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May 22 2025

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

ALC Docket No.: 24-ALJ-07-0367-CC
Appellate Case No.: 2025-000288

Walter Buchanan,

Appellant,

v.

South Carolina Department of Environmental Services and
Silfab Solar, Inc.

Respondents.

**RESPONDENT SOUTH CAROLINA DEPARTMENT OF ENVIRONMENTAL
SERVICES' REPLY IN SUPPORT OF MOTION TO STRIKE**

Pursuant to Rule 240, SCACR, Respondent South Carolina Department of Environmental Services (“Department”) hereby submits this Reply in support of its May 8, 2025, Motion to Strike Appellant’s Designation of Matter (“Motion to Strike”).

In the interests of a clear and proper record, the Department requested in its motion that the Court strike from Appellant’s Designation of Matter documents that were not presented to the Administrative Law Court (“ALC”) during the proceedings below (and which are further not relevant to the limited jurisdictional issues raised in this appeal). Specifically, eleven documents

listed by Appellant (Items 1-4, 6-7, 9-11, and 16-17) were not presented to the ALC and therefore should be stricken pursuant to Rules 210(c) and 209(b), SCACR. Dept. Mot. to Strike, pp. 3-4.

Appellant’s Return focuses primarily on the transcript of an October 30, 2023, public hearing held by the S.C. Department of Health and Environmental Control (“DHEC”) on a draft permit for Silfab Solar, Inc. (“Silfab Solar”). In his Return, Appellant “agrees” that Rule 210(c), SCACR, restricts the record on appeal to matters presented to the tribunal below and does not dispute that the referenced transcript and other materials were not presented to the ALC. App. Return, pp. 2, 9. Nonetheless, Appellant questions “why the lower court or tribunal,” *i.e.*, the ALC, “would not have the record in the first instance and even if it did, why the record is inexplicably incomplete,” implying some procedural defect on this account. *Id.* at 2.

The answer to this question is straightforward: the ALC did not have the referenced materials because neither Appellant nor the Department presented them to the ALC during the proceedings below. This is dispositive of the motion before this Court.

Contrary to Appellant’s assertions, the absence of the referenced transcript from the record on appeal is not indicative of any procedural failing or wrongdoing of the ALC or the Department. In this case, Appellant sought ALC review of a July 30, 2024, letter from the Department to Silfab Solar addressing a change to the facility’s planned stack height. Order of Dismissal (Attach. 1 to Dept. Mot. to Strike), p. 3; *see also* App. Return, pp. 4-5 (“Appellant[’s] contested case hearing request was submitted in response to 7/30/2024 correspondence from the [Department] to Respondent Silfab Solar, Inc.”). The referenced transcript, by contrast, was for a DHEC hearing held on October 30, 2023, to receive public comments during the facility’s permitting process. McCaslin Aff. (Attach. to Reply) ¶¶ 4, 7. The Department issued a permit to Silfab Solar on March 1, 2024, and that permit became final after ALC review was not sought. *Id.* ¶ 6; Order

of Dismissal (Attach. 1 to Dept. Mot. to Strike), p. 2. Thus, while the DHEC public hearing transcript is part of Silab Solar's permitting history (and has been preserved as such), it is not a Rule 207, SCACR, transcript of any proceedings in this case. That the Department did not present the referenced transcript to the ALC in the proceedings below reflects only that the Department did not consider it relevant either to the case generally or its motion to dismiss specifically. The Department's assessment of what information was relevant and would be presented to the ALC in connection with its motion to dismiss was within its discretion, and the referenced transcript was not needed for the ALC to resolve the issue before it.

Finally, the referenced public hearing transcript was never concealed in any way: it was available in full¹ on the Department's website during the entirety of the ALC proceedings (in addition to being available through Freedom of Information laws and discovery). McCaslin Aff. (Attach. to Reply) ¶ 8. Had Appellant believed it to be relevant, he could have submitted it to the ALC with his own pleadings or in response to the Department's motion to dismiss.

For all those reasons set forth in the Department's Motion to Strike and this Reply, the Department maintains that those documents not presented to the ALC below should be stricken from Appellant's Designation of Matter.²

¹ Appellant alleges that the transcript improperly omits material presented to the public prior to 7:18pm. Department regulations provide both for public hearings and public meetings. S.C. Code Ann. Regs. 61-62.1, Section II(N). As explained in the attached affidavit, these are distinct concepts, and while both a public meeting and public hearing were held for Silfab Solar, only the public hearing was transcribed. McCaslin Aff. (Attach. to Reply) ¶¶ 3-5, 7.

