

Exhibit-A

February 14, 2025 Notice of Appeal

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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | | |
|--|---|------------------------------|
| Walter Buchanon, |) | Docket No. 24-ALJ-07-0367-CC |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | ORDER OF DISMISSAL |
| |) | |
| South Carolina Department of |) | |
| Environmental Services and Silfab Solar, |) | |
| |) | |
| Respondents. |) | |
| _____ |) | |

This matter is before the South Carolina administrative Law Court (Court) pursuant to a Joint Motion to Dismiss (Motion) filed by the South Carolina Department of Environmental Services (Department) and Silfab Solar (Silfab) (collectively, Respondents) on November 27, 2024. As of the date of this Order, Petitioner has not filed a response to the Motion. Pursuant to Rule 19 of the Rules of Procedure of the South Carolina Administrative Law Court (SCALC Rules), “[f]ailure of a party to timely file a response may be deemed a consent by that party to the relief sought in the motion or petition.” As a result, the Court finds that Petitioner’s failure to respond is deemed consent to the relief sought by Respondents. Accordingly, as explained further below, Respondents’ Motion to Dismiss is granted.

BACKGROUND

On March 1, 2024, the Department’s predecessor,¹ the South Carolina Department of Health and Environmental Control (DHEC), issued an air quality permit to Silfab for the construction of solar cell and panel production facility in Fort Mill, South Carolina. Specifically, the permit authorizes construction of solar cell and module manufacturing equipment and processes, associated chemical storage tanks, and an emergency generator, and also establishes applicable emission limits, source testing, monitoring, recordkeeping, and reporting requirements. Under the issued permit, facility equipment and operations includes, emissions of hydrochloric

¹ On July 1, 2024, the South Carolina Department of Health and Environmental Control (SCDHEC) was abolished and the administrative authority to regulate permits pursuant to the National Pollutant Discharge Elimination System Permit Program (NPDES) was transferred to the newly-created South Carolina Department of Environment Services (SCDES). See Act No. 60, 2023 S.C. Acts, 302-27 (implementing government agency restructuring); S.C. Code Ann. § 1-30-140 (Westlaw Edge through 2024 Act No. 210).

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with the applicable standards. Importantly, the letter notes that, because the updated parameters were submitted in accordance with Section I.1 of the facility's permit, a construction permit revision was not required and was not being issued.

On August 14, 2024, Petitioner, on his behalf and on the behalf of others, filed a Petition for Review (Petition) to the Department seeking review of the Department's July 30 letter. Two days later, the Department's general counsel notified Petitioner, through his counsel, that DHEC was abolished, and that the review process previously available before the DHEC Board under section 44-1-60 was no longer applicable.

Petitioner then filed a request for contested case hearing form with this Court as well as an Agency Information Sheet and Notice of Appearance on September 9, 2024.^{3,4} However, the form did not specifically identify the intended Petitioner(s) and identified only the submitting attorney, Mr. J. Cameron Halford, by name. In addition to those documents, Petitioner submitted the Department's March 1, 2024 decision issuing the permit to Silab, its August 14 Petition to the Department and the Department's August 16 letter to its Petition. Yet, in its actual request, Petitioner claims to be seeking review of only an unnamed July 30, 2024 "decision" because it resulted in a "violation of substantive due process and error of law denying proper notice and opportunity to be heard, thus denying contested case status," pursuant to the South Carolina Constitution. Moreover, the contested case form did not include an original signature and the filing of the Agency Information Sheet was improper as the agency, the Department in this case, is responsible for its filing. As a result, on September 10, 2024, the ALC Clerk of Court (Clerk) sent a memorandum to Petitioner explaining the signature deficiency, the Agency Information Sheet was also returned. Then, on October 5, 2024, Petitioner corrected the deficiency.⁵ The case was then assigned on October 16, 2024.

³ Curiously, the "Agency Information Sheet and Notice of Appearance" erroneously filed on behalf of the Petitioner on August 29, 2024, identified Andy Lytle, Dave Phelps, Garry Griffith, and Carolina Land as putative "appellants." However, Petitioner's cover letter indicates Walter Buchanon as the only Petitioner.

⁴ The documents were dated August 29, 2024; however, the Court did not receive them until September 9, 2024. See SCALC Rule 4.

⁵ Although Respondents believe it was filed on September 9, 2024, it was filed on October 5, 2024. When the Clerk sent the memorandum, the Clerk also returned the original request for contested case hearing form that had already been stamped as filed on September 9. Petitioner then resubmitted this form by placing a wet signature on top of the original form. To avoid confusion, the Clerk file stamped the cover letter that Petitioner included with the resubmission, thus indicating the filing was perfected on October 5, 2024.

Constitution of the State of South Carolina, 1895, to be determined by an agency or the Administrative Law Court after an opportunity for hearing. S.C. Code Ann. § 1-23-505(3) (Supp. 2024).

