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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Docket Nos. 24-ALJ-07-0266-CC, 24-ALJ-07-0267-CC

South Carolinians for Responsible Agricultural Practices, ……. Appellant,

v.

South Carolina Department of Environmental Services, Jim Young, d/b/a J. Young Broilers, Heath Coggins, and d/b/a Heath Coggins Broilers ……. Respondents.

NOTICE OF APPEAL

South Carolinians for Responsible Agricultural Practices hereby appeals the Order of Dismissal issued by the Honorable Ralph King Anderson, III, Chief Administrative Law Judge, on December 13, 2024 and received by Appellant on December 13, 2024. Appellant also includes in this Notice of Appeal the Order Denying Motion for Reconsideration issued by the Honorable Ralph King Anderson, III on January 17, 2025 and received by Appellant on January 17, 2025.

s/ Emily S. Poole
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PROOF OF SERVICE

I hereby certify that on this date I served the foregoing Notice of Appeal upon the Administrative Law Court and the Respondents by U.S. Mail and with electronic notification, distributed to the following:

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolinians for Responsible Agricultural Practices, Petitioner, v. South Carolina Department of Environmental Services, Jim Young d/b/a J. Young Broilers, Respondents.	Docket No. 24-ALC-07-0266-CC **ORDER OF DISMISSSAL**
South Carolinians for Responsible Agricultural Practices, Petitioner, v. South Carolina Department of Environmental Services and Heath Coggins Broilers, Respondents.	Docket No. 24-ALC-07-0267-CC

This matter is before the South Carolina administrative Law Court (Court) pursuant to a Motion to Dismiss (Motion) filed by Jim Young d/b/a J. Young Broilers and Heath Coggins Broilers (collectively, Respondents) on October 22, 2024. On December 3, 2024, a hearing on the Motion was held at the Court's offices in Columbia, South Carolina.[1] After reviewing the filings and the law in this case, Respondents' Motion to Dismiss is granted.

BACKGROUND

These cases originally came before the Court pursuant to separate requests for contested case hearings filed by Petitioner challenging decisions by the Department of Environmental

[1] The Court notes that during the hearing, the Department explained it took no position on the Motion.

Services[2] (DES or Department) in which it issued separate permits to Respondent Young and Respondent Coggins to construct and operate no-discharge agricultural animal facilities at the Respondents' respective locations, in Laurens County, South Carolina. The permits each authorized Respondent Young and Respondent Coggins to construct eight new broiler houses that can hold a maximum of 264,000 birds at any one time.

DISCUSSION

Respondents argue the cases should be dismissed because the Court lacks subject matter jurisdiction. More specifically, Respondents assert that subsection 48-6-40(D)(2) of the South Carolina Code (Supp 2024) functions to limit this Court's subject matter jurisdiction, precluding it from reviewing any case when the "proposed building footprint is located eight hundred feet or more from the facility owner's property line or located one thousand feet or more from an adjacent property owner's residence." *See* § 48-6-40(D)(2). In the alternative, Respondents argue the matter should be dismissed because Petitioner lacks statutory standing as an affected person under subsection 48-6-40(E) of the South Carolina Code (Supp. 2024).

Conversely, Petitioner argues that the requirements set forth under subsection 48-6-40(D)(2) of the South Carolina Code do not preclude this Court from reviewing this case. First, Petitioner contends these matters involve a general class of cases which the Court has jurisdiction to hear. Next, Petitioner asserts that since "affected person" includes property owners "within a one-mile radius of the proposed building footprint or permitted poultry facility," its members are affected persons and thus, the Court has jurisdiction to hear the matter. Petitioner further asserts that to construe section 48-6-40 of the South Carolina Code as a jurisdictional bar would undermine the Legislature's broader intent to allow affected persons and persons entitled to notice an opportunity to have their concerns heard and determined by this Court.

Does the Court have Subject Matter Jurisdiction?

"Subject matter jurisdiction is the power a court has to hear cases in the general class to which the proceedings in question belong." *McCain v. Briehtharp*, 399 S.C. 240, 247, 730 S.E.2d 916, 919 (Ct. App. 2012). This Court, as a creation of statute, only has those powers statutorily granted to it. *See, e.g.*, *S.C. Dep't of Consumer Affairs v. Foreclosure Specialists, Inc.*, 390 S.C.

[2] Prior to July 1, 2024, the Department was restructured 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),

182, 186, 700 S.E.2d 468, 470 (Ct. App. 2010) ("The statutes do not grant the Department or the ALC authority to exceed their statutorily granted powers."); *Responsible Econ. Dev. v. S.C. Dep't of Health & Envt'l. Control*, 371 S.C. 547, 553, 641 S.E.2d 425, 428 (2007) ("As a creature of statutes, regulatory bodies like DHEC have only the authority granted them by the legislature."). With the exception of specific statutory exceptions, this Court has subject matter jurisdiction "over all appeals from final decisions of contested cases pursuant to the Administrative Procedures Act, Article I, Section 22, Constitution of South Carolina, 1895, or another law." S.C. Code Ann. § 1-23-600(A) of the South Carolina Code (Supp. 2024). A "contested case" is a proceeding in which the legal rights, duties, or privileges of a party are required by law or by Article I, Section 22, 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).

