

Jul 21 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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

Appellate Case No. 2025-000294

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South Carolinians for Responsible Agricultural Practices, Appellant,  
v.  
South Carolina Department of Environmental Services, Jim Young d/b/a J. Young Broilers,  
Respondents.

AND

South Carolinians for Responsible Agricultural Practices, Appellant,  
v.  
South Carolina Department of Environmental Services and Heath Coggins Broilers,  
Respondents.

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**RECORD ON APPEAL  
VOLUME I OF II**

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Coggins Broilers***

# **RECORD ON APPEAL**

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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 and )  
d/b/a J. Young Broilers, )  
)  
Respondents. )  
\_\_\_\_\_ )

Docket No. 24-ALJ-07-0266-CC

**ORDER**

South Carolinians for Responsible )  
Agricultural Practices, )  
)  
Petitioner, )  
)  
v. )  
)  
South Carolina Department of )  
Environmental Services, and Heath Coggins )  
Broilers, )  
)  
Respondents. )  
\_\_\_\_\_ )

Docket No. 24-ALJ-07-0267-CC

Petitioner and Respondents consent to consolidating the above-captioned matters. Rule 19(D) of the Rules of Procedure for the Administrative Law Court (SCALC Rules) provides in relevant part:

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at such hearing, the administrative law judge may upon motion by any party or on his own motion order that a consolidated hearing be conducted.

In both of these cases, the same or substantially similar evidence is relevant and material to the issues that are to be determined and, thus, consolidation is appropriate pursuant to SCALC Rule 19(D). Therefore, for good cause shown,



**IT IS HEREBY ORDERED** that pursuant to SCALC Rule 19(D), the above-captioned cases are consolidated for hearing purposes. Each case shall retain its separate caption and docket number. In addition, a single record of the proceedings shall be made and evidence introduced shall be considered as introduced in each matter.

**AND IT IS SO ORDERED.**

A handwritten signature in black ink, reading "Ralph K. Anderson, III". The signature is written in a cursive, flowing style with a horizontal line underneath the name.

Ralph King Anderson, III  
Chief Administrative Law Judge

September 12, 2024  
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).



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Stephanie Perez  
Judicial Law Clerk

September 12, 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 OF DISMISSAL**

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

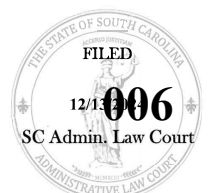
This matter is before the South Carolina administrative Law Court (Court) pursuant to a Motion to Dismiss (Motion) filed by Jim Young d/b/a J. Young Broilers and Heath Coggins Broilers (collectively, Respondents) on October 22, 2024. On December 3, 2024, a hearing on the Motion was held at the Court's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

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<sup>1</sup> The Court notes that during the hearing, the Department explained it took no position on the Motion.



Services<sup>2</sup> (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. Brietharp*, 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.

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<sup>2</sup> 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.<sup>3</sup> 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

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<sup>3</sup> 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).<sup>4</sup> 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

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<sup>4</sup> *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.<sup>5</sup> *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

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<sup>5</sup> 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 Env't. 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.2d 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 bring 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 brought 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.<sup>6</sup>

**IT IS THEREFORE ORDERED** that the Respondents' Motion to Dismiss is **GRANTED**, and these matters are **DISMISSED** with prejudice.

**AND IT IS SO ORDERED.**



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Ralph King Anderson, III  
Chief Administrative Law Judge

December 13, 2024  
Columbia, South Carolina

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<sup>6</sup> 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<sup>1</sup> (DES or Department) and Respondents filed its Response to the Motion.<sup>2</sup>

<sup>1</sup> 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).

<sup>2</sup> 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).

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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.<sup>3</sup> Petitioner cites to *Stono River Environmental Protection*

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<sup>3</sup> 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.2d 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.<sup>4</sup> Council denied League’s request on the basis that its certification decision was not a contested case as defined under the Administrative Procedures

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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.

<sup>4</sup> 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 & Env’t. 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.<sup>5</sup> 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

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<sup>5</sup> 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 brought 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.**

A handwritten signature in black ink, reading "Ralph K. Anderson, III". The signature is written in a cursive, flowing style with a horizontal line underneath the name.

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).



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Stephanie Perez  
Judicial Law Clerk

January 17, 2025  
Columbia, South Carolina



**SOUTH CAROLINA  
ENVIRONMENTAL  
LAW PROJECT**

*Lawyers for the Wild Side*

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June 18, 2024

**VIA IN-PERSON DELIVERY AND EMAIL**

M. Denise Crawford, Clerk of the Board  
South Carolina Board of Health and Environmental Control  
2600 Bull Street  
Columbia, SC 29201  
boardclerk@dhec.sc.gov

**RE: Request for Board Review (RFR) of Permit for the Construction and Operation of an Agricultural Animal Facility and Manure and Animal By-Products Treatment and Storage System in Laurens County**

Permittee: Heath Coggins (Heath Coggins Broilers)  
Permit Nos.: ND0090174, AG-20599  
Notice No.: HQ1-SB91-8TNXE

Dear Ms. Crawford:

Enclosed for filing please find the Request for Final Review Conference in the above-referenced matter submitted on behalf of South Carolinians for Responsible Agricultural Practices along with our certificate of service. I paid the \$100 filing fee via credit card by phone yesterday (Confirmation #: TDGGRM1Y75C86). Please return a clocked-in copy by email.

Thank you very much for your kind cooperation, and please do not hesitate to reach out if you need anything else.

Respectfully,

Emily S. Poole, Esq.

STATE OF SOUTH CAROLINA  
BEFORE THE BOARD OF THE DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL CONTROL

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South Carolinians for Responsible Agricultural Practices,

Requestor,

vs.

Heath Coggins (d/b/a Heath Coggins Broilers), and South Carolina Department of  
Health and Environmental Control,

Respondents.

RE: Permit for Construction and Operation of Agricultural Animal Facility and  
Manure and Animal By-Products Treatment and Storage System in Laurens  
County

P/N#: ND0090174, AG-20599, HQ1-SB91-8TNXE

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**REQUEST FOR FINAL REVIEW CONFERENCE**

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South Carolinians for Responsible Agricultural Practices (“SCRAP” or “the Requestor”), pursuant to S.C. Code Ann. § 44-1-60, hereby respectfully requests that the Board of the South Carolina Department of Health and Environmental Control (“Board”) conduct a Final Review Conference in connection with the DHEC staff’s decision to issue a permit for the construction and operation of an agricultural animal facility and manure and animal by-products treatment and storage system (hereinafter “the Permit”), Permit Number AG-20599 and Facility Permit Number ND0090174, to Heath Coggins, doing business as Heath Coggins Broilers (“Coggins” or “Permittee”). Coggins proposes to build eight poultry barns 55’ by 600’ in size that will hold 264,000 broilers with a normal production live weight of 1,306,800 pounds and will result in an

annual litter production of 1,610 tons. This facility would be located in Mountville, SC along the Little River and its tributaries on TMS # 511-00-00-009. DHEC's Office of Groundwater Protection and Agricultural Permitting issued the Permit on June 4, 2024, and a copy of the Notice of the Permit Decision letter and the Permit issued to Coggins are attached hereto as **Exhibit 1**. SCRAP requests that the Board reverse the staff's decision because it fails to comply with state laws, regulations, and policies.

## **I. THE REQUESTOR AND THEIR INTEREST**

Requestor South Carolinians for Responsible Agricultural Practices ("SCRAP") is an association of concerned residents in the Mountville area who seek to protect their rural community from the over-proliferation of chicken houses. Since 2016, this association has sought better permitting, oversight, and enforcement from DHEC as it pertains to the dozens upon dozens of poultry barns in their area. SCRAP and its members desire to see their rural community and its treasures, like the Little River, protected from the pollution and destruction of the poultry facilities that have overrun their community, impacting their homes and properties. Further, SCRAP's members—all of whom are affected persons within the definition of S.C. Code Ann. § 44-1-65(E)—breathe the air; drink the water; enjoy viewing plant and wildlife; and recreate, use, and appreciate the natural resources in and around the proposed facility, including the Little River. All of these activities and interests are at risk of harm if Coggins constructs and operates the proposed agricultural animal facility as authorized by DHEC staff in the Permit decision.

## **II. DHEC'S ISSUANCE OF THE PERMIT VIOLATES SOUTH CAROLINA LAW**

One of the most central provisions of the animal facility permitting regulations states: "The Department *shall act* on all permits *to prevent*, so far as reasonably possible considering relevant standards under state and federal laws, *an increase in pollution of the waters and air of the State*

from any new or enlarged sources.”<sup>1</sup> This and other mandates found in the regulations require DHEC to impose heightened protections and more stringent requirements for the proposed facility at issue here in order to minimize water quality impacts, protect the surrounding ecosystem, and preserve the health and welfare of the community’s residents. Because the terms of Coggins’ Permit do not allow for adequate protection of the surrounding water bodies, the Permit should not have been issued by DHEC staff, and the Permit should be rescinded by this Board.

**A. DHEC Staff Failed to Consider This Facility’s Proximity to the Little River**

Because one of the principal purposes of DHEC’s animal facility permitting regulatory scheme is to prevent an increase in pollution of waters of the State, the Department has crafted many regulatory provisions to ensure compliance with this mandate. In S.C. Code Ann. Regs. § 61-43.200.140, the Department declares:

A. There *shall* be no discharge of pollutants from the operation into surface Waters of the State (including ephemeral and intermittent streams). There *shall* be no discharge of pollutants into groundwater, which could cause groundwater quality not to comply with the groundwater standards established in R.61-68.

...

C. The following cases *shall* be evaluated for additional or more stringent requirements:

1. Source water protection. Facilities and manure utilization areas located within a state-approved source water protection area.
2. 303(d) Impaired Water Bodies List. Facilities and manure utilization areas located upstream of an impaired waterbody.
3. Proximity to Outstanding Resource Waters, trout waters, shellfish waters, or potential to adversely affect a federally listed endangered or threatened species, its habitat, or a proposed or designated critical habitat.
4. Aquifer Vulnerability Area, an area where groundwater recharge may affect an aquifer.<sup>2</sup>

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<sup>1</sup> S.C. Code Ann. Regs. § 61-43.200.70(E) (emphasis added).

<sup>2</sup> S.C. Code Ann. Regs. § 61-43.200.140 (emphasis added).