Here, Petitioner's request challenges the Department's July 30th letter which acknowledged Silfab's review and update of its modeling data. Notably, the letter did not issue or modify Silfab's permit. Rather, it merely memorialized that Silfab's April 17, 2024 permit remained in compliance with applicable standards. In addition, the regulations which implement the licensing and review of Silfab's permit do not provide for a contested case hearing for review of updated modeling parameters. In fact, to the contrary, Standard 8 within the regulations and Condition I.1 of the permit itself expressly address modeling parameter changes by requiring the facility to conduct a review to verify continued compliance.

Because Silfab's submission of the updated air dispersion modeling analysis did not trigger a legal duty for the Department to review or issue a final decision regarding the facility review, the Department's July 30th letter cannot be described as a "contested case" as defined under the Administrative Procedures Act (APA). *Amisub of SC, Inc. v. S.C. Dep't of Envtl. Control*, 403 S.C. 572, 596, 743 S.E.2d 786 (2013) (holding letter from DHEC did not give rise to final agency decision subject to a contested case proceeding because DHEC owed no legal duty to issue staff decision). As a result, this Court does not have jurisdiction to review Petitioner's challenge to the July 30 letter. *See* § 1-23-600(D).

Still, Petitioner claims a right to a contested case based on Article 1, Section 3 and Section 14 of the South Carolina Constitution⁷ in his request for review before this Court. Article I, Section 3 of the South Carolina Constitution provides that "[t]he privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be

contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act. Notwithstanding Section 1-23-600(H)(1), the entirety of Section 1-23-600(H) shall apply to timely requests for a contested hearing of decisions from the Department of Environmental Services. The court shall give consideration to the provisions of Section 1-23-330 regarding the department's specialized knowledge.

S.C. Code Ann. § 48-6-30(D)(2) (Supp. 2024) (emphasis added).

⁷ Article 1, Section 14 of the South Carolina Constitution provides for the right of a trial by jury, however, this Court does not hear jury trials.

IT IS THEREFORE ORDERED that the Respondents' Motion to Dismiss is **GRANTED**, and these matters are **DISMISSED** with prejudice.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

December 23, 2024
Columbia, South Carolina

Petitioner had until August 29, 2024, thirty days after electronic mailing of the letter, to file its request. However, Petitioner did not perfect its request for a contested case until October 5, 2024, thus making it untimely.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Walter Buchanan,)
)
) Petitioner,)
)
) v.)
)
) South Carolina Department of)
) Environmental Services and Silfab Solar,)
)
) Respondents.)
)

Docket No. 24-ALJ-07-0367-CC

**ORDER DENYING MOTION
FOR RECONSIDERATION**

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Feb 14 2025

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Motion for Reconsideration (Motion) filed by Walter Buchanan (Petitioner) on January 2, 2025. This Court previously issued an Order of Dismissal on December 23, 2024, granting a Joint Motion to Dismiss filed by the South Carolina Department of Environmental Services¹ (DES or Department) and Silfab Solar (Silfab). Importantly, Petitioner failed to respond to the Department's Motion to Dismiss. *See* SCALC Rule 19 (“[f]ailure of a party to timely file a response may be deemed a consent by that party to the relief sought in the motion or petition.”).

Now, in its Motion, Petitioner requests the Court reconsider its legal analysis under the guise of the discovery of new evidence. On January 10, 2025, Silfab filed its Response to the Motion.

For the reasons stated below, Petitioner's Motion is denied.

DISCUSSION

As grounds for his Motion for Reconsideration, Petitioner cites to Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRCP). Rule 59(e), SCRCP, provides for the timeframe to file a motion to alter or amend the judgment in Circuit Court, which is inapplicable to this case. *See* SCALC Rule 68 (“the South Carolina Rules of Civil Procedure and the South Carolina Appellate Court Rules, in contested cases and appeals respectively, may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules.”).

¹ Prior to July 1, 2024, the Department was recognized as the Department of Health and Environmental Control. South Carolina Act No. 60 of 2023 and section 1-30-140 of the South Carolina Code (Westlaw Edge through 2024 Act No. 210).

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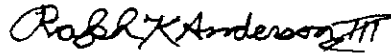
motion or petition." Enforcement of court rules is ordinary practice and thus, I find Petitioner's argument unavailing.

Accordingly, Petitioner's Motion is denied.

ORDER

IT IS THEREFORE ORDERED that Petitioner's Motion for Reconsideration is **DENIED**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

January 17, 2025
Columbia, South Carolina

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SC Court of Appeals

South Carolina Administrative Law Court
Attn: Mrs. Stephanie Perez
Law Clerk to Ralph King Anderson III
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: ALC Case No. 24-ALJ-07-0367-C
Walter Buchanan v. South Carolina Department of Environmental
Services, and Silfab Solar, Inc.

Dear Sir or Madame :

Please find attached for filing the Notice of Appeal in the above entitled matter, along with exhibits and return stamped envelope. Kindly return a clocked copy in the envelope provided. Thank you for your assistance.

With regards, I remain

Respectfully,


J. Cameron Halford
Attorney for Appellant Walter Buchanan

JCH:jal
Enclosures/attachments
cc: Sarah V. Martinez, Esq. – SCDES
cc: Ethan R. Ware, Esq. – Silfab Solar, Inc.