The General Assembly passed 2018 Act No. 139, which added section 44-1-65 to the Code of Laws "to establish specific requirements for the review and appeal of" Department decisions on permits for agricultural facilities, excluding swine facilities. Act No. 139, 2018 S.C. Act 139, *repealed by* Act 60, 2023 S.C. Laws Act 60.[3] Subsection 48-6-40(A) of the South Carolina Code (Supp. 2024) authorizes the Department to render decisions on permits of poultry facilities, such as the Department decisions at issue in these cases. Additionally, if "[a]n applicant, permittee, licensee, or affected person" disagrees with the Department's actions, the person may request a contested case hearing before this Court. S.C. Code Ann. § 48-6-40(D)(1) (Supp. 2024). Although subsection 48-6-40(D)(2) further provides that a decision to issue a permit, "may not be contested if the proposed building footprint is located eight hundred feet or more from the facility owner's property line or located one thousand feet or more from an adjacent property owner's residence," subsection 48-6-40(D)(2) sets forth a procedural limitation to this Court's jurisdiction. It does not, however, limit the subject matter jurisdiction of this Court to hear matters involving disputes over the approval of a permit for agricultural animal facilities. *See Betty Ann Allison v. W.L. Gore & Assoc.*, 394 S.C. 185, 714 S.E.2d 547 (2011) (holding question of compliance with rules, regulations, and statutes governing an appeal is matter of appellate jurisdiction, not subject matter jurisdiction). I therefore find this Court has subject matter jurisdiction to hear and determine cases

[3] Act 60 recodified section 44-1-65 of the South Carolina Code as section 48-6-60 of the South Carolina Code (Supp.2024), effective July 1, 2024.

of the general class to which this proceeding belongs. *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 507 (2004) (quoting *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 238, 442 S.E.2d 598, 600 (1994)).

Nevertheless, the question remains, what was the Legislature's intent in promulgating subsection 48-6-40(D)(2)? As will be addressed further below, subsections 48-6-40(D)(2) functions to limit the decisions which an affected person can contest before this Court.

Standing

Standing is a fundamental prerequisite to instituting an action and, it may exist by statute, through the principles of constitutional standing, or through the public importance exception. *Freemantle v. Preston,* 398 S.C. 186, 192, 728 S.E.2d 40, 43 (2012). "Statutory standing exists, as the name implies, when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation." *Youngblood v. South Carolina Dep't of Social Serv*., 402 S.C, 311, 317, 741 S.E.2d 515, 518 (2013). "When no statute confers standing, the elements of constitutional standing must be met. *Id.* To establish constitutional standing, a party must 1) have suffered an injury-in-fact which is a concrete, particularized, and actual or imminent invasion of a legally protected interest, 2) there must be a causal connection between the injury and the challenged conduct and, 3) it must be likely that a favorable decision will redress the injury. *ATC South, Inc. v. Charleston Cnty.,* 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008) (quoting *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)).

Statutory Standing

Respondents argue that Petitioner has failed to establish statutory standing as an affected person since it does not meet the definition under subsection 48-6-40(E) of the South Carolina Code (Supp. 2024). Petitioner nonetheless contends it has statutory standing to bring this case before the Administrative Law Court because they are "affected persons" as defined under subsection 48-6-40(E).

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Statutes must be read as a whole and sections that are part of the same general statutory scheme must be construed together and each given effect, if reasonable. *Higgins v. State,* 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992). "When a statute's terms are clear and unambiguous on their face, there is no room for

statutory construction, and a court must apply the statute according to its literal meaning." *Univ. of S. California v. Moran,* 365 S.C. 270, 276, 617 S.E.2d 135, 138 (Ct.App. 2005). Furthermore, "[t]he various provisions of an act should be read so that all may, if possible, have their due and conjoint effect without repugnancy or inconsistency." *Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass'n*, 424 S.C. 542, 549, 819 S.E.2d 124,

Subsection 48-6-40(E) of the South Carolina Code sets forth that for purposes of addressing decisions by the Department concerning a permit, license, certification, or other approval of a poultry facility, an "affected person" is:

> a property owner **with standing** within a one mile radius of the proposed building footprint or permitted poultry facility . . ., who is challenging on his own behalf the permit, license, certificate, or other approval for the failure to comply with the specific grounds set forth in the applicable department regulations governing the permitting of poultry facilities and other animal facilities, other than swine facilities.

(Emphasis added).[4] Accordingly, the General Assembly expressly requires that to be an "affected person" a property owner must have **standing** and that standing be a criteria for appealing Department decisions on permits for agricultural facilities. *See* Act No. 139, 2018 S.C. Act 139, *repealed by* Act 60, 2023 S.C. Laws Act 60.

In *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 600–01, 550 S.E.2d 287, 291 (2001) (internal citations removed), the South Carolina Supreme Court held that:

> [t]o have standing, one must have a personal stake in the subject matter of the lawsuit. In other words, one must be a real party in interest. A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action." A private person does not have standing unless he has sustained, or is in immediate danger of sustaining, prejudice from an executive or legislative action.

