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May 29 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Administrative Law Court
Hon. Ralph King Anderson III

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

Walter Buchanan, Appellant

v.

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

APPELLANT FINAL RETURN TO
RESPONDENT SOUTH CAROLINA DEPARTMENT OF
ENVIRONMENTAL SERVICES
MOTION TO STRIKE

Appellant here files its final reply to responds to Respondent South Carolina Department of Environmental Services (“SCDES”) Memorandum filed with the court May 22, 2025 and would respectfully show the court is presented with discretionary matter to permit or not permit a transcript of record that was part of the corporation’s permitting history which evidences department and Silfab due process failures beginning October 30, 2023 at public forum and continuing thereafter.

Respectfully submitted,

J. Cameron Halford
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ARGUMENT

Respondent seeks to strike designations of matter it deems not relevant to the issues raised on appeal, consisting of eleven (11) documents inclusive of the limited transcript of October 30, 2023 of public forum held by the department's predecessor, South Carolina Department of Health & Environmental Control (SCDHEC). Only the department would be responsible for scheduling the public forum, not Silfab and not appellant. S.C. Code Ann. Regs. 61-62.1, Section II (N). Both the public meeting and the public hearing were "held for Silfab (sic)". Respondent has this backwards. The October 30, 2023 was held for the public, conveying Silfab draft permit information.

1. Incomplete June 30, 2023 transcript.

Respondent cites the October 23, 2023 was a SCDHEC hearing "*to receive public comments*" during "*the facility's permitting process.*" The public hearing was upon a **draft** permit. The department then issued final permit to Silfab on March 1, 2024, some five months later. Respondent concedes the transcript public hearing was part of Silfab Solar's permitting history (sic) and was preserved as such, which is not entirely accurate. The argument is fatal viewing the transcript itself which per respondent "speaks for itself" as part of the permitting process record. It can only speak as to what occurred post 7:18 pm. Yet, respondent deems it not relevant either to the case generally or its motion to dismiss, it being a matter of the department's discretion and now discretion of the Court of Appeals.

The issue here is what the department public forum was intended to accomplish. The transcript from 7:18 pm hour forward documents only *public commentary*. If the department and Silfab were purportedly complying with due process, then Silfab presentations to the public by and through the department (then SCDHEC) are relevant and should have been accurately transcribed. The information as to Silfab draft permit is omitted entirely under guise that prior to 7:18 pm only a “public hearing” took place, and it was department discretion to not transcribe the information conveyed from 6:00 pm to the 7:18 pm hour. Again, respondent has this backwards. While omitted from transcription, what occurred prior to 7:18 pm was not public commentary, rather department conveying inaccurate and insufficient detail to the public, upon which public commentary was transcribed only. Following this logic, only public commentary (not data submitted by Silfab thru the department public forum) had to be transcribed.

2. Transcript never available in “full” contrary to respondent assertions.

Respondent disclaims concealment in any way, citing the transcript was *available in full*. This is not the case. The transcript evidences otherwise. It omits anything prior to the 7:10 pm hour. Thus, given the incomplete transcript Appellant could not have fully submitted it to the ALC as stated by respondent in seeking motion to strike. The issue is what was purportedly conveyed to the public prior to 7:18 pm hour. While respondent conveniently attempts to defer to regulations that permit both “*public hearings*” and “*public meetings*” as separate and distinct concepts, respondent concedes both a public “meeting” and a public “hearing” were “*held for Silfab (sic)*” by the department. Herein lies the problem. If the public forum was not held for public benefit but rather Silfab, the department is colluding with Silfab and not complying with due process.

The information presented at “public meeting” before the 7:18 pm hour is lost entirely, while only public commentary is recorded. The salient facts and data conveyed to the public as part of

purported due process then change drastically. After permit of March 1, 2024 Silfab changes stack height and diameter. None of this is ever conveyed in accurate or sufficient detail, because the initial information under “draft” permit presentation is never preserved by the very department that hosted the public forum purportedly under due process. In terms of due process, how does a “*synthetic minor*” permit lead to a “*conditional major*” emitter of pollutants ? By evading due process under irregular if not unlawful procedure by SCDHEC and later SCDES. If no accurate data was preserved October 30, 2023 prior to 7:18 pm, any further changes had no base line fact or data conveyed to the public which the public could review. Hence, no need to further disseminate accurate information or data as the permit underwent major changes never communicated to the affected public after March 1, 2024 and the department has exceeded its statutory authority, irrespective of whether SCHDEC or SCDES and irrespective of government restructuring by statute July 1, 2024. It is continuous hide the ball by old and new department(s) of the administrative government of South Carolina in failing to properly regulate, exceeding the department’s statutory authority.

Appellants respectfully ask the court to deny the motion, as respondent has agreed to defer to the judgment of the Court of Appeals in resolution of this matter. If due process is at issue before the below court where appellant requested a contested hearing but was dismissed procedurally, appellant respectfully asserts the transcript is the best remaining evidence of department and Silfab failures to comply with substantive and procedural due process beginning October 30, 2023 and thereafter through July 30, 2024 when major (not minor) changes occur after the public forum.

Respectfully submitted May 30, 2025.

HALFORD LAW FIRM

/s. J. Cameron Halford

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CERTIFICATE OF SERVICE

I hereby certify that I am counsel for the appellant in the above entitled matter and that I did on May 30, 2024 serve a copy of the foregoing APPELLANT FINAL RETURN TO RESPONDENTS' MOTION TO STRIKE DESIGNATIONS OF MATTER on counsel for respondents by electronic filing and email as follows:

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Respectfully submitted,

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VIA EMAIL DELIVERY and U.S. Mail
South Carolina Court of Appeals
Catherine Harrison, Deputy Clerk
Post Office Box 11629
Columbia, South Carolina 29211

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

Dear Mrs. Harrison :

Please find attached for filing the appellant final reply to respondent SCDES motion to strike for filing. If you can kindly return a clocked copy by email. The mailing goes to opposing counsel today by email and U.S. mail. Thank you.

Respectfully,

J. Cameron Halford
Attorney for Appellant Walter Buchanan

JCH:jal

cc: Dawn Miller, Assistant General Counsel for Respondent SCDES
Cc: Bennet Smith, Esq. Counsel for Respondent SCDES
cc: Richard H. Willis, Esq. – Attorney for Respondent Silfab Solar Inc.
cc: John G. Tamasitis, Esq. – Attorney for Respondent Silfab Solar Inc.