These unequivocal provisions establish a general rule and a set of more specific rules, as applicable, that the Department must impose upon animal facility permit applicants to protect water quality. The general rule is that *no discharge of pollutants* from these facilities can occur in either surface waters or groundwaters of the State. The next section cited above then details specific situations that call for more stringent requirements to be evaluated, including when a proposed animal facility is located upstream of an impaired waterbody. The strength and stringency of these regulations have been confirmed through judicial review, establishing precedent that is extremely relevant here. In 2022, the South Carolina Court of Appeals stressed that to comply with the plain language of the regulations, DHEC *must* meaningfully evaluate agricultural facilities being sited in a waterbody listed on the impaired waterbodies list in making permit decisions.<sup>3</sup>

Turning to the Permit at hand, Coggins is planning to build a new poultry facility on a parcel that the Little River runs directly through (TMS # 511-00-00-009). This means that this facility is located upstream of the Little River and that any discharges from this facility, whether point source or nonpoint source pollution, will inevitably run into the Little River. Since 2004, the Little River and its tributaries “have been placed on the South Carolina § 303(d) list of impaired waters for violations of the fecal coliform standard.”<sup>4</sup> Therefore, because of this facility’s proximity to the Little River, which has been designated as an impaired waterbody by the Environmental Protection Agency (“EPA”), this Permit is governed by the terms of S.C. Code

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<sup>3</sup> See *Blackmon v. S.C. Dept. of Health & Envtl. Control*, 441 S.C. 342, 357–61, 893 S.E.2d 578, 586–89 (2022).

<sup>4</sup> S.C. Dept. of Health & Envtl. Control, *Total Maximum Daily Load Development for the Little River Watershed*, [https://scdhec.gov/sites/default/files/docs/HomeAndEnvironment/Docs/tmdl\\_littleRvr\\_fc.pdf](https://scdhec.gov/sites/default/files/docs/HomeAndEnvironment/Docs/tmdl_littleRvr_fc.pdf) (Sept. 29, 2004).

Ann. Regs. § 61-43.200.140(C)(2), cited above. This means that DHEC was required to make a meaningful evaluation of more stringent permitting requirements to protect water quality.

Unfortunately, the permit application submitted to DHEC makes clear that Coggins has not taken and does not plan to take any action to protect the already-impaired Little River. On page 7 of Coggins' Comprehensive Nutrient Management Plan ("CNMP"), attached hereto as **Exhibit 2**, the CNMP leaves space for the Permittee to identify natural resource concerns considered in the permit application process. This page of the CNMP states, "If checked, the indicated resource concerns have been identified and addressed in this plan." Crucially, under the separate boxes meant to house Water Quality Concerns and Soil Quality Concerns, the Permittee simply wrote, "None." Correspondingly, the boxes where the Permittee details their planned Activities to Address Concerns are blank in the CNMP.

Because the permit application submitted to DHEC did not contain any information from which the Department could consider additional or more stringent requirements for the protection of the impaired Little River, DHEC staff should not have issued this Permit as written. Issuing the Permit as submitted, in which water quality concerns and the impaired Little River were not considered, violates S.C. Code Ann. Regs. § 61-43.200.140(C)(2), cited above. Therefore, the Board should either rescind the Permit or amend the Permit to impose the more stringent requirements contemplated by the regulation. In the report that created a Total Maximum Daily Load ("TMDL") for the Little River as it pertains to fecal coliform, DHEC found that agricultural operations, including poultry facilities, are a "source[ ] of fecal coliform bacteria" and recommended best management practices (BMPs) for these facilities.<sup>5</sup> These same BMPs, as well as other measures, might be used by the Board as the more stringent requirements imposed upon

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<sup>5</sup> *Id.*

Coggins to protect the Little River from further degradation.

In the public meeting DHEC hosted on this permit application, several of Requestor's members asked about how the Department planned on meeting its burden under S.C. Code Ann. Regs. § 61-43.200.140(C)(2). The Department did not give a clear answer at that time, and one spokesperson for DHEC indicated they were not aware that there was a TMDL on the Little River. This is deeply concerning to the Requestor and its members—all of whom are counting on DHEC to protect the Little River from further harm. Even if Coggins did not consider the impaired Little River, the Department was undoubtedly required to do so. This Board should not allow this Permit to become final until the TMDL has been properly considered and stricter requirements are imposed upon the facility.

**B. DHEC Staff Failed to Address the Particular Needs of This Site**

Recognizing again that the central goal of DHEC's animal facility permitting regulatory scheme is to prevent an increase in pollution of waters of the State, the Department also requires proposed animal facilities to comply with several siting requirements. The following siting requirements apply to all animal facilities:

1. The minimum separation distance between an animal facility (animal growing areas, houses, pens or barns, not including range areas or manure utilization areas) and a public or private drinking water well (excluding the applicant's well) is 200 feet. The minimum separation distance between an animal facility and a potable water well owned by the applicant is 50 feet (as required by R.61-71).
2. The minimum separation distance between an animal facility and Waters of the State (including ephemeral and intermittent streams) located down slope from the facility is 100 feet.
3. Except for site drainage, the minimum separation distance required between an animal facility and a ditch or swale located down slope from the facility is 50 feet.
4. A new animal facility or an expansion of an established animal facility shall not be located in the 100-year floodplain.

5. The separation distance required between a small animal facility or growing areas (pens or barns not including range areas) and the lot line of real property owned by another person is 200 feet and 1,000 feet from the nearest residence.

6. The separation distance required between large or X-large animal facilities or growing areas (pens or barns not including range areas) and the lot line of real property owned by another person is 400 feet and 1,000 feet from the nearest residence.<sup>6</sup>

In addition, the siting requirements for the animal facility's specific storage structures that hold dry animal manure and other animal by-products, "including, but not limited to, stacking sheds, burial sites, incinerators, manure, and dead animal composters," are largely similar to those above:

1. The minimum separation distance between a dry animal manure and other animal by-products treatment or storage facility and a public or private drinking water well (excluding the applicant's well) is 100 feet. The minimum separation distance between a dry animal manure and other animal by-products treatment or storage facility and a potable water well owned by the applicant is 50 feet.

2. Except for site drainage, the minimum separation distance required between a dry animal manure and other animal by-products treatment or storage facility and a ditch or swale located down slope from the facility is 50 feet.

3. The minimum separation distance between a dry animal manure and other animal by-products treatment or storage facility and Waters of the State including ephemeral and intermittent streams located down slope from the facility is 100 feet.

4. A new dry animal manure and other animal by-products treatment or storage facility or an expansion of an established dry animal manure and other animal by-products treatment or storage facility shall not be located in the 100-year floodplain.

5. The separation distance required between a dry animal manure and other animal by-products treatment or storage facility operated at an animal growing facility and the lot line of real property and a residence owned by another person shall be equivalent to the setback required for the animal growing areas or houses.

6. The minimum separation distance required between a dry animal manure and other animal by-products treatment or storage facility operated by a manure broker

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<sup>6</sup> S.C. Code Ann. Regs. § 61-43.200.80(A).

and the lot line of real property owned by another person is 200 feet and 1,000 feet to the nearest residence.<sup>7</sup>

The Department's regulations make clear that the siting requirements cited above are the *minimum requirements* for every animal facility and its storage structures. As part of DHEC's review of a permit application, the Department must also determine if *additional* siting restrictions are necessary:

F. The setback limits given in Part 200 are siting requirements. The Department shall evaluate the following factors to determine if any special conditions are necessary:

1. Latitude and Longitude;
2. Down-wind receptors; and
3. Nutrient Management Plan.<sup>8</sup>

For the Permit at issue here, DHEC determined that Coggins met the minimum siting requirements detailed in S.C. Code Ann. Regs. § 61-43.200.80(A) and (C). However, DHEC did not evaluate whether special conditions are necessary for the siting of these facilities in order "to prevent . . . an increase in pollution of the waters and air of the State."<sup>9</sup> As detailed in the paragraphs below, mandatory considerations, including the latitude and longitude and Nutrient Management Plan for this facility, strongly indicate that additional siting restrictions are necessary in this case.

*1.     Latitude and Longitude*

The latitude and longitude of Coggins' proposed facility and storage structures illustrate why additional siting conditions are necessary to protect the natural resources, water quality,

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<sup>7</sup> S.C. Code Ann. Regs. § 61-43.200.80(C).

<sup>8</sup> S.C. Code Ann. Regs. § 61-43.200.70(F).

<sup>9</sup> *Id.* at 61-43.200.70(E).

ecosystems, and residents around this site. First, as stated before, the Little River runs through the property where Coggins has proposed this facility. As a result, the barns and stacking sheds proposed are extremely close to surface water and wetlands, as shown in one of the drawings included in Coggins' CNMP, which is attached hereto as **Exhibit 3**. Second, the proposed facility is also nearly located within the 100-year floodplain, as can be seen in the FEMA Flood Map for this area, attached to this letter as **Exhibit 4**. Third, many of the soil types found at this latitude and longitude have a "very high" likelihood of runoff during rain and storm events, as shown on pages 11 and 19 of the Custom Soil Resource Report in Coggins' CNMP, which are attached hereto as **Exhibit 5**. Fourth, one of Coggins' proposed sites for a stacking shed is directly beside unstable topography, as shown in one of the drawings included in Coggins' CNMP, which is attached hereto as **Exhibit 6**.

These four characteristics of the proposed parcel's latitude and longitude each make it much more likely that the Little River, its resources, its ecosystems, and the general public will be harmed as a result of the operation of this facility, especially when rain and storm events cause runoff from this facility. For the protection of all, additional siting requirements should be imposed to move this facility further away from the Little River, the 100-year floodplain, and unstable soil and topography.

While the facility's proximity to the Little River, its tributaries, and its wetlands certainly call for even more protective measures, it appears that DHEC staff, at one point, at least partially considered ways to reduce impacts to water and wetlands. In the Notice of Permit Decision letter, attached hereto as **Exhibit 1**, the last sentence of the third paragraph reads: "Additionally, the permit requires the applicant to maintain the existing evergreen buffers around the facility and also to plant an evergreen buffer in the areas that don't currently have an existing evergreen buffer."

However, in the Permit itself, also in **Exhibit 1**, this evergreen buffer permit term is not mentioned. To complicate matters more, in Coggins' CNMP, the drawing in the CNMP showing a vegetated buffer only shows the buffer on one side of the facility, as shown in the drawing attached hereto as **Exhibit 7**. If the evergreen buffer is a Permit requirement, it should be spelled out clearly in the terms and reflected in the drawings submitted by Coggins to DHEC. This Board should demand that this requirement, along with additional siting requirements needed to fully account for the unique, natural features of this site, be included in the Permit issued to Coggins.

## 2. Nutrient Management Plan

Further, Coggins' Nutrient Management Plan for this facility also shows why additional siting requirements are so crucial in this instance. First, Coggins' CNMP states that the facilities plan to have two stacking sheds that are 40 feet by 200 feet in size. However, the CNMP also details that the sizing of these stacking sheds is *a minimum*, as shown on page 40 of Coggins' CNMP, which is attached hereto as **Exhibit 8**. As discussed in the prior paragraph, one of the proposed stacking sheds for this facility is located directly adjacent to unstable topography.<sup>10</sup> The lack of detail in the CNMP about how the stacking sheds might be expanded is extremely relevant to determining the potential impacts of this proposed facility. Second, Coggins' CNMP also states that one of the purposes of the Animal Mortality Facility is to “[d]ecrease non-point source pollution of surface and groundwater resources,” as shown on page 10 of the CNMP, which is attached hereto as **Exhibit 9**. However, DHEC regulations require that this Permit be a no-discharge permit,<sup>11</sup> meaning that *any* pollution from this facility is a violation of the Permit's terms and of state and federal law. The CNMP should not be discussing a *decrease* in pollutants; instead,

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<sup>10</sup> See **Exhibit 6**.