Subsection 48-6-40(D)(1) of the South Carolina Code, also requires that a person must be "aggrieved" to request a contested case before the Administrative Law Court challenging the approval of a poultry facility, *See* Act No. 139, 2018 S.C. Act 139. While the term is not defined by statute, it ordinarily means "suffering from an infringement or denial of legal rights." *Aggrieved*, Merriam-Webster, https://www.merriam-webster.com/dictionary/aggrieved, (last

[4] *See* S.C. Code Ann. Regs. 61-43, Part 50 (Supp. 2024) (similarly defining affected persons as a property owner with standing, within a one mile radius of the proposed building footprint or permitted poultry facility).

visited December 9, 2024). *E.g.*, Branch v. City of Myrtle Beach, 340 S.C. 405, 532 S.E.2d 289 (2000) ("When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning."). Hence, since only aggrieved persons can request a contested case, it is evident that subsection 48-6-40(D)(2) of the South Carolina Code was intended to further explain that an infringement does not occur if "the proposed building footprint is located eight hundred feet or more from the facility owner's property line or located one thousand feet or more from an adjacent property owner's residence." In other words, the Legislature established a limitation as to when a person is considered "aggrieved" for purpose of section 48-6-40.[5] *See* §§ 48-6-40(D)(1)-(2); *see also Hinton v. S.C. Dep't of Prob., Parole and Pardon Servs.,* 357 S.C. 327, 332–33, 592 S.E.2d 335, 338 (Ct.App.2004), *cert. granted* (Jan. 7, 2005) (citing *S. Mut. Church Ins. Co. v. South Carolina Windstorm & Hail Underwriting Ass'n*, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991)); ("The terms must be construed in context and their meaning determined by looking at the other terms used in the statute.").

In conclusion, to discern whether Petitioner has statutory standing as an affected person the meaning of subsections 48-6-40(D) and (E) must be read as a whole. See *Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass'n*, 424 S.C. 542, 549, 819 S.E.2d 124, 128 (2018) quoting *Crescent Mfg. Co. v. Tax Comm'n*, 129 S.C. 480, 124 S.E. 761 (1924) ("The various provisions of an act should be read so that all may, if possible, have their due and conjoint effect without repugnancy or inconsistency."). Reading subsections 48-6-40(D) and (E) together, it is clear that a party is aggrieved, and thus able to establish standing, to challenge a decision approving a poultry facility, only if the proposed building footprint is located less than eight hundred feet from the facility owner's property line or located less than one thousand feet or more from an adjacent property owner's residence.

In this case, Petitioner does not contend the proposed building footprint is located less than eight hundred feet from the facility owner's property line or that the facilities are less than one thousand feet from a member's residence. Specifically, Adam Gaines attested that the Young and Coggins facilities are each 800 feet or more from the facility owner's property line. Moreover, it is undisputed that the closest residence to the Young facility is approximately 2,454 feet and 2,901

[5] Notably, Petitioner conceded during the hearing that this was a reasonable interpretation of the statute.

feet to the Coggins facility. Since Petitioner was not aggrieved by the Department's decision, it does not have a "real, material, or substantial interest in the subject matter of the action" and, therefore, cannot establish statutory standing as an affected person under subsection 48-6-40(E) of the South Carolina Code. *Sea Pines Ass'n for Prot. of Wildlife,* 345 S.C. at 600–01, 550 S.E.2d at 291.

Constitutional Standing

Petitioner argues that even if it does not possess statutory standing, it possesses constitutional standing to challenge the Department's decision under article I, sections 3 and 22 of the South Carolina Constitution.

Article I, Section 3

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 denied the equal protection of the laws. Petitioner alleges its constitutional rights to due process would be violated if subsection 48-6-40(D)(2) is applied to prevent its members of an opportunity to be heard. However, other than the statutory provisions granting affected persons the right to challenge the issuance of a permit pursuant to section 48-6-40, Petitioner failed to explain to this Court during the hearing what legally protected right was denied in deprivation of its constitutional due process rights.

Importantly, "the interests protected by the due process clause are defined not by the Constitution, but by independent sources, such as state law." *James Acad. of Excellence v. Dorchester Cnty. Sch. Dist. Two*, 376 S.C. 293, 657 S.E.2d 469 (2008) (citing U.S.C.A. Const. Amend. 14). In cases such as this, the right to administrative review arises purely from the criteria set forth under section 48-6-40. As discussed above, the Legislature did not intend to create a private right of action when "the proposed building footprint is located eight hundred feet or more from the facility owner's property line or located one thousand feet or more from an adjacent property owner's residence." § 48-6-40(D)(2); *see also, e.g., Kubic v. MERSCORP Holdings, Inc.*, 416 S.C. 161, 168, 785 S.E.2d 595, 599 (2016) ("The main factor in determining whether a statute gives rise to a private cause of action is legislative intent, which is determined primarily from the language of the statute"). While Petitioner's members may believe that the permitting decisions represent an imminent and concrete threat to interests which should be safeguarded, Petitioner's

