 29.....10

B The Court of Appeals correctly rejected Petitioners’  
claims regarding challenges to the Department’s  
issuance of coverage to the project under the  
Stormwater General Permit.....14

II. THE DEPARTMENT’S INTERPRETATION OF THE  
CONDITIONS THAT IT PLACED ON NWP 29 IS  
ENTITLED TO DEFERENCE.....15

Conclusion .....17

**TABLE OF AUTHORITIES**

**Cases**

CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 716 S.E.2d 877 (2011)..... 14

Dunton v. South Carolina Board of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 132 (1987)..... 14

Etiwan Fertilizer Company v. South Carolina Tax Commission, 217 S.C. 354, 60 S.E.2d 682 (1950)..... 15

Georgetown County League of Women Voters v. Smith Land Company, LLC, 393 S.C. 350, 713 S.E.2d 287 (2011) ..... 12

Hendrix v. Eastern Distribution, Inc., 320 S.C. 218, 464 S.E.2d 112 (1995)..... 14

Media General Communications, Inc. v. South Carolina Department of Revenue, 388 S.C. 138, 694 S.E.2d 525 (2010) ..... 15

Murphy v. South Carolina Department of Health and Environmental Control and District 5 of Lexington and Richland Counties, 396 S.C. 633, 723 S.E.2d 191 (2012) ..... 15, 16

Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000)..... 14

Spectre, LLC v. South Carolina Department of Health and Environmental Control, 386 S.C. 357, 688 S.E.2d 844 (2010) ..... 12

Town of Arcadia Lakes, et al. v. South Carolina Department of Health and Environmental Control and Roper Pond, LLC, 404 S.C. 515, 745 S.E.2d 385 (Decided March 6, 2013 and Withdrawn, Substituted, and Refiled June 12, 2013) ..... 10, 11, 13, 14

**Statutes**

33 U.S.C § 1341 (2012)..... 13

6 S.C. Code Ann. Regs. 61-68 (2012) ..... 10

8 S.C. Code Ann. Regs. 61-101 (2012) ..... 6, 10, 12, 13

**Other Authorities**

South Carolina Coastal Zone Management Act..... 12

**Rules**

Rule 242(d)(4), SCACR..... 11

Rule 59(e) SCRCF ..... 14

## QUESTIONS PRESENTED

- I. DID THE COURT OF APPEALS CORRECTLY HOLD THAT ROPER POND'S PROJECT MET ALL OF THE CONDITIONS APPLICABLE TO THE WATER QUALITY CERTIFICATION ISSUED BY THE DEPARTMENT FOR NATIONWIDE PERMIT 29 ("NWP 29").
  
- II. WHETHER THE DEPARTMENT'S INTERPRETATION OF THE CONDITIONS THAT IT PLACED ON NWP 29 IS ENTITLED TO DEFERENCE.

## COUNTERSTATEMENT OF THE CASE

Respondent South Carolina Department of Health and Environmental Control (“Department”) submits this Return in response to that portion of Petitioners Town of Arcadia Lakes, *et al.* Petition for Certiorari seeking review of the “Validity of the 401 Certification and General Permit Coverage” The Department takes no position on the standing issue raised by Petitioners. Accordingly, in this Counterstatement of the Case, the Department will only present facts applicable to the substantive issues of the validity of the water quality certification and its impact on the issuance of coverage under a stormwater permit. Further, since the Department agrees with the procedural recitation set forth in the Petition the Department will not duplicate those facts in this Counterstatement of the Case. However since the background section omits several key facts with regard to the issue of the validity of 401 water quality certification, the Department’s Counterstatement of the Case will briefly set forth those facts.

### ***Background***

Respondent Roper Pond, LLC (“Roper Pond”) is the owner of a 12.75-acre tract of real property located in an unincorporated portion of Richland County. (Record (“R”) pp. 544, 555). The property is suitable for development for housing and includes 1.80 acres of jurisdictional wetlands and a pond. (R. p. 5).

