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SC Court of Appeals

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

South Carolina Coastal Conservation League,  
Petitioner,

v.

South Carolina Department of Health and  
Environmental Control and Pulte Homes,  
LLC,

Respondents.

Docket No. 24-ALJ-07-0088-CC to  
24-ALJ-07-131-CC

**ORDER GRANTING RESPONDENTS'  
MOTION FOR SUMMARY JUDGMENT  
AND DENYING PETITIONER'S  
MOTION FOR SUMMARY JUDGMENT**

**STATEMENT OF THE CASE**

This matter is before the Administrative Law Court (ALC or Court) pursuant to a Request for Contested Case Hearing filed by the South Carolina Coastal Conservation League (SCCCL or Petitioner), on April 5, 2024. SCCCL contests forty-four permits issued by the South Carolina Department of Health and Environmental Control<sup>1</sup> (Department or DHEC) to Pulte Homes, LLC (Pulte) authorizing on-site wastewater systems designed for peak flows less than 1,500 gallons per day. The Department issued the permits without conducting a Coastal Zone Consistency review and without issuing public notice of the permit applications. SCCCL argues the Department's failure to conduct a Coastal Zone Consistency review violated South Carolina Code section 48-39-80 (2008 & Supp. 2023). SCCCL also argues the Department's failure to issue public notice of the permit applications denied SCCCL due process.

The Court has jurisdiction over this contested case pursuant to South Carolina Code section 44-1-60(F)(2) (2018). On May 28, 2024, SCCCL filed Petitioner's Prehearing Statement. On May 29, 2024, the Department filed Respondent South Carolina Department of Health and Environmental Control's Prehearing Statement. On May 30, 2024, Pulte filed its Prehearing statement. On October 1, 2024, the Department and Pulte Homes (collectively Respondents) filed Respondents' Joint Motion for Summary Judgment and Incorporated Memorandum. On October 10, 2024, SCCCL filed Petitioner's Response to Respondents' Joint Motion for Summary Judgment and Cross-Motion for Summary Judgment. Respondents filed a Joint Response to

<sup>1</sup> This matter was filed prior to the South Carolina Department of Health and Environmental Control splitting into two separate agencies, of which the South Carolina Department of Environmental Services retains authority over this matter.



Petitioner's Motion for Summary Judgment on October 22, 2024. On October 28, 2024, SCCCL filed Petitioner's Reply to Respondents' Joint Response to Petitioner's Motion for Summary Judgment. On November 4, 2024, SCCCL and Respondents participated in a motion hearing before the Court. After considering both parties' respective prehearing statements, motions, memoranda, and statements at the hearing, the Court grants Respondents' joint motion for summary judgment.

### **SUMMARY JUDGMENT STANDARD**

Under SCALC Rule 68, the Court may apply the South Carolina Rules of Civil Procedure in contested case proceedings where no Administrative Law Court rule applies and when practicable. In this case, the Court applies Rule 56(c), SCRPC to determine whether summary judgment is proper in this case. Summary judgment is proper "when there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law." Holmes v. E. Cooper Cmty. Hosp., Inc., 408 S.C. 138, 153–54, 758 S.E.2d 483, 492 (2014) (citations omitted); Rule 56(c), SCRPC. Summary judgment should not be granted, even when there is no dispute as to evidentiary facts, if there is disagreement concerning the conclusions or inferences to be drawn from those facts. Id. at 154, 758 S.E.2d at 492. To determine whether any triable issues of fact exist, the trial court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party. Grimsley v. S.C. Law Enf't Div., 415 S.C. 33, 40, 780 S.E.2d 897, 900 (2015) (internal quotations and citation omitted). However, a party cannot create an inference that is not reasonable or an issue of fact that is not genuine in order to survive a motion for summary judgment. See id. "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). A party may not rest upon the mere allegations or denials of its pleadings, but must come forward with affidavits or other supporting documents demonstrating the existence of a genuine issue for trial. Rule 56(e), SCRPC.

### **DISCUSSION**

#### **Statutory Compliance**

SCCCL argues it is entitled to summary judgment finding the Department failed to comply with section 48-39-80 when it issued the wastewater system permits without conducting a Coastal

Zone Consistency review. Section 48-39-80 states, in relevant part:

The department<sup>2</sup> shall develop a comprehensive coastal management program, and thereafter have the responsibility for enforcing and administering the program in accordance with the provisions of this chapter and any rules and regulations promulgated under this chapter. In developing the program the department shall:

(A) Provide a regulatory system which the department shall use in providing for the orderly and beneficial use of the critical areas.

(B) In devising the management program the department shall consider all lands and waters in the coastal zone for planning purposes. In addition, the department shall: . . .

(10) Devise a method by which the permitting process shall be streamlined and simplified so as to avoid duplication.

(11) Develop a system whereby the department shall have the authority to review all state and federal permit applications in the coastal zone, and to certify that these do not contravene the management plan.

Pursuant to section 48-39-80(A), the Department created the Coastal Zone Management Program Document (CMP). “Upon review and approval of the proposed management plan by the Governor and General Assembly, the proposed plan shall become the final management plan for the State's coastal zone.” S.C. Code Ann. § 48-39-90(D) (2008). The CMP was approved by the General Assembly and the Governor approximately forty-five years ago and it includes an exemption from Coastal Zone Consistency review of individual wastewater system permits for systems with capacities of less than 1,500 gallons per day.