failure to point to a legally protected interest leads me to conclude that there were no due process rights implicated by the Department's actions. Indeed, the practical implication of finding otherwise would be that every statute requiring Department action would automatically give rise to a right to administrative review. *Cf. Tant v. S.C. Dep't of Corrections*, 408 S.C. 334,341, 759 S.E.2d 398 (2014) (holding that violation of due process hinges on inquiry into whether interest involved can be defined as liberty or property within the meaning of the due process clause); *U.S. Rubber Co. v. McManus*, 211 S.C. 342, 350, 45 S.E.2d 335, 338 (1947) (due process rights only vest when they are absolute, complete, and unconditional, and not dependent upon future act, contingency, or decision); *Hamilton V. Bd. of Tr. of Oconee Cty. Sch. Dist*., 282 S.C. 519, 525, 319 S.E.2d 717, 721 (Ct. App. 1984) (property interests are not created by Constitution but are created and defined by independent sources such as state law). Accordingly, I find that Petitioner has failed to establish constitutional standing under article 1, section 3.

Article 1, section 22

Article 1, section 22 of the South Carolina Constitution requires that:

> [n]o person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency **affecting private rights** except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.

(Emphasis added). Undeniable article 1, section 22 of the South Carolina Constitution affords procedural due process in the administrative context. Nonetheless, the fundamental guarantees of notice, an opportunity to be heard in a meaningful way, and judicial review are only guaranteed if a person's private rights have been bound by an administrative decision. *See Amisub of South Carolina v. South Carolina Dep't of Envt. Control*, 389 S.C. 380, 392, 699 S.E.2d 146, 153 (2013) (holding failure to establish private right precludes protections under Article I, Section 22); *see* 16C C.J.S. Constitutional Law §1895 (Dec. 2024 Update) ("[A]n interest in property which is protected by due process arises only when there is a legitimate claim of entitlement, as created and defined by independent sources, and a person clearly must have more than an abstract need or desire for it, and the person must have more than a unilateral expectation of it."); *cf. Stono River Env't Prot. Ass'n v. S.C. Dep't of Health and Env't Control*, 305 S.C. 90, 406 S.E.2d 340 (1991) (Appellant entitled to due process protections where Department abandoned procedures for review without notice to parties), *and League of Women Voters of Georgetown Cty. v. Litchfield-by-the-*

Sea, 305 S.C. 424, 427, 409 S.E.29 378, 380 (1991) (holding League, who petitioned for public hearing, was entitled to due process at all stages of the application process). While Petitioner may believe it is entitled to due process, Petitioner has pointed to no private right aside from the fundamental right to due process. Since Petitioner has failed to show this Court that it has a private right to request a contested case, I find that Petitioner has, in turn, failed to establish an interest that warrants due process protections under article 1, section 22 of the South Carolina Constitution. *See*. *S.C. Ambulatory Surgery Ctr. Ass'n v. S.C. Workers' Comp. Comm'n*, 389 S.C. 380, 699 S.E.2d 146 (2010) (quoting 16C C.J.S. Constitutional Law § 1516 (2010) ("[A]n interest in property which is protected by due process arises only when there is a legitimate claim of entitlement, as created and defined by independent sources, and a person clearly must have more than an abstract need or desire for it, and the person must have more than a unilateral expectation of it.")).

Associational Standing

Respondents further assert that subsection 48-6-40(E) of the South Carolina Code precludes Petitioner from seeking associational standing. In its most basic sense, associational standing recognizes an organization's right to bright suit on behalf of its members. Associational standing acknowledges that persons often join organizations to create an effective vehicle for vindicating shared interests and that associational representation can promote judicial economy and efficiency by avoiding repetitive and costly independent actions and allows members who would have standing to pool resources to further a complete and vigorous litigation of the issues. *Georgetown Cnty. League of Women Voters v. Smith Land Co*., 393 S.C. 350, 360, 713 S.E.2d 287, 292 (2011). The South Carolina Supreme Court has recognized that an organization can bring suit on behalf of its members when:

> (1) at least one member would otherwise have standing, statutory, constitutional, or otherwise, to sue in his or her own right, (2) the interests at stake are germane to the organization's purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Pres. Soc'y of Charleston v. S.C. Dep't of Health & Env't Control, 430 S.C. 200, 210 845 S.E.2d 481, 486 (2020). As discussed above, Petitioner has failed to establish that at least one of its members has standing—statutory, constitutional, or otherwise—to challenge this permit. *See Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 617, 703 S.E.2d 221, 225 (2010) ("[A]n appellate issues when disposition of a prior issue is dispositive ....").

Moreover, subsection 48-6-40(E) adds an additional criterion that to be an "affected person," the property owner, must be challenging the permit or other approval "on his own behalf." Notably, Merriam-Webster defines "own" as "belonging to oneself or itself —usually used following a possessive case or possessive adjective." *See Own*, Merriam-Webster, https://www.merriam- webster.com/dictionary/own (last visited on December 9, 2024). This certainly reflects that a challenge to the permit must be bought specifically by the property owner. This is especially true in light of the presumption that the Legislature must have intended "to accomplish something by its choice of words and would not do a futile thing." *Gordon v. Phillips Utilities, Inc.*, 362 S.C. 403, 406, 608 S.E.2d 425, 427 (2005).