<sup>11</sup> See, e.g., S.C. Code Ann. Regs. § 61-43.200.140(A).

it should make clear that *no pollutants* will be coming from this facility into surface and groundwater resources. Further, the design of the facility must be shown to be adequate to achieve that outcome.

Because of these two points in the CNMP that present a lack of specificity and clarity, additional siting restrictions should be imposed to protect the natural resources, ecosystems, and communities surrounding this facility. It is not clear from the CNMP that the Permittee here understands the importance of (1) disclosing the full information of this application and (2) ensuring that no pollutants escape from the facility into nearby waters. Thus, the Department should not have issued this Permit without additional siting guidelines that ensure stacking sheds will be placed only upon stable topography and that the facility is far enough away from the nearby water sources such that pollution does not occur.

**C. DHEC Staff Failed to Evaluate Possible Discharges into the Little River**

As mentioned briefly in the sections above, when DHEC issues an animal facility operating permit, that permit is a no-discharge permit.<sup>12</sup> This means that facility operators cannot allow any part of their facility to discharge pollutants into waters of the State.

In a majority of states, operators of a concentrated animal feeding operation (“CAFO”) are allowed to discharge pollutants into waters of the State and waters of the United States if they apply for and receive a National Pollutant Discharge Elimination System (“NPDES”) permit. In fact, the federal government has determined the floor of each state’s regulatory scheme through the provisions of 40 C.F.R. § 122.23(a):

Concentrated animal feeding operations (CAFOs) . . . are point sources, subject to NPDES permitting requirements as provided in this section. Once an animal feeding operation is defined as a CAFO for at least one type of animal, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the

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<sup>12</sup> See S.C. Code Ann. Regs. § 61-43.200.20(B).

operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

Because the federal regulations determine the baseline that each state must meet or exceed, South Carolina's regulations directly mirror 40 C.F.R. § 122.23 in S.C. Code Ann. Regs. § 61-9.122.23. As a result, the requirement in the federal regulations that an NPDES permit be in effect should any discharges occur also applies in the State of South Carolina. Further, under both the federal regulations and the State of South Carolina's regulations, an operator of a CAFO must apply for and receive an NPDES permit if they plan to discharge or know that their facility will discharge pollutants into waters of the United States or waters of the State, respectively.<sup>13</sup>

On its face, the South Carolina state law requirement that all operating permits issued to CAFOs be no-discharge permits seems to comply with federal law and protect water quality in the state. However, further examination of federal law reveals that there is a significant gap in South Carolina's NPDES regulations. Although discharges that occur under these CAFO operating permits are prohibited by South Carolina law, there is no regulatory mechanism in place that monitors whether discharges are, in fact, not occurring. This means that discharges very well can—and do—occur, but because South Carolina regulations presume no discharges are occurring, no oversight and monitoring is in place to ensure the no-discharge rule is being honored.

A similar situation recently occurred in the State of Idaho and was litigated in the U.S. Court of Appeals for the Ninth Circuit. In interpreting 40 C.F.R. § 122.23, which again is duplicated in South Carolina's state regulations, the Court found that simply stating a permit is a no-discharge permit does not make it so under the law. Specifically, the Court wrote:

[T]he Idaho Permit does not allow *any* discharges from the production area.<sup>14</sup>  
Without a requirement that CAFOs monitor waste containment structures for

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<sup>13</sup> See 40 C.F.R. 122.23(d); S.C. Code Ann. Regs. § 61-9.122.23(d).

<sup>14</sup> The term *production area* is defined as: “that part of an AFO that includes the animal

underground discharges, there is no way to ensure that production areas comply with the Permit's zero-discharge requirement. *See Waterkeeper Alliance, Inc. v. U.S. E.P.A.*, 399 F.3d 486, 499 (2d Cir. 2005) (failure of permit to include any mechanism for evaluating compliance with effluent limitation was arbitrary and capricious).<sup>15</sup>

This and other precedent from federal courts make clear that if a state issues a no-discharge permit, it must also require monitoring mechanisms as part of that permit to evaluate compliance with the no-discharge standard.

For the Permit at hand, this means that DHEC staff should have required comprehensive monitoring mechanisms as part of the issuance of this Permit to ensure that no discharges of pollutants are in fact taking place. The facility proposed by Coggins is a CAFO by definition because the proposed facility would have over 125,000 broilers and would use a dry-manure handling system.<sup>16</sup> Thus, under both federal and state law, the facility must either have an NPDES permit *or* it must have a no-discharge permit and appropriate monitoring mechanisms in place to ensure that no discharges occur. Because South Carolina does not give NPDES permits to CAFOs, and instead issues no-discharge operating permits, there must be sufficient monitoring mechanisms in place for Coggins' facility to be compliant with both state and federal law. Because DHEC staff have not required water monitoring mechanisms as part of this Permit, the Board should rescind the Permit or amend it to include proper monitoring and reporting requirements.

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confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. . .” 40 C.F.R. § 122.23(b)(8); S.C. Code Ann. Regs. § 61-9.122.23(b)(8).

<sup>15</sup> *Food & Water Watch v. U.S. Env'tl. Prot. Agency*, 20 F.4th 506, 517 (9th Cir. 2021).

<sup>16</sup> *See* S.C. Code Ann. Regs. § 61-9.122.23(b)(4)(x).

**D. DHEC Staff Failed to Honor South Carolina’s Water Quality Standards and Antidegradation Policies**

In addition to complying with the specific regulations relating to agricultural animal facilities, facilities like the one proposed in this instance must also adhere to the applicable regulations relating to water quality, air quality, waste disposal, and more.<sup>17</sup> In S.C. Code Ann. Regs. 61-43.200.40(H), water classifications and standards are expressly designated as a source of law that applies to agricultural animal facilities, which are found in S.C. Code Ann. Regs. 61-68. These water classifications and standards exist so that the State of South Carolina can “maintain reasonable standards of purity of the air and water resources of the State, consistent with the public health, safety and welfare of its citizens, maximum employment, the industrial development of the State, the propagation and protection of terrestrial and marine flora and fauna, and the protection of physical property and other resources.”<sup>18</sup>

Federal law requires that every state issue water quality standards and policies that protect each water body found in the state and designated uses delineated for those water bodies.<sup>19</sup> Specifically, every state must have an *antidegradation policy* ensuring each water body’s long-term ecological health and suitability for specific activities. South Carolina’s antidegradation policy declares: “Existing water uses and the level of water quality necessary to protect these existing uses shall be maintained and protected regardless of the water classification.”<sup>20</sup> For waters designated as Freshwater under the regulations, which is true of the Little River, the water quality standards provide: “Freshwaters (FW) are freshwaters suitable for primary and secondary contact

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<sup>17</sup> See S.C. Code Ann. Regs. § 61-43.200.40 (listing other DHEC regulatory chapters that often apply to agricultural animal facilities).

<sup>18</sup> S.C. Code Ann. § 48-1-20 (detailing the purpose of the South Carolina Pollution Control Act and its implementing regulations).

<sup>19</sup> See, e.g., 40 C.F.R. §§ 131.10–12.

<sup>20</sup> S.C. Code Ann. Regs. 61-68(D)(1).

recreation and as a source for drinking water supply after conventional treatment in accordance with the requirements of the Department. Suitable for fishing and the survival and propagation of a balanced indigenous aquatic community of fauna and flora. Suitable also for industrial and agricultural uses.”<sup>21</sup>

Turning to Coggins’ proposed facility, the antidegradation policy and the water quality standards for the Little River make clear that this Permit cannot be issued if the facility’s construction and operations could lead to degradation of the Little River and its tributaries. In addition to being a source of fecal coliform bacteria, as discussed earlier in this document, the EPA has determined that livestock operations and animal manure also spread other key pollutants to surrounding water bodies, including nitrogen, phosphorus, potassium, organic compounds, solids, salts, trace elements from feed additives and pesticide ingredients, volatile compounds include greenhouse gases, pathogens, antimicrobials, hormones, and other pollutants.<sup>22</sup> EPA created a table that lists each of these pollutants, a description of the pollutant, pathways to that the pollutant reaches the environment, and potential impacts of that pollutant upon the environment, which is attached hereto as **Exhibit 10**.<sup>23</sup> That table conclusively shows that facilities like Coggins’ often lead to degradation of water bodies that violate the antidegradation policies required by the federal and state governments.

With the antidegradation policy in mind, DHEC staff should not have issued this Permit without thorough consideration of the key pollutants that can result from poultry facilities and how those pollutants can reach water resources. This Permit cannot be issued unless DHEC staff are

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<sup>21</sup> *Id.* at 61-68(G).

<sup>22</sup> U.S. Env’tl. Prot. Agency, *Literature Review of Contaminants in Livestock and Poultry Manure and Implications for Water Quality*, <https://www.epa.gov/npdes/animal-feeding-operations-afos> (July 2013).

<sup>23</sup> *Id.*, Table 1-1.

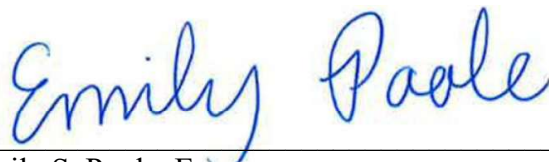
confident that the many different pathways to the environment for these pollutants are adequately determined and then eliminated for the protection of the Little River and its tributaries. For a water body that is already impaired, it is all the more imperative that this Board take the antidegradation policy very seriously and prevent this Permit from becoming the agency's final action.

### **III. CONCLUSION AND REQUEST FOR RELIEF**

In light of the foregoing, the Requestor urges the Board of Health and Environmental Control to conduct a final review conference to review and deny the above-referenced DHEC staff decision approving Heath Coggins Broilers' construction and operating Permit where Requestor's members live, work, and own property; or condition such Permit to adequately protect the interests of Requestor's members from harm. Please direct all notices and communications related to this request for final review to the undersigned counsel.

Respectfully submitted,

**SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT**



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(843) 527-0078  
emily@scelp.org

Greenville, South Carolina  
June 18, 2024

STATE OF SOUTH CAROLINA  
BEFORE THE BOARD OF THE DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL CONTROL

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South Carolinians for Responsible Agricultural Practices,

Requestor,

vs.

Heath Coggins (d/b/a Heath Coggins Broilers), and South Carolina Department of  
Health and Environmental Control,

Respondents.