On September 24, 2008, Roper Pond filed a notice of intent (“NOI”) with the Department for a proposed project to construct a multi-family residential apartment development. (R. pp. 1–2, 8, 549-50). “Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit.” 3 S.C. Code Ann. Regs 61-9.122.26(c)(1)(2012). Roper Pond sought coverage under a National Pollution Discharge Elimination System

("NPDES") General Permit for Storm Water Discharges from Large and Small Construction Activities, Permit No. SCR100000 ("Stormwater General Permit") to obtain stormwater coverage. (R. p. 8). Under the Stormwater General Permit, "[i]f a US Army Corps of Engineers' 404 Permit is required by Section 404 of the CWA Act for a permanent or temporary storm water control structures, [the Department] may not grant you . . . coverage under this CGP [(Construction General Permit)] until the Permit has been issued and is effective." (R. p. 487). Since the Roper Pond project included the filling of 0.075 acres of jurisdictional wetlands, on September 8, 2008, Roper Pond filed a Joint Federal and State Application Form with the Corps and the Department for a Nationwide Permit. (R. pp. 553-554).

At the trial, the sole witness called by Petitioners to establish that the validity of the water quality certification covering the activities for Roper Pond's project was not valid was the section manager of the Department's water quality certification program, Charles Hightower. Mr. Hightower testified that Nationwide Permits ("NWP") are federal Clean Water Act ("CWA") general permits issued by the United States Army Corps of Engineers ("Corps") to construction projects that the Corps' has determined will have minimal impacts on the water quality. (R. pp. 243-244). As with all federal permits that authorize discharges into navigable waters, the Department reviewed the NWPs pursuant to the state Water Quality Certification regulation, 8 S.C. Code Ann. Regs. 61-101 (2012) and, in 2007, issued certification decisions. (R. pp. 245-46, 255, 257, 271, 273). To address a problem that the Department was experiencing with applicants applying for and receiving successive and multiple NWPs for projects that were being completed in phases, the Department conditioned all NWPs so that the Department could "look at all the jurisdictional activities that required 404 Permits at one time rather than piecemeal the project." (R. p. 255, 285, 573). Specifically, Mr. Hightower testified as follows:

Q. Okay. Read for me Number 1.

A. 'SC DHEC considers a single or complete project to mean the overall project proposed or accomplished by a single owner/developer, and it includes all the project under single ownership. It is not interpreted to mean only land area directly impacted by each Nationwide Permit. Impacts of geographical areas of particular concern or sites or adjacent water bodies or wetlands resulting from an activity will be considered during the review of these actions.'

Q. So, it specifically says that the Department, in issuing this certification, does not consider the single and complete project to mean only the land area directly impacted by each NWP Permit? That's what it says right there, doesn't?

A. Yes, sir.

Q. And it also says that impacts – skipping over to “geographical area of particular concern”, (sic) that's a coastal term, isn't it?

A. I believe – I'm not sure. I don't know what that . . .

Q. So, “Impacts to adjacent water bodies or wetlands resulting from an activity will be considered during the review of these actions”. (sic) That's what it says, doesn't it?

A. That is what it says and the reason we put that condition on there, my understanding is, we were having applicants come in and they would apply for a coverage under a Nationwide Permit, and then they would get that one, and then as they developed a project in phases, they would come back for another Nationwide, and they would come back for another Nationwide, and the intent was that we'd look at all the jurisdictional activities that required 404 Permits at one time rather than piecemeal the projects.

(R. pp. 284-285).

Mr. Hightower also testified that the Roper Pond required a 404 permit because it intended to discharge 0.075 acres of fill into jurisdictional wetlands. (R. pp. 237-238). To obtain the 404 permit, Roper Pond filed a Joint Federal and State Application Form with the Corps and the Department. (R. pp. 235-236, 553-554). When an applicant files for a NWP, it is

the Corps that determines which NWP is applicable as the Department does not make jurisdictional determinations. (R. pp 268-270). Under the certifications, “if [a project] met [the] conditions that [the Department] placed on the [NWP] . . . [the applicant] would be granted coverage under that Nationwide.” (R. p. 283). The Corps initially determined the project should be covered by NWP 39. (R. p. 244). Subsequently, the Corps determined that the project would be covered under NWP 29. (R. p. 273). Since NWP 29, which is for residential development, and NWP 39, which is for commercial and industrial development, had the same general conditions and no special conditions, the Corps decision to change the applicable NWP had no bearing on the applicability of the 401 water quality certification. (R. pp. 247, 263-64, 267, 273).