Furthermore, several cases acknowledging an association's right to bring cases for their members, implicitly recognize that the association's challenge was brought on behalf of its members. *See Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n,* 407 S.C. 67, 75–76, 753 S.E.2d 846, 850 (2014) ("[A] plaintiff that is an association may possess standing by virtue of associational standing on behalf of its members if one or more of its members will suffer an individual injury by virtue of the contested act."); *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 600–01, 550 S.E.2d 287, 291 (2001) ("When an organization is involved, the organization has standing on behalf of its members if one or more of its members will suffer an individual injury by virtue of the contested act."). On the contrary, here, since Petitioner's members do not have a "real, material, or substantial interest in the subject matter of the action," Petitioner could not bring suit on behalf of its members *Sea Pines Ass'n for Prot. of Wildlife,* 345 S.C. at 600–01, 550 S.E.2d at 291.

Conclusion

In conclusion, the Legislature enacted subsection 48-6-40 of the South Carolina Code to establish specific requirements for the review and appeal of Department decisions on permits for agricultural facilities, other than swine. § 48-6-40 (originally enacted as Act No. 139, 2018 S.C. Act 139). Subsections 48-6-40(D)(1)-(2) create a restriction on a party's right to seek administrative review, eliminating the right when "the proposed building footprint is located eight hundred feet or more from the facility owner's property line or located one thousand feet or more from an adjacent property owner's residence." Because Respondents' facilities are each 800 feet or more from the facility owner's property line and since Petitioner's have failed to show that its members have residences within 1,000 feet of the proposed building footprint of either facility, it

lacks statutory standing. Moreover, aside from the constitutional right to due process and equal protection of the laws, Petitioner has failed to set forth with particularity a private right that has been affected by the Department's decision. As such, Petitioner has failed to establish constitutional standing under either article 1, section 3 or section 22. Since Petitioner lacks standing to pursue its claim, I need not address its remaining arguments that subsection 48-6-40(D) draws an arbitrary classification.[6]

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 13, 2024
Columbia, South Carolina

[6] To the extent Petitioner may have intended to raise a facial challenge to the statute, this Court cannot entertain such challenges. *Travelscape v. S.C. Dep't of Revenue*, 391 S.C. 89, 109, 705 S.E.2d 28, 39 (2011).

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

Stephanie Perez
Judicial Law Clerk

December 13, 2024
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolinians for Responsible Agricultural Practices, Petitioner, v. South Carolina Department of Environmental Services, Jim Young d/b/a J. Young Broilers, Respondents.	)	Docket No. 24-ALC-07-0266-CC **ORDER DENYING MOTION FOR RECONSIDERATION**
South Carolinians for Responsible Agricultural Practices, Petitioner, v. South Carolina Department of Environmental Services and Heath Coggins Broilers, Respondents.	)	Docket No. 24-ALC-07-0267-CC

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Motion for Reconsideration (Motion) filed by the South Carolinians for Responsible Agricultural Practices (Petitioner or SCAP) on December 20, 2024. *See* SCALC Rule 29(D). This Court previously issued an Order of Dismissal on December 13, 2024, granting a Motion to Dismiss filed by Jim Young d/b/a J. Young Broilers and Heath Coggins Broilers (collectively, Respondents). On January 9, 2025, the South Carolina Department of Environmental Services[1] (DES or Department) and Respondents filed its Response to the Motion.[2]

[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).

[2] Upon the consent of Petitioner, the Court granted Respondents' an extension to file its response.

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

DISCUSSION

Pursuant to SCALC Rule 29(D), a party may move for reconsideration of a final decision of this Court subject to the grounds for relief set forth in Rule 59, SCRCP. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004) ("A motion under Rule 59(e) long has been viewed as 'motion for reconsideration' despite the absence of those words from the rule."). In its Motion, Petitioner presents four arguments concerning why the Court should reconsider its Order—each of which will be addressed in turn. As will be discussed in detail below, Petitioner's arguments are without merit.

Whether Petitioner meets the elements of constitutional standing

During the hearing on the Motion to Dismiss, Petitioner asserted that its legally protected interest arose from constitutional provisions under either article 1, section 3 or section 22. Now, in its Motion, Petitioner argues that it has constitutional standing because its injuries are found through several concrete, particularized, and imminent invasions of Petitioner's members' legally protected rights, specifically, their "legally protected, unrestricted right to use and enjoy their properties." However, Petitioner's argument misses the forest from the trees. In fact, Petitioner only offers conclusory statements that these hypothetical injuries will occur if these facilities begin operating. "Constitutional standing is based on Article III of the United States Constitution, which limits the jurisdiction of the federal courts to actual cases or controversies." *Preservation Society of Charleston v. South Carolina Department of Health and Environmental Control,* 430 S.C. 200, 210, 845 S.E. 2d 481, 486 (2020). It is well established that the "irreducible constitutional minimum" of standing requires that the plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-61, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351 (1992). To establish injury in fact, a plaintiff must show that he or she suffered "an invasion of a **legally protected interest**" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan,* 504 U.S., at 560, 112 S.Ct. at 2136, 119 L.Ed.2d 351 (internal quotation marks omitted) (emphasis added).