RE: Permit for Construction and Operation of Agricultural Animal Facility and  
Manure and Animal By-Products Treatment and Storage System

P/N#: ND0090174, AG-20599, HQ1-SB91-8TNXE

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**CERTIFICATE OF SERVICE**

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I hereby certify that on this date I served Respondent SCDHEC by emailing and hand-delivering the foregoing Request for Final Review Conference at the address below, and I served Respondent Heath Coggins by placing a copy of the foregoing Request for Final Review Conference in the U.S. Mail to the address below:

South Carolina Board of DHEC  
Attention: Clerk of the Board  
2600 Bull Street  
Columbia, South Carolina 29201  
boardclerk@dhec.sc.gov

Heath Coggins Broilers  
c/o Heath Coggins  
2254 Easy Road  
Laurens, South Carolina 29360

  
\_\_\_\_\_  
Emily S. Poole, Esq.

Greenville, South Carolina  
June 18, 2024

# **EXHIBIT 1**



June 4, 2024

**Notice of Permit Decision**

Heath Coggins Broilers  
Facility ID# ND0090174  
Laurens County, South Carolina

Dear Sir or Madam,

Thank you for your interest and/or comments regarding the permit application from the above-referenced facility. The South Carolina Department of Health and Environmental Control ("Department") values all comments received during the permitting process and is committed to addressing and considering all relevant information prior to making a final permit decision. Public input is an important part of the permitting process and can result in changes to permit conditions and operational practices if a permit is issued.

After due consideration of all relevant comments received, the requirements and policies expressed in the Pollution Control Act of South Carolina and applicable regulations, the Department has made the decision to issue the construction permit.

Some comments received during the permitting process, such as those related to property values and road traffic, are outside the scope of the Department's regulations. Comments related to health, odors, and vectors are addressed by the Department's setbacks and other regulatory requirements which are included in the permit. The Comprehensive Nutrient Management Plan for the facility includes measures for controlling odors, vectors, and protecting surface water and groundwater. Additionally, the permit requires the applicant to maintain the existing evergreen buffers around the facility and also to plant an evergreen buffer in the areas that don't currently have an existing evergreen buffer.

The permit will be issued on June 4, 2024, with an effective date of June 19, 2024. Once the construction permit is issued, only an applicant, permittee, licensee, or an affected person(s) can request a review of the issuance of that permit, as outlined in the "Guide for Board Review" enclosed in this mailing.

If you have any further questions regarding the review procedures, you may contact the Legal Office, Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201 or by calling 803-898-3350.

Sincerely,

A handwritten signature in blue ink that reads "Lisa Appel".

Lisa Appel, Ag Permitting Project Manager  
Groundwater Protection & Agricultural Permitting Section  
Bureau of Water

Enclosure: Guide for Board Review  
Permit AG-20599 v1.0

cc: Natalie Kirkpatrick, Director, Upstate EA Greenwood Office  
Travis Fuss, Director, Midlands EA Aiken Office

**047**

**Permission is hereby granted to:**

Heath Coggins  
Heath Coggins Broilers  
6821 Lisbon Road  
Mountville, SC 29371

for the construction and operation of a **NO-DISCHARGE** agricultural animal facility, manure and animal by-products treatment and storage system in accordance with the construction plans, specifications, engineering report, Animal Facility Management Plan, and Construction Permit Application prepared by Adam Gaines, PE.

**County:** Laurens County

**Project Description:**

1. Construction of eight (8) new broiler houses.
2. Broilers raised on earthen floor covered with wood shavings.
3. Contract disposal of manure, utilizing a permitted manure broker.
4. Other conditions as stated in permit special conditions and animal facility management plan.
5. Treat a total of 1610 tons of manure generated as follows:
  - 8 houses X 33,000 Broilers per house = 264,000 birds at any one time.
  - 264,000 Broilers X 4.95 Lbs. Ave. Live Wt. = 1,306,800 Lbs. Normal Production Live Weight
  - 264,000 Broilers X 6.1 tons/1000 bird spaces/year = 1610 tons/year waste production

**Special Conditions:** (See attachments).

**Facility Permit Number:** ND0090174

**Permit Number:** AG-20599 v1.0

**Date of Issue:** 6/4/2024

**Effective Date:** 6/19/2024

**Expiration Dates:** Unless construction begins prior to 6/17/2026 and is completed prior to 6/16/2027, this permit will expire. In accepting this permit, the owner agrees to the admission of properly authorized persons at all reasonable hours for the purpose of sampling and inspection.

**Treatment Plant Classification:** Group 0

**WRITTEN APPROVAL TO OPERATE THIS FACILITY MUST BE OBTAINED FROM THE DEPARTMENT PRIOR TO PLACING ANIMALS IN THE FACILITY.**



Kelly Whitlock, Manager  
Groundwater Protection & Ag Permitting  
Bureau of Water

cc: Natalie Kirkpatrick, Director, Upstate EA Greenville/Spartanburg Office  
Travis Fuss, Director, Midlands EA Aiken Office

SPECIAL CONDITIONS  
(Poultry)

- Operate and maintain the waste system, including all special conditions in accordance with Animal Facility Management Plan developed by Adam Gaines, PE. Operate and maintain the waste management system in accordance with State and Federal law so as to prevent discharges to the environment. Should any part of the Animal Facility Management Plan fail to function as intended, additional controls or treatment of the wastes may be required.
- The primary method of disposal of mortality will be by incineration until a rotary drum composter is installed. The excessive mortality method of disposal will be by burial. If a massive die-off occurs, notify your local inspector immediately, Travis Fuss, Midlands EA Aiken Office, 206 Beaufort Street, NE, Aiken, SC 29801, and phone number is (803) 642-1637, or email at [fusstr@dhec.sc.gov](mailto:fusstr@dhec.sc.gov). If you are calling after-hours, please call the Department's twenty four hour number (888)-481-0125 or (803)-253-6488. If you plan to bury the dead animals from a massive die-off, the Department recommends that you develop an emergency plan, and have it approved by the Department, prior to the occurrence. If you do not have a plan and site approved by the Department you will not be able to bury the animals. If the plan and site are approved, you would only be required to notify the Department of the massive die-off, and then implement the approved plan for disposal. The Department recommends following the Burial Guidance document when submitting your plan for approval. It can be found at [https://www.scdhec.gov/sites/default/files/media/document/Burial-Site-Guidance-6\\_28\\_17.pdf](https://www.scdhec.gov/sites/default/files/media/document/Burial-Site-Guidance-6_28_17.pdf).
- If you have mortality on the farm that may be attributed to disease or toxin exposure, please contact Dr. Julie Helm of the State Veterinarian office at (803)-788-2260 for additional assistance in the handling and disposal of infected animals. The State Veterinarian's office recommends that the diagnostic lab evaluate samples for deaths in excess of 10% of a house population. This action can help identify disease outbreaks on the farm. The State Veterinarian's Office can also provide guidance in preventing the spread of diseases.
- You are responsible for obtaining any other local or state permits that may be required for this project, including a **stormwater permit**. For information concerning stormwater, call (803) 898-4234, or <https://www.scdhec.gov/environment/water-quality/stormwater/stormwater-construction-activities/stormwater-construction>.
- Drinking water wells installed on this site to provide water for animal and/or human consumption must be installed with at least the following minimum setbacks required in Regulation 61-71 (Well Standards & Regulations):
 

|                                                                   |          |
|-------------------------------------------------------------------|----------|
| (a) Sewer lines .....                                             | 20 feet  |
| (b) Lakes, streams, surface-water bodies .....                    | 50 feet  |
| (c) Septic tanks/tile fields .....                                | 75 feet  |
| (d) Animal feedlots, barns, stables .....                         | 50 feet  |
| (e) Waste disposal - land application sites .....                 | 100 feet |
| (f) Waste treatment lagoons .....                                 | 100 feet |
| (g) Herbicide, pesticide & petroleum handling/storage sites ..... | 100 feet |

A permit for private wells must be obtained from the Department prior to installation and a Notice of Intent must be submitted, Regulation 61-44 (Individual Residential Well and Irrigation Well Permitting). Enclosed is a copy of the Notice of Intent. For information concerning well permitting, call (803)-898-3559 or <https://scdhec.gov/BOW/private-drinking-water-wells>

6. ***Annual reporting is required for this permit.***

*An annual report is due by June 19th of each year and must include the following:*

- a. Waste sampling results for the last year, if applicable, and the latest rolling average.*
- b. Soil monitoring results, if applicable.*
- c. Groundwater monitoring results, if applicable.*
- d. Calculated application rates for all waste utilization areas, if applicable.*
- e. The adjusted application rates, if applicable, based on the most recent animal waste sampling and soil samples. The application rate change could also be due to a change in field use, crop grown or other factors.*

**Annual Reports may be submitted through your ePermitting account or mailed to the following address:**

**SC Department of Health & Environmental Control  
Bureau of Water - Ag Permitting & Groundwater Protection Section  
Attn: Tonya O'Cain  
2600 Bull Street  
Columbia, SC 29201**

7. CAMM Certification is required within one year from the effective date of this permit. The next CAMM training is scheduled for February 4 or 18, 2025 (different locations). Please contact Bryan Smith with the Clemson Extension Service to inquire about future CAMM training classes for manure handling at (864)-984-2514 .



June 4, 2024

Heath Coggins  
Heath Coggins Broilers  
2254 Easy Rd.  
Laurens, SC 29360

Re: Facility Permit #ND0090174 and Construction Permit #AG-20599 v1.0  
Heath Coggins Broilers  
Laurens County

Dear Heath Coggins:

Enclosed is a State Agricultural Permit for the above-referenced facility. Construction and operation is to be performed in accordance with this permit and the supporting agricultural facility management plan approved by this Office. Once the construction permit is issued, an applicant, permittee, licensee, or an affected resident can request a board review of the issuance of that permit, as outlined in the enclosed document "Guide to Board Review" dated December 1, 2022. If you have any questions regarding these review procedures, you may contact the Legal Office, Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201 or by calling (803)-898-3350. This permit does not cover the use of an incinerator or composter. Those will be permitted by Henry Gibson when plans and specs are received by this office.

Upon completion of construction, a letter must be submitted to the Environmental Affairs (EA) Regional office from the Agricultural Animal Facility Management Plan preparer certifying that the construction has been completed in accordance with the approved plan. A final inspection may then be scheduled. The EA Regional office will grant approval to operate (ATO) upon successful completion of the project. **In addition, Regulation 61-43 requires an operator of an animal facility or manure utilization area to complete CAMM training, created by Clemson University, on the operation of animal manure management systems. As the operator of this facility, you are required to complete this training program within one year from effective date of this permit. Please contact Bryan Smith with the Clemson Extension Service to inquire about future CAMM training classes for manure handling at (864)-984-2514.**

If you have any questions regarding the permit, please contact Lisa Appel at (803)-898-1745. This system cannot be placed into operation until the final ATO is granted by the appropriate EA Regional Office. Your Region contact is Travis Fuss, Midlands EA Aiken Office, 206 Beaufort Street, NE, Aiken, SC 29801, and phone number is (803) 642-1637, or email at [fusstr@dhec.sc.gov](mailto:fusstr@dhec.sc.gov). The EA Regional Office should be notified when construction begins.