² The Department will respectfully defer to the Court's judgment in resolution of this matter. While the Department believes that clarity regarding the record and matters under review is best assured by restricting the Designation of Matter in accordance with Rules 210(c) and 209(b), SCACR, to the extent the Court rules to allow Appellant to include the referenced transcript or other documents not presented below in his Designation of Matter, the contents of those documents speak for themselves and do not change the record before the ALC, the issues presented on appeal, or the continued grounds in support of the ALC's decision below.

Respectfully submitted,

/s/ Dawn K. Miller

Dawn K. Miller, S.C. Bar No. 80133

Assistant General Counsel

Bennett W. Smith, S.C. Bar No. 102894

Assistant General Counsel

South Carolina Department of

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Attorneys for Respondent SCDES

May 22, 2025

Columbia, South Carolina

Attachment

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

ALC Docket No.: 24-ALJ-07-0367-CC
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Walter Buchanon,

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AFFIDAVIT OF STEVEN McCASLIN

PERSONALLY APPEARED BEFORE ME, **Steven McCaslin**, who being duly sworn,
deposes and says:

1. I am the Director of the Air Permitting Division of the Bureau of Air Quality (“BAQ”) within the S.C. Department of Environmental Services (“Department”). I also held this position within BAQ when it was part of the S.C. Department of Health and Environmental Control (“DHEC”). As part of my duties, I am familiar with our agency’s permitting processes generally as well as the specific facility which is the subject matter of this case, and I have personal knowledge of the facts set forth below.

2. S.C. Regulation 61-62.1, Section II.N, sets forth the public participation procedures

for air quality permits issued by the Department (and its predecessor DHEC). Permits required to undergo public participation procedures, including public notice and the opportunity for public comment, include permits for synthetic minor sources. In addition to the written public notice required by the regulation, the Department also “may use additional means of public notice, including, but not limited to public meetings.” S.C. Code Ann. Regs. 61-62.1, Section II(N)(1).

3. Public meetings are informal in nature, and there are no specific regulatory requirements or procedures for public meetings. During a public meeting on a draft permit, the Department will share information about the proposed permit and respond to questions from the public. Public meetings are not required but may be held in response to significant public interest regarding a particular facility or permit. Public meetings are not transcribed.

4. Public hearings are different from public meetings. The purpose of a public hearing is to allow the public to provide oral comments to be recorded and considered by the Department before a final decision is made on a draft permit. Section II(N)(3) of S.C. Regulation 61-62.1 provides that the Department must keep a record of all commenters and the comments made during the public comment period (including those received during the public hearing) and must consider all comments in making a final decision. For this reason, public hearings are transcribed.

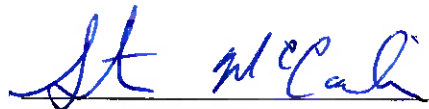
5. Many permits are issued without either a public meeting or public hearing. For some permits, there will have been either a public meeting or a public hearing in advance of permit issuance. In some cases, both a public meeting and public hearing will be held.

6. DHEC issued a synthetic minor air quality construction permit to Silfab Solar, Inc. (“Silfab Solar”) on March 1, 2024. That permit became final after DHEC’s governing Board declined final review of the permit under S.C. Code Section 44-1-60, and no further review before the S.C. Administrative Law Court was sought.

7. Prior to permit issuance for Silfab Solar, DHEC placed a draft permit on public notice and scheduled both a public meeting and a public hearing, with the public hearing slated to occur immediately following the public meeting. Thirty (30) days public notice was provided prior to the public meeting and public hearing. Both events were held on October 30, 2023, at the Fort Mill School District Office in Fort Mill, South Carolina. Only the public hearing for receiving comments was transcribed, per the applicable regulations and standard practice.

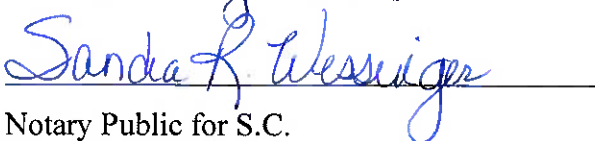
8. The transcript of the public hearing for Silab Solar is part of the facility's permit record and is available to the public upon request through Freedom of Information ("FOI") procedures. The transcript would have been in DHEC's (and, subsequently, the Department's) possession and available through the FOI process beginning in November 2023. In addition, because of the level of public interest regarding the facility, in mid-August 2024, the Department created a dedicated webpage with information concerning Silfab Solar (available at <https://des.sc.gov/community/community-engagement/environmental-sites-projects/silfab-solar>). Among other things, this webpage includes a link to a copy of the transcript (available at <https://des.sc.gov/sites/des/files/Documents/BAQ/Silfab/PublicHearingTranscript.pdf>). The Silfab Solar webpage is still maintained and provides continued access to the transcript.