As discussed in *Preservation Society of Charleston v. South Carolina Department of Health and Environmental Control*, "[t]he purpose of [the] administrative [review] process is to discover and evaluate harm to the surrounding environment and to **persons who would be affected by the proposed project**." 430 S.C. at 216, 845 S.E.2d at 489 (emphasis added). As addressed in the Court's Order of Dismissal, to be affected by a poultry facility project, a party must show that: 1) they are a property owner within a one mile radius of the proposed building footprint or permitted poultry facility or other animal facility, 2) that the proposed building footprint is located less than eight hundred feet from the facility owner's property line or located less than one thousand feet or more from an adjacent property owner's residence and, 3) that it is challenging the decision in its own behalf. Petitioner has failed to show that it meets these requirements. As such, the Court did not err in concluding that Petitioner failed to meet its burden of proof to show that it possessed constitutional standing because Petitioner has failed to show an invasion of a **legally protected interest**. Said differently, since the General Assembly has only granted the right to administrative review of projects for poultry facilities to affected persons as defined under section 48-6-40 of the South Carolina Code (Supp. 2024), Petitioner failed to meet its burden that it has suffered an injury in fact.

Whether the Department's Application of Subsection 48-6-40(D)(2) Violated Petitioner's Due Process Rights.

Petitioner contends the Court incorrectly applied Article I, § 3 and § 22 of the South Carolina Constitution to determine whether Petitioner has constitutional standing. I do not find the Court erred in this regard or improperly failed to rule on whether subsection 48-6-40(D)(2) of the South Carolina Code resulted in an unconstitutional violation of Petitioner's due process rights. As stated above, the consideration of Article I, § 3 and § 22 of the South Carolina Constitution was responsive to Petitioner's position. However, Petitioner explains in its Motion that it raised these constitutional provisions to show that dismissal of the cases violates Petitioner and its members' due process right because it precludes them from the opportunity to vindicate their property and liberty interests.[3] Petitioner cites to *Stono River Environmental Protection*

[3] The asserted property and liberty interests include: (1) the unrestricted right to use and enjoy their properties; (2) the contracts that many of SCRAP's members have allowing hunting and timber production on their properties, and the profits associated with those contracts; (3) the right to clean air and clean water safeguarded under the public trust doctrine; and (4) the right to reasonable use of the riparian resources on their properties and the right to be free from

Association v. South Carolina Department of Health and Environmental Control, 305 S.C. 90, 406 S.E.2d 340 (1991), *League of Women Voters of Georgetown County v. Litchfield-by-the-Sea*, 305 S.C. 424, 427, 409 S.E.29 378, 380 (1991), and *Howard v. South Carolina Department of Corrections*, 399 S.C. 618, 733 S.E. 2d 211 (2012) to argue that parties with a property or liberty interest in an administrative agency's decision are entitled to notice, an opportunity to be heard, and judicial review. Yet, these cases are distinguishable from the case at bar because in each of the aforementioned cases, the appealing person possessed a legally protected interest in the administrative process.

In *Stono Environmental Protection Association v. South Carolina Department of Health and Environmental Control*, the Supreme Court considered whether Stono River EPA and the Sierra Club were denied an opportunity to contest a 401 certification in an adjudicatory proceeding. In contrast to Petitioner, Stono River EPA and the Sierra Club each sought administrative review pursuant to rights arising under regulation 61-72 of the South Carolina Code of Regulations. S.C. Regs. 61-72 (2015) (amended June 26, 2015) (defining party as "[a] person who initiates administrative review by filing a Petition, or is deemed to be a party by operation of Section 402, or who is admitted to participate in an adjudicatory hearing, with rights to participate by presenting evidence, and calling and cross-examining witnesses. The Department is deemed to be a party."). Indeed, in contrast to Stono River EPA and the Sierra Club, Petitioner has failed to meet its burden to show that it possesses a right to seek contested case review of the decisions at issue in these cases.

Moreover, *League of Women Voters of Georgetown County* involved the South Carolina Coastal Council's (Council) denial of League's request for a public hearing on its issuance of certification that Willbrook Plantation's (Willbrook) project was consistent with the South Carolina Coastal Zone Management Program.[4] Council denied League's request on the basis that its certification decision was not a contested case as defined under the Administrative Procedures

unreasonable use of those riparian resources by adjacent landowners. Further, liberty interests are also at stake in these permit challenges and lead SCRAP and its members to fight for those interests, including (1) the right to fish and hunt safeguarded by the South Carolina Constitution, and (2) the right to use and enjoy clean water and clean air capable of sustaining human life.

[4] Certification from the Council is required in order to obtain a permit from the Department to construct a sanitary sewer system; a decision which, League has a legally protected interest in.