Sincerely,

Kelly Whitlock, Manager  
Groundwater Protection & Ag Permitting  
Bureau of Water

cc: Natalie Kirkpatrick, Director, Upstate EA Greenville/Spartanburg Office  
Travis Fuss, Director, Midlands EA Aiken Office

051

# **EXHIBIT 2**

## 1.8. Natural Resource Concerns

If checked, the indicated resource concerns have been identified and addressed in this plan.

### Soil Quality Concerns

|   | <i>Soil Quality Concern</i> | <i>Activities to Address Concern</i> |
|---|-----------------------------|--------------------------------------|
| X | None                        |                                      |

### Water Quality Concerns

|   | <i>Water Quality Concern</i> | <i>Activities to Address Concern</i> |
|---|------------------------------|--------------------------------------|
| X | None                         |                                      |

### Other Concerns Addressed

|   | <i>Other Concern</i> | <i>Activities to Address Concern</i> |
|---|----------------------|--------------------------------------|
| X | Regulations          | CNMP Required by SC DHEC             |
| X | Litter Management    | Planned Stacking Shed                |
| X | Mortality Management | Planned Composter                    |
| X | Mortality Management | Planned Burial Site                  |
| X | Mortality Management | Planned Incinerator                  |

# **EXHIBIT 3**

## Proposed Barn, Manure Storage & Burial Location

Heath Coggins  
Laurens Co., SC

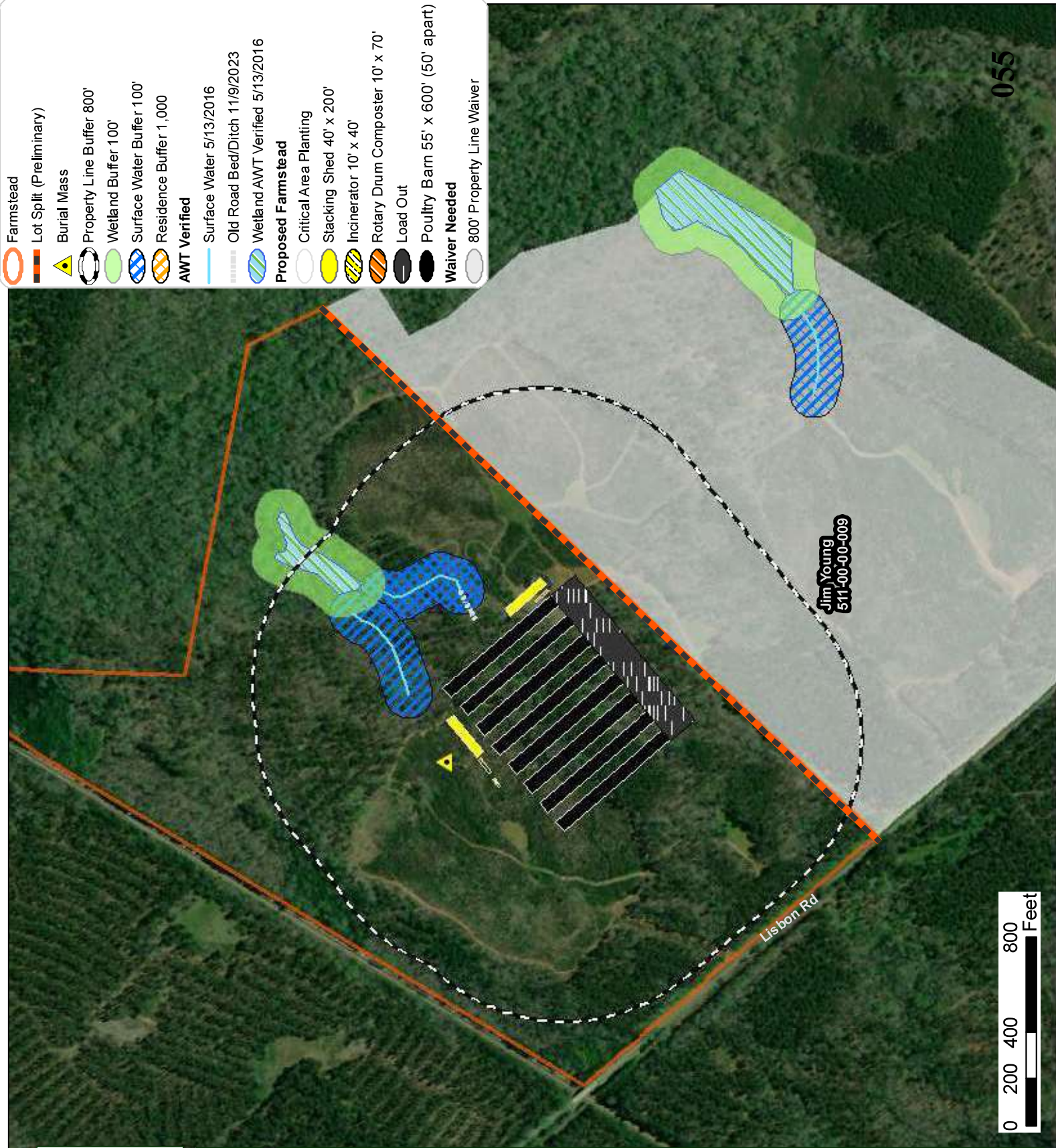
TAX PIN:  
511-00-00-004



### IMPORTANT NOTES

- 1.) Poultry houses/stacking shed/com poster/burial do NOT impact the 1,000' permanent residence buffer. No Waivers Needed
- 2.) Poultry houses, structures, and burial are closer than 800' from the property line (black dotted line). 1- 800' property line waiver is needed from Jim Young,
- 3.) Poultry houses/structures/ burial are more than 100' from surface water and wetlands.
- 4.) Planned poultry houses and stacking sheds are more than 200' from neighbor's wells.
- 5.) Poultry houses are 55' x 600' and 50 feet apart.
- 6.) Burial location determined by AWT soil scientists and meet SC DHEC requirements.
- 7.) Mr. Young and Mr. Coggins property is currently one polygon. This map shows a preliminary property split in order to complete their facility's permit process.

Drawn By: Julie Davidson  
Reviewed By: Adam Gaines  
Date: 2/16/2024



# **EXHIBIT 4**



# **EXHIBIT 5**

## Laurens County, South Carolina

### Ca—Cartecay-Toccoa complex

#### Map Unit Setting

*National map unit symbol:* 4cmx

*Elevation:* 450 to 1,500 feet

*Mean annual precipitation:* 41 to 54 inches

*Mean annual air temperature:* 47 to 73 degrees F

*Frost-free period:* 173 to 216 days

*Farmland classification:* Prime farmland if drained and either protected from flooding or not frequently flooded during the growing season

#### Map Unit Composition

*Cartecay and similar soils:* 55 percent

*Toccoa and similar soils:* 40 percent

*Minor components:* 5 percent

*Estimates are based on observations, descriptions, and transects of the mapunit.*

#### Description of Cartecay

##### Setting

*Landform:* Flood plains

*Landform position (three-dimensional):* Tread

*Down-slope shape:* Linear

*Across-slope shape:* Linear

*Parent material:* Loamy alluvium

##### Typical profile

*Ap - 0 to 14 inches:* sandy loam

*C - 14 to 30 inches:* sandy loam

*Cg - 30 to 79 inches:* fine sandy loam

##### Properties and qualities

*Slope:* 0 to 2 percent

*Depth to restrictive feature:* More than 80 inches

*Drainage class:* Somewhat poorly drained

*Runoff class:* Very high

*Capacity of the most limiting layer to transmit water (Ksat):* High (1.98 to 5.95 in/hr)

*Depth to water table:* About 6 to 18 inches

*Frequency of flooding:* Occasional

*Frequency of ponding:* None

*Available water supply, 0 to 60 inches:* Low (about 5.3 inches)

##### Interpretive groups

*Land capability classification (irrigated):* None specified

*Land capability classification (nonirrigated):* 3w

*Hydrologic Soil Group:* A/D

*Ecological site:* F136XY610GA - Flood plain forest, wet

*Hydric soil rating:* No

#### Description of Toccoa

##### Setting

*Landform:* Flood plains

## **WkD—Wilkes sandy loam, 6 to 15 percent slopes**

### **Map Unit Setting**

*National map unit symbol:* 4cpb  
*Elevation:* 340 to 750 feet  
*Mean annual precipitation:* 41 to 54 inches  
*Mean annual air temperature:* 47 to 73 degrees F  
*Frost-free period:* 173 to 216 days  
*Farmland classification:* Not prime farmland

### **Map Unit Composition**

*Wilkes and similar soils:* 100 percent  
*Estimates are based on observations, descriptions, and transects of the mapunit.*

### **Description of Wilkes**

#### **Setting**

*Landform:* Interfluves  
*Landform position (two-dimensional):* Backslope  
*Landform position (three-dimensional):* Side slope  
*Down-slope shape:* Convex  
*Across-slope shape:* Convex  
*Parent material:* Loamy residuum weathered from hornblende, diorite, or gabbro

#### **Typical profile**

*Ap - 0 to 7 inches:* sandy loam  
*Bt - 7 to 12 inches:* sandy clay loam  
*Cr - 12 to 24 inches:* weathered bedrock  
*R - 24 to 79 inches:* unweathered bedrock

#### **Properties and qualities**

*Slope:* 6 to 15 percent  
*Depth to restrictive feature:* 10 to 20 inches to paralithic bedrock; 20 to 40 inches to lithic bedrock  
*Drainage class:* Well drained  
*Runoff class:* Very high  
*Capacity of the most limiting layer to transmit water (Ksat):* Very low to moderately low (0.00 to 0.01 in/hr)  
*Depth to water table:* More than 80 inches  
*Frequency of flooding:* None  
*Frequency of ponding:* None  
*Available water supply, 0 to 60 inches:* Very low (about 1.8 inches)

#### **Interpretive groups**

*Land capability classification (irrigated):* None specified  
*Land capability classification (nonirrigated):* 6e  
*Hydrologic Soil Group:* D  
*Ecological site:* F136XY730SC - Basic upland forest, depth restriction, dry  
*Hydric soil rating:* No

# **EXHIBIT 6**



Agri-Waste Technology, Inc.  
501 N Salem Street, Suite 203, Apex, NC 27502  
agrivaste.com | 919.859.0669

### Proposed Manure Storage & Burial Site w Soil Borings

Heath Coggins  
Laurens Co., SC

TAX PIN:  
511-00-00-009



Soil evaluation was completed on 11/9/2023 by Chris McGee of AWT. Chris is a licensed Soil Scientist.

Details shown here summarizes Chris's determination for stacking shed, compost and burial location for NRCS/SCDHEC approval.

#### Soil Boring Evaluation:

Area 1a- suitable for burial, stacking shed, compost= 45,395 sq. ft.