Besides the placement of the fill in the wetlands, Roper Pond intended to excavate the pond to lower its level. The pond is not a federal navigable water and, as such, no federal permit is required for excavation. (R. p. 271-272). Since the Corps did not have regulatory authority to cover the excavation of the pond, the Department did not require an individual 401 certification for the NWP 29. (R. pp. 258-259).

## ARGUMENTS IN REPLY

**I. THE COURT OF APPEALS CORRECTLY HELD THAT ROPER POND'S PROJECT MEETS ALL OF THE CONDITIONS APPLICABLE TO THE WATER QUALITY CERTIFICATION ISSUED BY THE DEPARTMENT FOR NATIONWIDE PERMIT 29 ("NWP 29").**

**A. The Court of Appeals reviewed and found meritless each of Petitioners' claims challenging the water quality certification for NWP 29.**

Petitioners raised four claims before the Court of Appeals asserting that the 401 water quality certification issued by the Department was insufficient to satisfy the requirements necessary for a 404 permit for Roper Pond's project. In its decision, the Court of Appeals addressed each of these issues and explained why the issues were either not applicable or were meritless.

With regard to the issue that the 401 water quality certification for the NWP 29 was insufficient because Roper Pond did not disclose to the Corps that as part of the project it intended to lower the level of the on-site pond, the Court of Appeals rejected this claim by noting that although Roper Pond's initial submission to the Corps did not include information regarding the lowering of the pond, it subsequently rectified this omission by providing the information to the Corps. Specifically, the Court of Appeals found that when Roper Pond requested a corrected letter indicating that the project would be covered under NWP 29 instead of NWP 39, Roper Pond informed the Corps that it intended to dredge the pond to lower its level and that it would dispose of the removed material in the jurisdictional wetland area. Armed with this knowledge, the Corps nevertheless found that the project "would result in 'minimal individual and cumulative environmental effects' and met the conditions of NWP 29" and notified Roper Pond of this fact in writing. Town of Arcadia Lakes, et al. v. South Carolina Department of Health

and Environmental Control and Roper Pond, LLC, 404 S.C. 515, 745 S.E.2d 385, 389 and 395 (Decided March 6, 2013 and Withdrawn, Substituted, and Refiled June 12, 2013).

In regard to Petitioners' claim that the project did not comply with the requirement that NWP's require the Department to consider the impact to all land within the project boundary, the Court of Appeals found this inapplicable because the "401 certification was necessary only as a prerequisite to obtaining a 404 permit from the Corps for filling the jurisdictional wetlands," which is expressly limited by statute to applying to discharges into "navigable waters" resulting from the construction or operation of a project requiring a federal permit or license. Town of Arcadia Lakes, et al., 745 S.E.2d at 395 (quoting 33 U.S.C. § 1341(1) (2012)). Here a 401 permit was not needed to "dredge and excavate the pond" and such activity would not "result in a discharge into a navigable water." Based on this fact and Petitioners' concession that the pond did not meet the requirements for a water quality certification, the Court of Appeals found that this claim was not applicable. Town of Arcadia Lakes, et al., 745 S.E.2d at 395.

Similarly, the Court of Appeals found Petitioners' third claim was not applicable. While agreeing with Petitioners that the Department did not issue notice to Roper Pond that its project was consistent with NWP 29, the Court of Appeals found that such notice letter was only a "formality for the applicant's benefit" and that "the absence of such a letter does not mean DHEC failed to issue a water quality certification for the project." Town of Arcadia Lakes, et al., 745 S.E.2d at 395-96.