Act. S.C. Code Ann. § 1-23-310(2) (1986). While the Supreme Court agreed that the decision was not a contested case, it ultimately concluded that League was entitled to due process at all stages of the application process under Article 1, Section 22 of the Constitution since "Council's certification determination may be accorded significant weight by the permitting agency in deciding whether or not to grant a permit." In other words, unlike Petitioner, since League possessed an interest in the potential issuance of a permit to Willbrook to construct a sanitary sewer system, Petitioner was entitled to due process notwithstanding the fact that the disputed decision of the Council was not a contested case. *League of Women Voters of Georgetown Cnty. v. Litchfield-by-the-Sea*, 305 S.C. 424, 427, 409 S.E.2d 378, 380 (1991), *overruled by Brownhoward v. S.C. Dep't of Health & Envt. Control*, 348 S.C. 507, 560 S.E.2d 410 (2002).

Lastly, *Howard v. South Carolina Department of Corrections* pertained to the ALC's summary dismissal of an inmate's appeal from a prison disciplinary conviction. To appreciate the differentiation of this case from the one at bar, it is helpful to understand that an inmate's right to administrative review of a Department of Corrections (DOC) final decision under the APA is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). In *Al-Shabazz*, the Court held that the ALC's jurisdiction in inmate appeals is limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. *Id.* at 382, 527 S.E.2d at 757.

In the cited case, Howard challenged DOC's enforcement of a policy and his disciplinary conviction. Following a hearing, Howard was found guilty and sanctioned with failure to earn good-time credits for the month of the disciplinary infraction and a reduction in earned-work credit, he did not, however, lose any accrued good-time credits due to his conviction. The ALC summarily dismissed the appeal on the basis that pursuant to subsection 1-23-600(D) of the South Carolina Code, the ALC lacked jurisdiction to hear the appeal because Inmate Howard had not lost any good time credits. *See* 1-23-600(D) (Supp. 2024) (providing ALJ shall not hear appeal from an inmate involving loss of the opportunity to earn sentence-related credits pursuant to Section 24-13-210(A) or Section 24-13-230(A)). However, the Supreme Court held that the summary dismissal was in violation of Howard's due process rights because Howard's appeal

involved more than a review of the loss of the opportunity to earn good-time credits and a reduction in earned-work credits. Specifically, the appeal also challenged DOC's enforcement of its policy, an action which Howard possessed a right to judicial review. *See Al-Shabazz v. State*, 338 S.C. at 370, 527 S.E.2d at 750.

As stated in this Court's Order of Dismissal, the Department's application of subsection 48-6-40(D)(2) of the South Carolina Code did not violate Petitioner's Due Process Rights because Petitioner has failed to demonstrate a legally protected interest in the Department's actions. Indeed, as explained in the Order of Dismissal, "the interests protected by the due process clause are defined not by the Constitution, but by independent sources, such as state law." *James Acad. of Excellence v. Dorchester Cnty. Sch. Dist. Two*, 376 S.C. 293, 657 S.E.2d 469 (2008) (*citing* U.S.C.A. Const. Amend. 14). In matters involving projects such as Respondents, section 48-6-40 limits administrative review to affected persons. Because Petitioner has failed to show an invasion of a legally protected interest, i.e., that it is an affected person, the Department's application of subsection 48-6-40(D)(2) cannot give rise to an unconstitutionally violation of Petitioner's due process rights.

Whether the Department's Application of Subsection 48-6-40(D)(2) Violated Petitioner's Rights to Equal Protection of the Laws.

Petitioner argues the Court failed to rule on whether subsection 48-6-40(D)(2) is a violation of Petitioner's equal protection rights. Significantly, section 48-6-40 limits access to the administrative review process to affected persons. As explained in the Court's Order of Dismissal and numerous times herein, Petitioner has failed to meet its burden of proof to show that it is an affected person as defined under section 48-6-40. Since Petitioner is not an affected person, it has no standing to complain of the application of the statute. *See Fed. Land Bank of Columbia v. Davant*, 292 S.C. 172, 177, 355 S.E. 2d 293, 296 (1987) (holding plaintiff lacked standing to raise an equal protection argument since statute restricted access to courts to nonresident plaintiffs).

Nevertheless, Petitioner's argument is categorically without merit. "The equal protection clause only forbids irrational and unjustified classifications." Our courts have repeatedly stated that:

> [a] classification will survive rational basis review when it bears a reasonable relation to the legislative purpose sought to be achieved, members of the class are treated alike under similar circumstances, and the classification rests on a rational

> basis. Further, those who challenge the validity of one under rational basis review must 'negate every conceivable basis which might support it.

E.g., Planned Parenthood S. Atl. v. State, 438 S.C. 188, 238–39, 882 S.E.2d 770, 797 (2023), *reh'g denied* (Feb. 8, 2023) (internal citations removed).