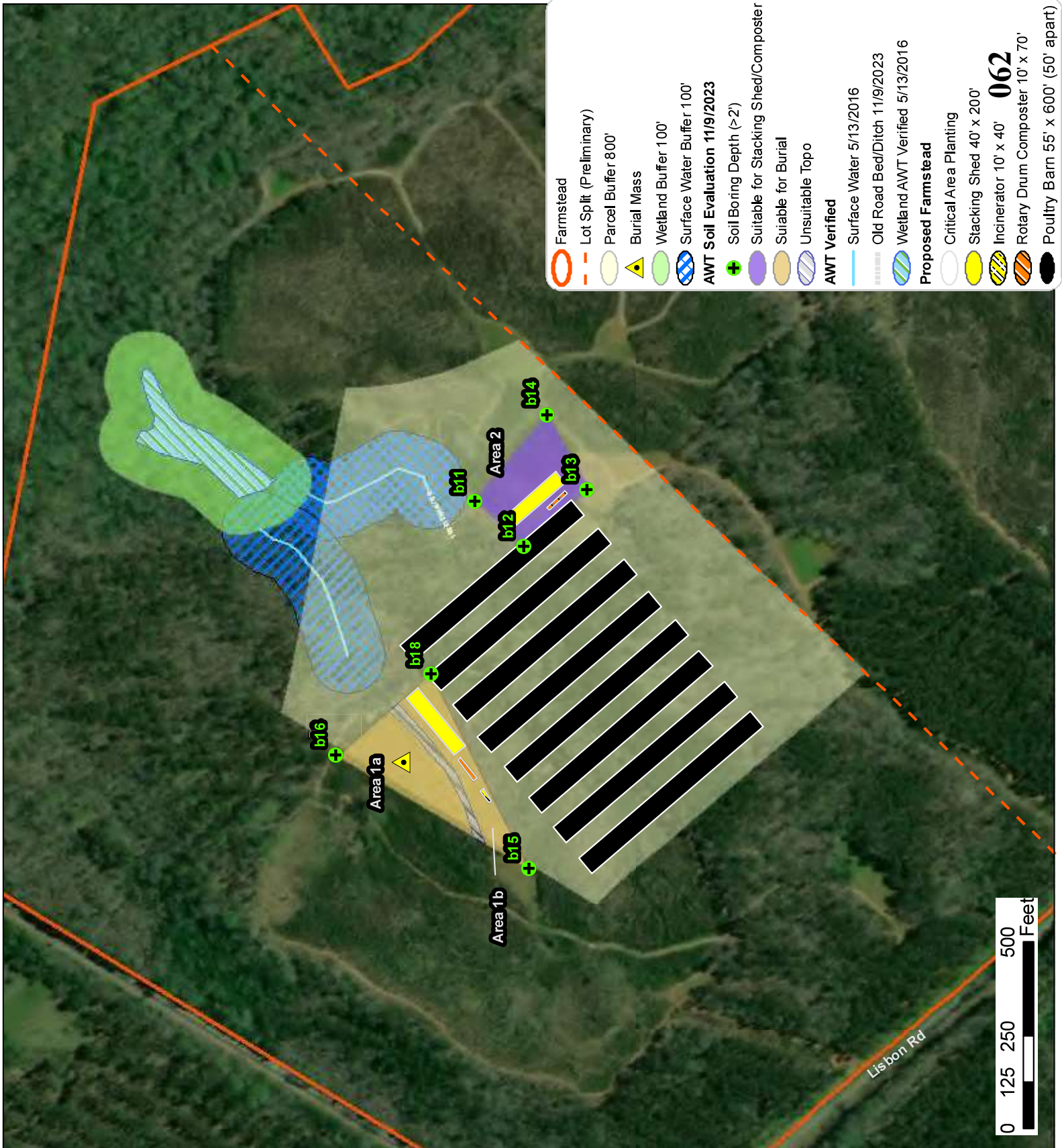
Area 1b- suitable for burial, stacking shed, compost= 38,803 sq. ft.

Area 2 suitable for compost and stacking shed= 53,059 sq. ft.

#### Additional Note:

Mr. Coggins and Jim Young plan to split this property. For now, the lot split shown here is preliminary.

Drawn By: Julie Davidson  
Reviewed By: Adam Gaines  
Date: 2/14/2024



- Farmstead
- Lot Split (Preliminary)
- Parcel Buffer 800'
- Burial Mass
- Wetland Buffer 100'
- Surface Water Buffer 100'
- AWT Soil Evaluation 11/9/2023
- Soil Boring Depth (>2')
- Suitable for Stacking Shed/Composter
- Suitable for Burial
- Unsuitable Topo
- AWT Verified
- Surface Water 5/13/2016
- Old Road Bed/Ditch 11/9/2023
- Wetland AWT Verified 5/13/2016
- Proposed Farmstead
- Critical Area Planting
- Stacking Shed 40' x 200'
- Incinerator 10' x 40'
- Rotary Drum Composter 10' x 70'
- Poultry Barn 55' x 600' (50' apart)

# **EXHIBIT 7**



Agri-Waste Technology, Inc.  
501 N Salem Street, Suite 203, Apex, NC 27502  
agriwaste.com | 919.859.0669

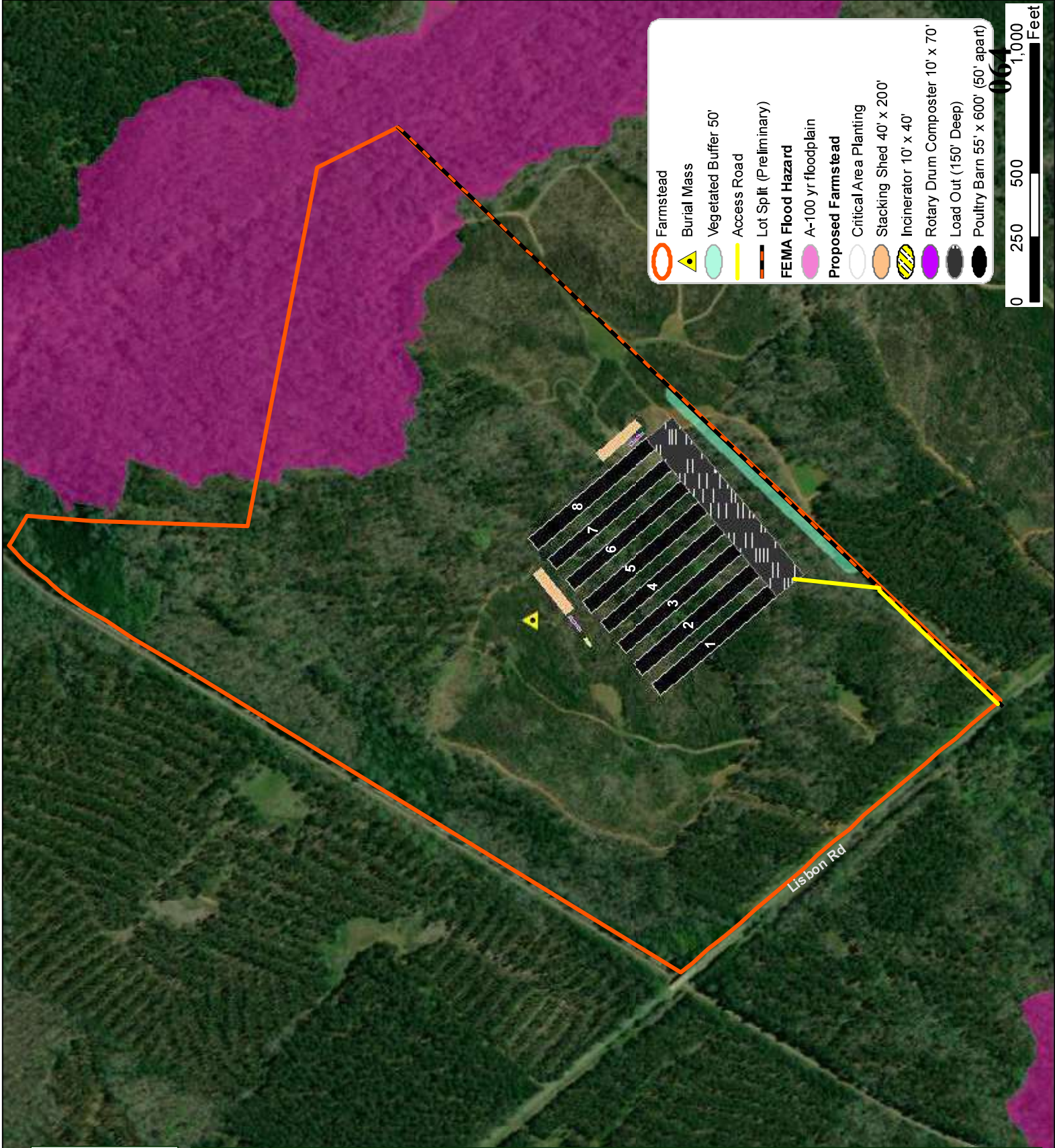
### Farmstead Flood Hazard

Heath Coggins  
Laurens Co., SC  
TAX PIN:  
511-00-00-004



Mr. Coggins and Jim Young  
plan to split their property.  
For now, the lot split shown  
here is preliminary.

Drawn By: Julie Davidson  
Reviewed By: Adam Gaines  
Date: 2/19/2024



- Farmstead
- Burial Mass
- Vegetated Buffer 50'
- Access Road
- Lot Split (Preliminary)
- FEMA Flood Hazard
- A-100 yr floodplain
- Proposed Farmstead
- Critical Area Planting
- Stacking Shed 40' x 200'
- Incinerator 10' x 40'
- Rotary Drum Composter 10' x 70'
- Load Out (150' Deep)
- Poultry Barn 55' x 600' (50' apart)

0 250 500 1,000 Feet

064

# **EXHIBIT 8**

Two planned 40' x 200' (minimum) stacking shed will hold litter following crusting before collection by a broker. Cleanouts will be collected directly by a manure broker out of the house. Each shed will have capacity for 550 tons of litter. The stacking shed will have enough storage for a full years' worth of crustings and provide emergency storage from cleanouts in case a broker is not able to come the same day. The stacking shed will have concrete put down to make cleaning the stacking shed easier and to prevent damaging the ground and causing erosion.

Web soil survey lists the primary soil type as Cecil sandy clay loam (CmC2) with 6-10% slopes and a seasonal high-water table of >80" for borings 15, 16, and 18. Borings 11, 12, 13, and 14 have a primary soil type as Wilkes sandy loam (WkD) with 6-15% slopes and a seasonal high water table of >80". During an onsite investigation, soil borings were taken in several locations. AWT was able to get seven borings to >24" without encountering a shallow seasonal high-water table. Picture below show the measurement and the soil at the construction site. These boring were taken in the build site parameters.

