STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
South Carolina Coastal Conservation League and Charleston Waterkeeper, Plaintiffs, v. South Carolina Department of Health and Environmental Control, Defendant.	Case No. 2022-CP-10-05192 **ORDER GRANTING PARTIAL SUMMARY JUDGMENT**

Appearances
Counsel for Plaintiffs — Leslie S. Lenhardt, Esq.
Counsel for Defendant South Carolina Department of Health and Environmental Control — Bradley D. Churdar, Esq.; Joseph Giordano, Esq.
Court Reporter: WebEx (Video recording only)
Date of Hearing: February 26, 2025

BACKGROUND AND PROCEDURAL HISTORY

THIS ACTION WAS BROUGHT by the South Carolina Coastal Conservation League (the League) and Charleston Waterkeeper pursuant to the Uniform Declaratory Judgments Act, S.C. Code Section 15-53-10, *et seq.* Plaintiffs seek declaratory and injunctive relief to remedy what they assert is the South Carolina Department of Health and Environmental Controls[1] ("Department") "failure to properly review individual on-site wastewater systems (also known as septic tanks or septic systems) for consistency with the state's Coastal Management Program, and Defendant's additional failure to publicly notice septic applications and permits, challenging

[1] Since the time Plaintiffs filed their Summons and Complaint, the General Assembly split the South Carolina Department of Health and Environmental Control into two separate state agencies. The South Carolina Department of Environmental Services is now the agency responsible for issuing septic permits.

DHEC's decision to issue a private recreational dock permit." (Complaint, p. 1).

On April 28, 2023, the League and Charleston Waterkeepers filed a *Motion for Preliminary Injunction*. On September 8, 2023, the Court conducted a hearing on the Plaintiff's *Motion for Preliminary Injunction* against the Department.

On January 4, 2024, this Court issued an Order denying the Plaintiff's *Motion for Preliminary Injunction* stating in pertinent part that "'it is beyond this Court's power to effect a change in the statutes enacted by the Legislature.' *Key Corp. Cap., Inc. v. Cnty. of Beaufort*, 373 S.C. 55, 59, 644 S.E.2d 675, 677 (2007) (quoting *State v. Corey D.*, 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000); *see also Keyserling v. Beasley*, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996) (this Court does "not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly")). '[A] court's equitable powers[2] must yield in the face of an unambiguously worded statute [such as CMP V-5].' *Santee Cooper Resort, Inc., v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1998)."

On July 19, 2024, the Plaintiffs filed a *Motion for Summary Judgment*. On July 31, the Department filed a *Cross Motion for Summary Judgment*. On November 11, 2024, the Department filed a *Reply to Plaintiff's Motion for Summary Judgment*. Both Summary Judgment Motions came before this Court for a motion hearing on February 26, 2025. This Court grant's Summary Judgment in favor of the Department regarding the 1,500-gallon-or-less-septic-system issue.

SUMMARY JUDGMENT STANDARD

Rule 56(c), SCRCP is the standard 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

[2] "An action for an injunction is equitable." *LeFurgy v. Long Cove Club Owners Ass'n, Inc.*, 313 S.C. 555, 557, 443 S.E.2d 577, 578 (Ct. App. 1994) (citing *Blanks v. Rawson*, 296 S.C. 110, 370 S.E.2d 890 (Ct. App. 1988)).

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), SCRCP. 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), SCRCP.

ISSUE FOR DETERMINATION

The issue for determination by this Court is whether the Department's Coastal Zone Management Program Document requires a Coastal Zone Consistency Certification for on-site wastewater systems designed for peak flows less than 1,500 gallons per day.[3]

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

Plaintiffs assert in their *Complaint* that S.C. Code Ann. § 48-39-80(B)(11) imposes on the Department's Bureau of Coastal Management ("BCM" or "Bureau of Coastal Management") a mandatory statutory duty to review presumably every septic tank permit issued for consistency

[3] This Court will address the Plaintiff's due process argument regarding the sufficiency of the Department's public notice procedure by separate Order.

with the Coastal Management Program. (*Complaint*, pp. 20-21, paragraphs 63-70). Plaintiffs' interpretation of S.C. Code Ann. § 48-39-80(B)(11) is flawed. This statute says that

> "[i]n devising the management program the department shall consider all lands and waters in the coastal zone for planning purposes. In addition, the department shall … [d]evelop 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."

This Court finds that the Department did in fact "consider all lands and waters in the coastal zone for planning purposes" and further finds that the Department determined that requiring a CZC Certification for ***all*** septic tank permits and "small" onsite wastewater systems was unnecessary to establish adequate environmental protections. Instead, the Department established a 1500-gallon-per-day minimum threshold for CZC Certifications. *See* Table 1 at CMP V-5.