Petitioners' last claim was that the Department failed to review the project for compliance with the Water Classifications and Standards regulation, 6 S.C. Code Ann. Regs. 61-68 (2012) and the Water Quality Certification Regulation, 8 S.C. Code Ann. Regs. 61-101 (2012). This claim was also held to be not applicable. Specifically, the Court of Appeals held

that this claim and the claim regarding the impact of the draining and excavation on the pond need not be addressed because the Corps was aware of Roper Pond's plan to excavate the pond and the 401 certification for NWP 29 satisfied the certification requirement for the 404 permit needed to authorize the placement of fill in the wetlands. Town of Arcadia Lakes, et al., 745 S.E.2d at 396.

In their Petition, Petitioners only raise the second claim, the Department's lack of review of the all impacts of the project, as a ground for review by this Court. By failing to raise the other three claims raised below, Petitioners have abandoned them and are barred from raising them again. See Rule 242(d)(4), SCACR. With regard to their preserved claim, contrary to Petitioners' assertion, it does not rise to the level of a novel question of law. Rather the claim is evidence of Petitioners' lack of understanding of the 401 water quality certification process and NWPs.

As stated above, the Court of Appeals recognized the fact that the 401 certification requirement could not be extended to cover the excavation of the pond because the CWA, which authorizes a state to certify the water quality impacts of construction or operation of a project authorized by a federal permit or license is limited to projects in which the construction or operation causes a discharge into navigable waters. Town of Arcadia Lakes, et al., 745 S.E.2d at 395 (citing 33 U.S.C. § 1341(a)(1)). Indeed, as noted by the Court of Appeals, Petitioners conceded that a 404 permit was not necessary to dredge and excavate the pond, and that nothing in the record indicates that dredging and excavating activities would cause a discharge to navigable waters. Town of Arcadia Lakes, et al., 745 S.E.2d at 395.

Nevertheless, Petitioner's claim that the Court of Appeals decision is wrong because this Court's rulings in Spectre, LLC v. South Carolina Department of Health and Environmental

Control, 386 S.C. 357, 688 S.E.2d 844 (2010) and Georgetown County League of Women Voters v. Smith Land Company, LLC, 393 S.C. 350, 713 S.E.2d 287 (2011) (hereinafter referred to as “Georgetown County LWV”). Spectre is distinguishable since the Roper Pond project called for the excavation of material from the pond, not the discharge of material into the pond. Since the pond is located in an area subject to the Coastal Zone Management Act. Georgetown County LWV is distinguishable because Roper Pond is not discharging material into the pond. Thus, Spectre nor Georgetown County LWV are not applicable. Therefore, Petitioners’ claim is clearly erroneous and cannot be the basis for reviewing the Court of Appeals decision.

Petitioners also claim that the Court of Appeals decision is wrong because the Department’s authority is broader than the CWA when state law expressly grants such authority. See Georgetown County LWV. 393 S.C. at 352-53, 713 S.E.2d at 288-89. Here, the state’s water quality certification regulation expressly ties and limits the Department’s water quality review authority to an applicant’s need for the certification as part of a federal permit or license. 8 S.C. Code Ann. Regs. 61-101(A)(1) and (2).

In the absence of a situation like that in Spectre where a state statute, the Coastal Zone Management Act, expressly provides that in coastal areas the Department’s authority to conduct water quality certification review is not tied to a federal permit or license, or a situation like that in Georgetown County LWV where the project called for the discharge of fill into the isolated pond and not the removal of fill from the pond, there is no state law authorizing review of the excavation of the pond. See Georgetown County LWV. 393 S.C. at 352-53, 713 S.E.2d at 288-89. Thus, Petitioners’ claim is without merit.