# **EXHIBIT 9**

7. Monitor temperatures at different points in the pile frequently. If temperatures exceed 190°F, or if the material is smoldering, prepare to remove material from the building. This includes notifying the local fire department to be on hand. A smoldering pile could burst into flames if exposed to air. A garden hose could be inadequate to extinguish the fire.
8. Do not store equipment in the litter storage structure.
9. At least twice per year, when the facility is empty, inspect wooden parts, hardware, or other replaceable parts that are damaged or show excessive wear or decay.
10. All disturbed areas around the facilities should be vegetated or covered with gravel to prevent erosion.
11. Warning signs, fences, guardrails, and other safety features will be installed and maintained to prevent unauthorized entry to any structure.

### **Animal Mortality Facility (316)**

An on-farm facility for the treatment or disposal of livestock and poultry carcasses.

This practice may be applied as part of a conservation management system to support one or more of the following purposes:

- Decrease non-point source pollution of surface and groundwater resources
- Reduce the impact of odors that result from improperly handled animal mortality
- Decrease the likelihood of the spread of disease or other pathogens that result from the interaction of animal mortality and predators
- To provide contingencies for normal and catastrophic mortality events

### **Roofs and Covers (367)**

A rigid, semirigid, or flexible manufactured membrane, composite material, or roof structure placed over a waste management facility, agrichemical handling facility, or an on-farm secondary containment facility.

- For enclosed waste facilities, exercise caution and care during cover removal or access. If opening of the cover is required for facility management, include provisions to prevent exposure of workers to hazardous gases.
- If personnel are or may be required to enter an enclosed waste facility, include safety provisions recommended by the National Institute for Occupational Safety and Health (NIOSH) for working in confined spaces including, but not limited to, using a positive-pressure self-contained breathing apparatus, safety line, and standby personnel.

### **Emergency Animal Mortality Management (368)**

A means or method for the management of animal carcasses from catastrophic mortality events.

- This practice is used to accomplish one or more of the following purposes:
- Reduce impacts to surface water and ground water including downstream drinking water sources
- Reduce the impact of odors.
- Decrease the spread of pathogens

Plan, design, and construct this practice to comply with all Federal, State, Tribal, and local regulations. The landowner must obtain all necessary permissions from regulatory agencies or document that no permits are required. The landowner and contractor are responsible for locating all buried utilities in the project area, including drainage tile and other structural measures.

Address biosecurity concerns in all aspects of planning, installation, operation, and maintenance of a catastrophic animal mortality operation. Provide warning signs, fences, refrigeration unit locks, and other devices, as

# **EXHIBIT 10**

**Table 1-1. Key pollutants from livestock operations and animal manure.**

| Pollutant                                     | Description of Pollutant                                                                                                                                                   | Pathways to the Environment                                                                                                                               | Potential Impacts                                                                                                                                                                             |
|-----------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Nitrogen                                      | Organic forms (e.g., urea) and inorganic forms (e.g., ammonium and nitrate) in manure may be assimilated by plants and algae.                                              | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> <li>• Atmospheric deposition as ammonia</li> </ul> | <ul style="list-style-type: none"> <li>• Eutrophication and harmful algal blooms (HABs)</li> <li>• Ammonia toxicity to aquatic life</li> <li>• Nitrate linked to methemoglobinemia</li> </ul> |
| Phosphorus                                    | As manure ages, phosphorus mineralizes to inorganic phosphate compounds that may be assimilated by plants.                                                                 | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water (water soluble forms)</li> </ul>                        | <ul style="list-style-type: none"> <li>• Eutrophication and HABs</li> </ul>                                                                                                                   |
| Potassium                                     | Most potassium in manure is in an inorganic form available for plant assimilation; it can also be stored in soil for future plant uptake.                                  | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> </ul>                                              | <ul style="list-style-type: none"> <li>• Increased salinity in surface water and ground water</li> </ul>                                                                                      |
| Organic Compounds                             | Carbon-based compounds decomposed by micro-organisms. Creates biochemical oxygen demand because decomposition consumes dissolved oxygen in the water.                      | <ul style="list-style-type: none"> <li>• Overland discharge</li> </ul>                                                                                    | <ul style="list-style-type: none"> <li>• Eutrophication and HABs</li> <li>• Dissolved oxygen depletion, and potentially anoxia</li> <li>• Decreased aquatic biodiversity</li> </ul>           |
| Solids                                        | Includes manure, feed, bedding, hair, feathers, and dead livestock.                                                                                                        | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Atmospheric deposition</li> </ul>                                                  | <ul style="list-style-type: none"> <li>• Turbidity</li> <li>• Siltation</li> </ul>                                                                                                            |
| Salts                                         | Includes cations (sodium, potassium, calcium, magnesium) and anions (chloride, sulfate, bicarbonate, carbonate, nitrate).                                                  | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> </ul>                                              | <ul style="list-style-type: none"> <li>• Reduction in aquatic life</li> <li>• Increased soil salinity</li> <li>• Increased drinking water treatment costs</li> </ul>                          |
| Trace Elements                                | Includes feed additives (arsenic, copper, selenium, zinc, cadmium), trace metals (molybdenum, nickel, lead, iron, manganese, aluminum), and pesticide ingredients (boron). | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> </ul>                                              | <ul style="list-style-type: none"> <li>• Aquatic toxicity at elevated concentrations</li> </ul>                                                                                               |
| Volatile Compounds Including Greenhouse Gases | Includes carbon dioxide, methane, nitrous oxide, hydrogen sulfide, and ammonia gases generated during manure decomposition.                                                | <ul style="list-style-type: none"> <li>• Inhalation</li> <li>• Atmospheric deposition of ammonia</li> </ul>                                               | <ul style="list-style-type: none"> <li>• Eutrophication</li> <li>• Human health effects</li> <li>• Climate change</li> </ul>                                                                  |
| Pathogens                                     | Includes a range of disease-causing organisms, including bacteria, viruses, protozoa, fungi, prions and helminths.                                                         | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Potential growth in receiving waters</li> </ul>                                    | <ul style="list-style-type: none"> <li>• Animal, human health effects</li> </ul>                                                                                                              |
| Antimicrobials                                | Includes antibiotics and vaccines used for therapeutic and growth promotion purposes.                                                                                      | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> <li>• Atmospheric deposition</li> </ul>            | <ul style="list-style-type: none"> <li>• Facilitates the growth of antimicrobial-resistance</li> <li>• Unknown human health and aquatic life effects</li> </ul>                               |
| Hormones                                      | Includes natural and synthetic hormones used to promote animal growth and control reproductive cycles.                                                                     | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> </ul>                                              | <ul style="list-style-type: none"> <li>• Endocrine disruption in fish</li> <li>• Unknown human health effects</li> </ul>                                                                      |
| Other Pollutants                              | Includes pesticides, soaps, and disinfectants.                                                                                                                             | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> </ul>                                              | <ul style="list-style-type: none"> <li>• Unknown human health and ecological effects</li> <li>• Potential endocrine disruption in aquatic organisms</li> </ul>                                |

*Adapted from USEPA (2002a) Exhibit 2-2.*



**SOUTH CAROLINA  
ENVIRONMENTAL  
LAW PROJECT**

*Lawyers for the Wild Side*

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /  
[www.scelp.org](http://www.scelp.org)

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June 18, 2024

**VIA IN-PERSON DELIVERY AND EMAIL**

M. Denise Crawford, Clerk of the Board  
South Carolina Board of Health and Environmental Control  
2600 Bull Street  
Columbia, SC 29201  
boardclerk@dhec.sc.gov

**RE: Request for Board Review (RFR) of Permit for the Construction and Operation of an Agricultural Animal Facility and Manure and Animal By-Products Treatment and Storage System in Laurens County**

Permittee: Jim Young (J. Young Broilers)  
Permit Nos.: ND0090175, AG-20600  
Notice No.: HQ1-XX01-HRRKG

Dear Ms. Crawford:

Enclosed for filing please find the Request for Final Review Conference in the above-referenced matter submitted on behalf of South Carolinians for Responsible Agricultural Practices along with our certificate of service. I paid the \$100 filing fee via credit card by phone yesterday (Confirmation #: TDGGRM1Y75C86). Please return a clocked-in copy by email.

Thank you very much for your kind cooperation, and please do not hesitate to reach out if you need anything else.

Respectfully,

Emily S. Poole, Esq.

STATE OF SOUTH CAROLINA  
BEFORE THE BOARD OF THE DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL CONTROL

---

South Carolinians for Responsible Agricultural Practices,

Requestor,

vs.

Jim Young (d/b/a J. Young Broilers), and South Carolina Department of Health  
and Environmental Control,

Respondents.

RE: Permit for Construction and Operation of Agricultural Animal Facility and  
Manure and Animal By-Products Treatment and Storage System in Laurens  
County

P/N#: ND0090175, AG-20600, HQ1-XX01-HRRKG

---

**REQUEST FOR FINAL REVIEW CONFERENCE**

---

South Carolinians for Responsible Agricultural Practices (“SCRAP” or “the Requestor”), pursuant to S.C. Code Ann. § 44-1-60, hereby respectfully requests that the Board of the South Carolina Department of Health and Environmental Control (“Board”) conduct a Final Review Conference in connection with the DHEC staff’s decision to issue a permit for the construction and operation of an agricultural animal facility and manure and animal by-products treatment and storage system (hereinafter “the Permit”), Permit Number AG-20600 and Facility Permit Number ND0090175, to Jim Young, doing business as J. Young Broilers (“Young” or “Permittee”). Young proposes to build eight poultry barns 55’ by 600’ in size that will hold 264,000 broilers with a normal production live weight of 1,306,800 pounds and will result in an annual litter production

of 1,610 tons. This facility would be located in Mountville, SC along the Little River and its tributaries on TMS # 511-00-00-009. DHEC's Office of Groundwater Protection and Agricultural Permitting issued the Permit on June 4, 2024, and a copy of the Notice of the Permit Decision letter and the Permit issued to Young are attached hereto as **Exhibit 1**. SCRAP requests that the Board reverse the staff's decision because it fails to comply with state laws, regulations, and policies.

## **I. THE REQUESTOR AND THEIR INTEREST**

Requestor South Carolinians for Responsible Agricultural Practices ("SCRAP") is an association of concerned residents in the Mountville area who seek to protect their rural community from the over-proliferation of chicken houses. Since 2016, this association has sought better permitting, oversight, and enforcement from DHEC as it pertains to the dozens upon dozens of poultry barns in their area. SCRAP and its members desire to see their rural community and its treasures, like the Little River, protected from the pollution and destruction of the poultry facilities that have overrun their community, impacting their homes and properties. Further, SCRAP's members—all of whom are affected persons within the definition of S.C. Code Ann. § 44-1-65(E)—breathe the air; drink the water; enjoy viewing plant and wildlife; and recreate, use, and appreciate the natural resources in and around the proposed facility, including the Little River. All of these activities and interests are at risk of harm if Young constructs and operates the proposed agricultural animal facility as authorized by DHEC staff in the Permit decision.