SCCCL argues section 48-39-80 requires the Department to review all wastewater system permits. Section 48-39-80(B) states, “In devising the management program the department shall: . . . (11) Develop a system whereby the department shall **have the authority to review** all state and federal permit applications in the coastal zone . . . .” The Department argues it has fulfilled its obligation under section 48-39-80(B) by creating the CMP, a system for reviewing permit applications in the coastal zone. SCCCL argues the Department’s interpretation of its obligation under section 48-39-80(B) creates an absurd result because the Department could create a system for reviewing permit applications that exempts all permits from review.

<sup>2</sup> The department referred to in the statute is the South Carolina Coastal Council, which was abolished July 1, 1994. The responsibility for administration of the Coastal Zone Management Act was transferred to DHEC’s Office of Ocean and Coastal Resource Management (OCRM). See 1993 Act No. 181.

“The cardinal rule of statutory construction 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). “Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Id. “In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction.” Higgins v. State, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992). “[R]egardless of how plain the ordinary meaning of the words in a statute, courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not have been intended by the General Assembly.” Duke Energy Corp. v. S.C. Dep’t of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016). “[W]here the construction of the statute has been uniform for many years in administrative practice, and has been acquiesced in by the General Assembly for a long period of time, such construction is entitled to weight, and should not be overruled without cogent reasons.” Etiwan Fertilizer Co. v. S.C. Tax Comm’n, 217 S.C. 354, 359, 60 S.E.2d 682, 684 (1950).

Section 48-39-80(B) states the Department shall create a system whereby the Department “shall have the authority to review” all permit applications in the coastal zone. “Authority” means, “Permission. Right to exercise powers; to implement and enforce laws; to exact obedience; to command; to judge. Control over; jurisdiction.” *Authority*, Black’s Law Dictionary (6th Ed. 1990). The plain meaning of “authority” does not impose a requirement to exercise power, but the right to. “As used in statutes . . . [‘shall’] is generally imperative or mandatory. . . . The word in ordinary usage means ‘must’ and is inconsistent with a concept of discretion.” *Shall*, Black’s Law Dictionary (6th Ed. 1990). The word “shall” in section 48-39-80(B)(11) precedes “have the authority to.” It does not directly precede the word “review.” Therefore, the intention of the General Assembly as conveyed by the plain language of section 48-39-80(B) is that the Department must create a system whereby it has the right to exercise power over permit applications in the coastal zone.

Additionally, section 48-39-80(B)(10) states the Department shall “[d]evise a method by which the permitting process shall be streamlined and simplified so as to avoid duplication.” In creating the CMP, the Department considered its limitation on review of wastewater systems with capacities less than 1,500 gallons per day to fulfill its requirement under section 48-39-80(B)(10)

to streamline the permitting process. Finally, the General Assembly, pursuant to section 48-39-90(D), reviewed the CMP and approved it. The CMP's limitation on the Department's exercise of its power to review based on the capacity of the wastewater system is not inconsistent with the General Assembly's intent that the Department create a streamlined system giving the Department the power to review coastal zone permits. Therefore, there is no genuine issue of material fact supporting a finding the Department granted the permits in violation of South Carolina law and summary judgment is appropriate on this issue.

### **Constitutional Challenge**

SCCCL argues it was denied due process of law by the Department's failure to issue public notice of the permit applications. There are no statutory or regulatory requirements for the Department to provide public notice of wastewater system permits. "Due process is flexible and calls for such procedural protections as the situation demands." Leventis v. S.C. Dep't of Health & Env'tl. Control, 340 S.C. 118, 131, 530 S.E.2d 643, 650 (Ct. App. 2000).

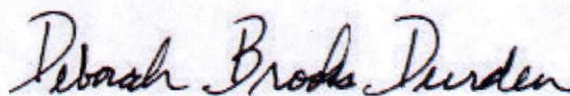
SCCCL was able to learn of the permits through significant effort on its part, including the use of FOIA requests. While the Court is concerned that the Department's lack of public notice creates a risk of due process violations in other cases, the fact remains there is no requirement for the Department to provide public notice of wastewater system permits. Since the Department was not required to provide public notice of wastewater system permits and SCCCL's due process rights are met in this proceeding, SCCCL was not prejudiced by the Department's lack of public notice. Therefore, there is no genuine issue of material fact supporting a finding SCCCL was denied due process and summary judgment is appropriate on this issue.

### **ORDER**

**THEREFORE, IT IS HEREBY ORDERED** that Respondents' Motion for Summary Judgment is **GRANTED**.

**IT IS ALSO ORDERED** that Petitioner's cross Motion for Summary Judgment is **DENIED**.

**AND IT IS SO ORDERED.**



Deborah Brooks Durden, Judge  
S.C. Administrative Law Court

December 18, 2024  
Columbia, South Carolina

**CERTIFICATE OF SERVICE**

I, Robin E. Coleman, 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).

*Robin Coleman*

Robin E. Coleman  
Judicial Aide to Judge Deborah Brooks Durden

December 18, 2024  
Columbia, South Carolina