FURTHER AFFIANT SAITH NOT.


Steven McCaslin

Sworn to me this 22nd

Day of May, 2025.


Sandra R. Wessinger

Notary Public for S.C.

My Commission Expires: 03-12-2035

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CERTIFICATE OF SERVICE

I, Bennett W. Smith, attorney for the South Carolina Department of Environmental Services, hereby certify that I have on this 22nd day of May, 2025, served the Department's May 22, 2025, ***Reply in Support of Motion to Strike*** upon all parties via e-mail sent by the undersigned to the primary AIS e-mail address for counsel of record, as follows:

| | |
|---|--|
| J. Cameron Halford, Esq. cam@halfordlaw.net | Ethan R. Ware, Esq. eware@williamsmullen.com |
| Halford Law Firm, LLC P.O. Box 172 Barnwell, SC 29812 | Ryan W. Trail, Esq. rtrail@williamsmullen.com |
| Attorney for Appellant | Richard H. Willis, Esq. rwillis@williamsmullen.com |
| | John G. Tamasitis, Esq. jtamasitis@williamsmullen.com |

| | |
|--|---|
| | <p>Williams Mullen Law Firm 1230 Main Street, Suite 330 Columbia, South Carolina 29201</p> <p>Attorneys for Respondent Silfab Solar</p> |
|--|---|

s/ Dawn K. Miller
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May 22, 2025
Columbia, South Carolina



Outlook

Buchanan v. SCDES & Silfab - Respondent SCDES Reply in Support of Motion to Strike - Appellate Case No.: 2025-000288

From Dawn K. Miller <Dawn.Miller@des.sc.gov>

Date Thu 5/22/2025 1:31 PM

To Cam@halfordlaw.net <cam@halfordlaw.net>; Tamasitis, John <jtamasitis@williamsmullen.com>

Cc Bennett W. Smith <Bennett.Smith@des.sc.gov>; Joanni Long <joanni@halfordlaw.net>; rwillis <rwillis@williamsmullen.com>; eware@williamsmullen.com <eware@williamsmullen.com>; Tyer, Sara <styer@williamsmullen.com>; Trail, Ryan <rtrail@williamsmullen.com>; Makayla Gladden <makayla.gladden@des.sc.gov>; Sandra R. Wessinger <Sandra.Wessinger@des.sc.gov>

 1 attachment (223 KB)

Respondent SCDES - Reply - 05.22.2025.pdf;

Good afternoon,

Please find attached Respondent SCDES's Reply in support of its May 8, 2025 Motion to Strike Appellant's Designation of Matter.

We will be filing this with the Court of Appeals shortly.

Thank you,

Dawn Miller
Assistant General Counsel

C: 803.528.1285

Dawn.Miller@des.sc.gov

DES.SC.gov



Please note my new email address with the South Carolina Department of Environmental Services (SCDES), which launched as a new state agency on July 1, 2024. While my old DHEC email will direct to me for a while, please update your address book with my new SCDES contact information.

PRIVACY NOTICE: The information contained in this message and all attachments transmitted with it may contain legally privileged and/or confidential information intended solely for the use of the individual or entity to whom it is addressed. Access to this information by any other individual is unauthorized and may be unlawful. If the reader of this message is not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying, or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately and delete the information without retaining any copies. Thank you.



SC DEPARTMENT of
**ENVIRONMENTAL
SERVICES**

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May 22, 2025

VIA EMAIL: ctappfilings@sccourts.org

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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Re: Walter Buchanan v. South Carolina Department of Environmental Services and
Silfab Solar, Inc., Appellate Case No.: 2025-000288

Dear Madam Clerk:

Please find enclosed Respondent South Carolina Department of Environmental Services' **Reply in Support of Motion to Strike** and accompanying **Certificate of Service** for filing in the above-referenced matter.

Thank you for your assistance. Please contact our office should you have questions or need additional information.

Sincerely,

/s/ Dawn K. Miller
Dawn K. Miller, Esq.
Assistant General Counsel

Enclosures

cc: J. Cameron Halford, Esquire (cam@halfordlaw.net)
Ethan. R. Ware, Esquire (eware@williamsmullen.com)
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