Finally, Petitioners claim that the Court of Appeals decision should be reviewed because of the purported “novel question of whether the DHEC 401 certification program is broader that

the Corps' NWP approval. This claim demonstrates Petitioners' fundamental misunderstanding of the CWA 401 and 404 programs. The purpose of the 401 program is to present states with the opportunity to certify that the project of a 404 permit applicant will not impair the state's water quality standards. See 33 U.S.C § 1341(a)(1). Simply put, a state's ability to review a 404 permit is jurisdictionally limited to certification of water quality impacts caused by a discharge into navigable waters as a result of construction or operations authorized by the 404 permit. Petitioners attempt to circumvent this fact by claiming that the CWA allows states to require compliance in connection with any other provision of law must fail, because in South Carolina, the water certification regulation, 8 S.C. Code Ann. Regs. 61-101 expressly limits the Department authority to review projects pursuant to its authority to those in which an applicant has applied for a federal permit, i.e., CWA 404 permit. 8 S.C. Code Ann. Regs. 61-101(A)(2). Petitioners have failed to present any authority that would overrule this regulatory limitation. Therefore, Petitioner's claim is meritless.

**B. The Court of Appeals correctly rejected Petitioners' claims challenging the Department's coverage of the project under the Stormwater General Permit.**

Petitioners raised two claims challenging the Department's issuance of coverage under the Stormwater General Permit to Roper Pond. Each claim was easily dismissed by the Court of Appeals. The first claim, that coverage was barred because the 401 certification of the 404 permit was inadequate, was merely a restatement of Petitioners' earlier claim that the Court of Appeals had rejected, and was, therefore, again appropriately rejected. Town of Arcadia Lakes, et al., 745 S.E.2d at 396. The second claim, that the excavation of the pond and the lowering of its surface level made the pond a water control structure, which would require a separate 404 permit from the Corps and review by the Department pursuant to the water quality certification regulation, was rejected by the Court of the Appeals as not preserved for appellate review since

the issue was not specifically ruled on by the ALC and Petitioners failed to request a ruling in their motion to reconsider. Town of Arcadia Lakes, et al., 745 S.E.2d at 396 (citing Shealy v. Aiken County, 341 S.C. 448, 460, 535 S.E.2d 438, 444-45 (2000); Rule 59(e) SCRPC; Hendrix v. Eastern Distribution, Inc., 320 S.C. 218, 218, 464 S.E.2d 112, 113 (1995)).

In its Petition, Petitioners again raise the claim that the project cannot be covered under the Stormwater General Permit. This claim must fail again since, as discussed in detail above, the 401 water quality certification for the NWP 29 satisfied the water quality review for the 404 permit to place fill in the jurisdictional wetlands, which was the only federal permit needed for the construction of the project. Given this fact, nothing in the Stormwater General Permit would require the Department to deny coverage to Roper Pond for its project. Accordingly, further review of this claim is not warranted.

**II. THE DEPARTMENT'S DETERMINATION THAT THE WATER QUALITY IMPACTS FROM THE ROPER POND PROJECT WERE SATISFIED BY THE WATER QUALITY CERTIFICATION ISSUED TO NWP 29 IS ENTITLED TO DEFERENCE.**

The Court of Appeals decision should also be upheld because it comports with the Department's interpretation of the water quality certification it issued for NWP 29. The Department is authorized by the Pollution Control Act to promulgate and administer the water quality certification regulation. S.C. Code Ann. §§ 48-1-30 and 48-1-50(17). "The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 77, 716 S.E.2d 877, 882 (2011) (quoting Dunton v. South Carolina Board of Examiners in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987)). Moreover, "[a]n agency's long-standing interpretation of a statute is usually entitled to be given deference and should not be overruled by a reviewing court in the absence of cogent reasons, but

the interpretation will not be sustained if it contradicts a statute's plain language." Media General Communications, Inc. v. South Carolina Department of Revenue, 388 S.C. 138, 149, 694 S.E.2d 525, 530 (2010) (citing Etiwan Fertilizer Company v. South Carolina Tax Commission, 217 S.C. 354, 359, 60 S.E.2d 682, 684 (1950)).