Plaintiffs argue that when S.C. Code Ann. § 48-39-80(B)(11) says "the department shall have the authority to review all state and federal permit applications in the coastal zone," the Bureau of Coastal Management can only properly exercise this authority by making a CZC Certification decision for every single septic permit. (*Complaint*, p. 20, paragraph 69). In other words, the Plaintiffs argue that the Department's establishment of a 1500-gallon-per-day minimum threshold before requiring a CZC Certification is an illegitimate exercise of authority. This is an unreasonable and unworkable statutory interpretation that fails to account for the comprehensive framework of system standards, permit procedures, minimum conditions, and other requirements designed to safeguard the environment and public health from potential wastewater discharges. See S.C. Code Ann. Regs. 61-56.

Plaintiffs assert in their *Complaint* that "[t]he CMP contains a provision that 'DHEC retains regulatory authority over septic tanks with flow rate of 1500 gallons per day or greater

(Section 44-1-40, S.C. Code of Laws).' CMP III-62; *see also* CMP V-5. However, nothing in the statute authorizes such a limitation on DHEC's certification review. Nor can the CMP override the plain language of the statute." (*Complaint*, p. 8, paragraph 23). This argument is without merit. Plainly there is no conflict between S.C. Code Ann. § 48-39-80(B)(11) and CMP V-5 (Table 1). The Program Document is simply "filling up the details" of the statutory mandate. "While the Legislature may not delegate its power to make laws, in enacting a law complete in itself, it may authorize an administrative agency or board 'to fill up the details' by prescribing rules and regulations for the complete operation and enforcement of the law within its expressed general purpose." *McNickel's Inc. v. S.C. Dep't of Revenue*, 331 S.C. 629, 503 S.E.2d 723 (1998) (citing *Heyward v. South Carolina Tax Comm'n*, 240 S.C. 347, 126 S.E.2d 15 (1962)). The Supreme Court went on to hold in *McNickel's* that "[a]n administrative regulation is valid as long as it is reasonably related to the purpose of the enabling legislation. *Id*. (citing *Hunter & Walden Co. v. South Carolina State Licensing Bd. for Contractors*, 272 S.C. 211, 251 S.E.2d 186 (1978)). *McNickel's* went further to hold that "[a]lthough a regulation has the force of law, it must fall when it alters or adds to a statute. *Id*. (citing *Society of Professional Journalists v. Sexton*, 283 S.C. 563, 324 S.E.2d 313 (1984)). That is not the case here. The Plaintiffs cannot prevail merely by asserting that the "1500-gallons-per-day" minimum threshold for requiring a CZC Certification is an invalid exercise of regulatory authority. As Judge McCoy correctly stated in her January 4, 2024 Order denying the Plaintiffs' *Motion for Preliminary Injunction*:

> "'[I]t is beyond this Court's power to effect a change in the statutes enacted by the Legislature.' *Key Corp. Cap., Inc. v. Cnty. of Beaufort*, 373 S.C. 55, 59, 644 S.E.2d 675, 677 (2007) (quoting *State v. Corey D.*, 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000); *see also Keyserling v. Beasley*, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996) (this Court does 'not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly')."

The Plaintiffs' concern is a matter for the General Assembly, not for this Court.

CONCLUSION

Upon hearing all of the arguments of counsel for all parties to this action, the Court finds that the Department is entitled to summary judgment. The Department did in fact comply with their statutory mandate per S.C. Code Ann. § 48-39-80(B)(11) (i.e., "[d]evelop 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" and "*consider* all lands and waters in the coastal zone for planning purposes." *Emphasis added*). Manifestly, the Department considered the environmental implications of septic tanks and "small" onsite wastewater systems and concluded that 1500 gallons per day (or less) is the point when a CZC Certification should not be required. Plaintiffs' disagreement with this minimum threshold is not proof of the Department's noncompliance with S.C. Code Ann. § 48-39-80. Accordingly, the Department is not required to issue a CZC Certification for septic permit applications for 1,500 gallons or less per day.

IT IS SO ORDERED.

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Frank R. Addy, Jr.
Presiding Circuit Judge

May 30, 2025
Greenwood, South Carolina

Charleston Common Pleas

Case Caption: South Carolina Coastal Conservation League , plaintiff, et al VS Department Of Health And Environmental Control South Carolin

Case Number: 2022CP1005192

Type: Order/Other

So Ordered

S/ Frank R. Addy, Jr.