Petitioner argues in its Motion that the requirements of subsection 48-6-40(D) of the South Carolina Code are not rationally related to the legislature purpose of the statute.[5] However, subsection 48-6-40(D) of the South Carolina Code unequivocally relates to the legislative purpose of establishing the specific requirements that must be met in order for a person to pursue administrative review of a permit decision for a poultry facility. In other words, the General Assembly has determined the extent to which a person must be affected to be entitled to seek review of a decision involving a poultry facility project. *See State v. Thompson*, 349 S.C. 346, 355–56, 563 S.E.2d 325, 330 (2002) (in upholding constitutionality of statute proscribing out of season trapping of furbearing animals the court held that limiting the trapping season and placing a slight limitation on property owners whose property is damaged reasonably balanced interests of furbearing animals against property owner's right to protect property from destruction). Petitioner's corollary argument that "the affected persons attempting to pursue administrative appeals of DES decisions on poultry facility permits are *not* similarly situated to all other persons affected by a decision of the Department …." so much as acknowledges this fact. Indeed, the Legislature has established a classification, and this Court shall afford that decision great deference as it presumably debated and weighed the advantages and disadvantages of the codified criterion. *Lee v. S.C. Dep't of Nat. Res.,* 339 S.C. 463, 467, 530 S.E.2d 112, 114 (2000).

Further, Petitioner's comparison of subsection 48-6-40(D) to "all other persons affected by a decision of the Department" is misplaced. Our court's have endorsed the Legislature's authority to formulate criteria for challenging administrative actions. *See, e.g., Preservation Society,* 430 S.C. at 209-216, 845 S.E.2d at 481-489. For purpose of permit decisions on a poultry facility, the Legislature has limited administrative review to persons who satisfy the criteria established under subsection 48-6-40. Moreover, setting aside the fact that Petitioner does not have standing to raise

[5] More specifically, Petitioner asserts in its Motion that there is "[n]o reasoning behind why the numbers selected were selected … and these arbitrary numbers of 800 feet and 1,000 feet do not match other gauges of when a person is affected …."

an equal protection challenge, Petitioner has presented no argument to this Court as to how it has been treated dissimilarly to any other person challenging a permit decision on a poultry facility. *See Fed. Land Bank of Columbia v. Davant*, 292 S.C. at 177, 355 S.E. 2d at 296. Rather, Petitioner has been treated the same as any other person challenging a permit decision of this kind.

Whether Subsection 48-6-40(E) Precludes Associational Standing

Petitioner asserts that the Court's interpretation of subsection 48-6-40(E) does not pass muster under associational standing principles or under equal protection principles. Specifically, Petitioner argues that construing subsection 48-6-40(E) as a bar to associational standing is unconstitutional under equal protection principles. It appears Petitioner believes the Court's reading of subsection 48-6-40(E) is unconstitutional because it does not treat organizations similarly as persons challenging poultry permit decisions on their own behalf. I disagree.

"The primary purpose in construing a statute is to ascertain legislative intent." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is **no occasion for employing rules of statutory interpretation** and the **court has no right to look for or impose another meaning**." *Paschal v. State Election Comm'n*, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995) (emphasis added). Subsection 48-6-40(E) plainly provides that to challenge a permit decision on a poultry facility, the challenge must be brought "on his own behalf." Merriam-Webster defines "own" as "belonging to oneself or itself —usually used following a possessive case or possessive adjective." *See Own*, Merriam-Webster, https://www.merriam- webster.com/dictionary/own (last visited on December 9, 2024). This language thus reflects a legislative intent that challenges to poultry facility permits must be bought by the property owner. Surely, the Legislature must have intended to accomplish something by its choice of words. *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964).

Furthermore, I find the only reasonable interpretation of this language, is a limitation of the right to bring a contested case to instances in which the permit affects the applicant itself. As highlighted by Petitioner in its Motion, associational standing creates a vehicle for organizations to advocate for the collective interests of its members. Importantly, the interests of the members of the organization are heart and center of the principles of associational standing. Quizzically, the implication of Petitioner's contention that construing subsection 48-6-40(E) as a bar to

associational standing is unconstitutional detaches the interests of Petitioner's members from the organization, creating a separate class in which Petitioner singly sits. Not only is Petitioner's argument in contradiction with the principles of association standing but it is also without merit because Petitioner has failed to present any argument that its members have been treated dissimilarly to any other person challenging a permit decision on a poultry facility.

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

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

Stephanie Perez
Judicial Law Clerk

January 17, 2025
Columbia, South Carolina

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Our Mission We use our legal expertise to protect land, water and communities across South Carolina.

February 14, 2025

VIA U.S. MAIL AND ELECTRONIC MAIL
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: ***South Carolinians for Responsible Agricultural Practices v. South Carolina Department of Environmental Services, Jim Young, & d/b/a J. Young Broilers***
Docket No. 24-ALJ-07-0266-CC
South Carolinians for Responsible Agricultural Practices v. South Carolina Department of Environmental Services, Heath Coggins, & d/b/a Heath Coggins Broilers
Docket No. 24-ALJ-07-0267-CC

Dear Madame Clerk:

Please find enclosed a Notice of Appeal in the above-referenced consolidated matters. I am also enclosing the filing fee of $250.00, a copy of the orders which are to be challenged on appeal, and the proof of service of the notice of appeal on the Respondents. Thank you for your kind consideration.

Respectfully,

Emily Poole

Emily S. Poole

Enclosures
cc: Stephen P. Hightower, Esq.
Sara V. Martinez, Esq.
Michael S. Traynham, Esq.
Joan W. Hartley, Esq.