Petitioner's claim that "Roper Pond does not qualify for a NWP certification because its project includes impacts on the overall project site that exceed the NWP certification" and to allow the certification to qualify would render all conditions applicable to NWPs to be superfluous. (Petition pp. 19, 22). This claim is neither supported by the facts nor the law. During the trial, Petitioners sought and received the Department's interpretation of the certification that it placed on all NWPs. The section manager who supervises the Department's water quality review section, Mr. Hightower testified that the reason the Department conditioned all NWPs was to "look at all the jurisdictional activities that required 404 Permits at one time rather than piecemeal the project." (R. p. 255, 285, 573). Petitioners presented no other evidence to contravene this interpretation of the Department's certification. Instead, Petitioners argued to the Administrative Law Court that it should reject Mr. Hightower's interpretation on the ground that only statements by the South Carolina Board of Health and Environmental Control are entitled to deference. (See R. p. 294). This argument is no longer valid. In Murphy v. South Carolina Department of Health and Environmental Control and District 5 of Lexington and Richland Counties, 396 S.C. 633, 723 S.E.2d 191 (2012), this Court granted deference in a case dealing with the 401 water quality certification regulation to the permit review's interpretation of the undefined regulatory term, "vicinity of the project" because the interpretation was reasonable and consistent with the plain language of the regulation. Id. 396 S.C. at 640-41, 721 S.E.2d at 125. Here, the reason for granting deference is even greater than

that in Murphy. The Department staff is interpreting a permit condition it drafted and must enforce. Only the staff has the institutional knowledge necessary to place the language into context, particularly since it would be the Department that would enforce the provisions of the certification. Accordingly, the Department's determination that the general condition meant to address segmentation of projects is not applicable to the Roper Pond case is entitled to deference.

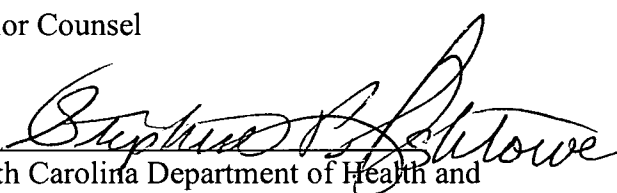
**CONCLUSION**

For the foregoing reasons stated above, Respondent South Carolina Department of Health and Environmental Control would respectfully ask this Court to deny the Petition for Writ of Certiorari.

Jacquelyn S. Dickman  
Deputy General Counsel

Stephen P. Hightower  
Assistant General Counsel

Roger P. Hall  
Senior Counsel

By:   
South Carolina Department of Health and  
Environmental Control  
2600 Bull Street  
Columbia, South Carolina 29201  
TEL: 803-898-3350  
FAX: 803-898-3367

Attorneys for Respondent SCDHEC

September 11, 2013  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

RECEIVED

SEP 11 2013

Appeal from the Administrative Law Court  
John D. McLeod, Administrative Law Judge

---

S.C. Supreme Court

Appellate Case No. 2013-001521

---

Town of Arcadia Lakes, Robert L. Jackson, Linda Z.  
Jackson, Robert E. Williams, Barbara S. Williams,  
Elizabeth M. Walker, Louis E. Spradlin, Mary Helen  
Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron  
Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr,  
Sanford T. Marcus, Ruth L. Marcus and Steve Brown,

Petitioners,

vs.

South Carolina Department of Health and Environmental  
Control and Roper Pond, LLC,

Respondents.

---

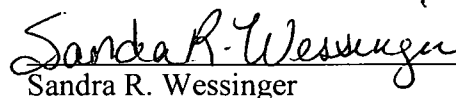
**CERTIFICATE OF SERVICE**

---

I, Sandra R. Wessinger, for the South Carolina Department of Health and Environmental Control, hereby certify that I have on this **11th day of September, 2013**, served a copy of *Respondent South Carolina Department of Health and Environmental Control's Return to Petition for Writ of Certiorari* upon all parties and counsel of record in the above-captioned case, via United States Mail, First Class, postage prepaid, addressed as follows:

Amy E. Armstrong, Esquire  
SC Environmental Law Project  
Post Office Box 1380  
Pawley's Island, South Carolina 29585

W. Thomas Lavender, Jr., Esquire  
Nexsen Pruet  
Post Office Box 2526  
Columbia, South Carolina 29202

  
Sandra R. Wessinger

September 11, 2013  
Columbia, South Carolina