## **II. DHEC'S ISSUANCE OF THE PERMIT VIOLATES SOUTH CAROLINA LAW**

One of the most central provisions of the animal facility permitting regulations states: "The Department *shall act* on all permits *to prevent*, so far as reasonably possible considering relevant standards under state and federal laws, *an increase in pollution of the waters and air of the State*

from any new or enlarged sources.”<sup>1</sup> This and other mandates found in the regulations require DHEC to impose heightened protections and more stringent requirements for the proposed facility at issue here in order to minimize water quality impacts, protect the surrounding ecosystem, and preserve the health and welfare of the community’s residents. Because the terms of Young’s Permit do not allow for adequate protection of the surrounding water bodies, the Permit should not have been issued by DHEC staff, and the Permit should be rescinded by this Board.

**A. DHEC Staff Failed to Consider This Facility’s Proximity to the Little River**

Because one of the principal purposes of DHEC’s animal facility permitting regulatory scheme is to prevent an increase in pollution of waters of the State, the Department has crafted many regulatory provisions to ensure compliance with this mandate. In S.C. Code Ann. Regs. § 61-43.200.140, the Department declares:

A. There *shall* be no discharge of pollutants from the operation into surface Waters of the State (including ephemeral and intermittent streams). There *shall* be no discharge of pollutants into groundwater, which could cause groundwater quality not to comply with the groundwater standards established in R.61-68.

...

C. The following cases *shall* be evaluated for additional or more stringent requirements:

1. Source water protection. Facilities and manure utilization areas located within a state-approved source water protection area.
2. 303(d) Impaired Water Bodies List. Facilities and manure utilization areas located upstream of an impaired waterbody.
3. Proximity to Outstanding Resource Waters, trout waters, shellfish waters, or potential to adversely affect a federally listed endangered or threatened species, its habitat, or a proposed or designated critical habitat.
4. Aquifer Vulnerability Area, an area where groundwater recharge may affect an aquifer.<sup>2</sup>

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<sup>1</sup> S.C. Code Ann. Regs. § 61-43.200.70(E) (emphasis added).

<sup>2</sup> S.C. Code Ann. Regs. § 61-43.200.140 (emphasis added).

These unequivocal provisions establish a general rule and a set of more specific rules, as applicable, that the Department must impose upon animal facility permit applicants to protect water quality. The general rule is that *no discharge of pollutants* from these facilities can occur in either surface waters or groundwaters of the State. The next section cited above then details specific situations that call for more stringent requirements to be evaluated, including when a proposed animal facility is located upstream of an impaired waterbody. The strength and stringency of these regulations have been confirmed through judicial review, establishing precedent that is extremely relevant here. In 2022, the South Carolina Court of Appeals stressed that to comply with the plain language of the regulations, DHEC *must* meaningfully evaluate agricultural facilities being sited in a waterbody listed on the impaired waterbodies list in making permit decisions.<sup>3</sup>

Turning to the Permit at hand, Young is planning to build a new poultry facility on a parcel that the Little River runs directly through (TMS # 511-00-00-009). This means that this facility is located upstream of the Little River and that any discharges from this facility, whether point source or nonpoint source pollution, will inevitably run into the Little River. Since 2004, the Little River and its tributaries “have been placed on the South Carolina § 303(d) list of impaired waters for violations of the fecal coliform standard.”<sup>4</sup> Therefore, because of this facility’s proximity to the Little River, which has been designated as an impaired waterbody by the Environmental Protection Agency (“EPA”), this Permit is governed by the terms of S.C. Code Ann. Regs. § 61-

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<sup>3</sup> See *Blackmon v. S.C. Dept. of Health & Envtl. Control*, 441 S.C. 342, 357–61, 893 S.E.2d 578, 586–89 (2022).

<sup>4</sup> S.C. Dept. of Health & Envtl. Control, *Total Maximum Daily Load Development for the Little River Watershed*, [https://scdhec.gov/sites/default/files/docs/HomeAndEnvironment/Docs/tmdl\\_littleRvr\\_fc.pdf](https://scdhec.gov/sites/default/files/docs/HomeAndEnvironment/Docs/tmdl_littleRvr_fc.pdf) (Sept. 29, 2004).

43.200.140(C)(2), cited above. This means that DHEC was required to make a meaningful evaluation of more stringent permitting requirements to protect water quality.

Unfortunately, the permit application submitted to DHEC makes clear that Young has not taken and does not plan to take any action to protect the already-impaired Little River. On page 7 of Young's Comprehensive Nutrient Management Plan ("CNMP"), attached hereto as **Exhibit 2**, the CNMP leaves space for the Permittee to identify natural resource concerns considered in the permit application process. This page of the CNMP states, "If checked, the indicated resource concerns have been identified and addressed in this plan." Crucially, under the separate boxes meant to house Water Quality Concerns and Soil Quality Concerns, the Permittee simply wrote, "None." Correspondingly, the boxes where the Permittee details their planned Activities to Address Concerns are blank in the CNMP.

Because the permit application submitted to DHEC did not contain any information from which the Department could consider additional or more stringent requirements for the protection of the impaired Little River, DHEC staff should not have issued this Permit as written. Issuing the Permit as submitted, in which water quality concerns and the impaired Little River were not considered, violates S.C. Code Ann. Regs. § 61-43.200.140(C)(2), cited above. Therefore, the Board should either rescind the Permit or amend the Permit to impose the more stringent requirements contemplated by the regulation. In the report that created a Total Maximum Daily Load ("TMDL") for the Little River as it pertains to fecal coliform, DHEC found that agricultural operations, including poultry facilities, are a "source[ ] of fecal coliform bacteria" and recommended best management practices (BMPs) for these facilities.<sup>5</sup> These same BMPs, as well as other measures, might be used by the Board as the more stringent requirements imposed upon

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<sup>5</sup> *Id.*

Young to protect the Little River from further degradation.

In the public meeting DHEC hosted on this permit application, several of Requestor's members asked about how the Department planned on meeting its burden under S.C. Code Ann. Regs. § 61-43.200.140(C)(2). The Department did not give a clear answer at that time, and one spokesperson for DHEC indicated they were not aware that there was a TMDL on the Little River. This is deeply concerning to the Requestor and its members—all of whom are counting on DHEC to protect the Little River from further harm. Even if Young did not consider the impaired Little River, the Department was undoubtedly required to do so. This Board should not allow this Permit to become final until the TMDL has been properly considered and stricter requirements are imposed upon the facility.

**B. DHEC Staff Failed to Address the Particular Needs of This Site**

Recognizing again that the central goal of DHEC's animal facility permitting regulatory scheme is to prevent an increase in pollution of waters of the State, the Department also requires proposed animal facilities to comply with several siting requirements. The following siting requirements apply to all animal facilities:

1. The minimum separation distance between an animal facility (animal growing areas, houses, pens or barns, not including range areas or manure utilization areas) and a public or private drinking water well (excluding the applicant's well) is 200 feet. The minimum separation distance between an animal facility and a potable water well owned by the applicant is 50 feet (as required by R.61-71).
2. The minimum separation distance between an animal facility and Waters of the State (including ephemeral and intermittent streams) located down slope from the facility is 100 feet.
3. Except for site drainage, the minimum separation distance required between an animal facility and a ditch or swale located down slope from the facility is 50 feet.
4. A new animal facility or an expansion of an established animal facility shall not be located in the 100-year floodplain.

5. The separation distance required between a small animal facility or growing areas (pens or barns not including range areas) and the lot line of real property owned by another person is 200 feet and 1,000 feet from the nearest residence.

6. The separation distance required between large or X-large animal facilities or growing areas (pens or barns not including range areas) and the lot line of real property owned by another person is 400 feet and 1,000 feet from the nearest residence.<sup>6</sup>

In addition, the siting requirements for the animal facility's specific storage structures that hold dry animal manure and other animal by-products, "including, but not limited to, stacking sheds, burial sites, incinerators, manure, and dead animal composters," are largely similar to those above:

1. The minimum separation distance between a dry animal manure and other animal by-products treatment or storage facility and a public or private drinking water well (excluding the applicant's well) is 100 feet. The minimum separation distance between a dry animal manure and other animal by-products treatment or storage facility and a potable water well owned by the applicant is 50 feet.

2. Except for site drainage, the minimum separation distance required between a dry animal manure and other animal by-products treatment or storage facility and a ditch or swale located down slope from the facility is 50 feet.

3. The minimum separation distance between a dry animal manure and other animal by-products treatment or storage facility and Waters of the State including ephemeral and intermittent streams located down slope from the facility is 100 feet.

4. A new dry animal manure and other animal by-products treatment or storage facility or an expansion of an established dry animal manure and other animal by-products treatment or storage facility shall not be located in the 100-year floodplain.

5. The separation distance required between a dry animal manure and other animal by-products treatment or storage facility operated at an animal growing facility and the lot line of real property and a residence owned by another person shall be equivalent to the setback required for the animal growing areas or houses.

6. The minimum separation distance required between a dry animal manure and other animal by-products treatment or storage facility operated by a manure broker

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<sup>6</sup> S.C. Code Ann. Regs. § 61-43.200.80(A).

and the lot line of real property owned by another person is 200 feet and 1,000 feet to the nearest residence.<sup>7</sup>

The Department's regulations make clear that the siting requirements cited above are the *minimum requirements* for every animal facility and its storage structures. As part of DHEC's review of a permit application, the Department must also determine if *additional* siting restrictions are necessary:

F. The setback limits given in Part 200 are siting requirements. The Department shall evaluate the following factors to determine if any special conditions are necessary:

1. Latitude and Longitude;
2. Down-wind receptors; and
3. Nutrient Management Plan.<sup>8</sup>

For the Permit at issue here, DHEC determined that Young met the minimum siting requirements detailed in S.C. Code Ann. Regs. § 61-43.200.80(A) and (C). However, DHEC did not evaluate whether special conditions are necessary for the siting of these facilities in order "to prevent . . . an increase in pollution of the waters and air of the State."<sup>9</sup> As detailed in the paragraphs below, mandatory considerations, including the latitude and longitude and Nutrient Management Plan for this facility, strongly indicate that additional siting restrictions are necessary in this case.

*1.     Latitude and Longitude*

The latitude and longitude of Young's proposed facility and storage structures illustrate why additional siting conditions are necessary to protect the natural resources, water quality,

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<sup>7</sup> S.C. Code Ann. Regs. § 61-43.200.80(C).

<sup>8</sup> S.C. Code Ann. Regs. § 61-43.200.70(F).

<sup>9</sup> *Id.* at 61-43.200.70(E).

ecosystems, and residents around this site. First, as stated before, the Little River runs through the property where Young has proposed this facility. As a result, the barns and stacking sheds proposed are extremely close to surface water and wetlands, as shown in one of the drawings included in Young's CNMP, which is attached hereto as **Exhibit 3**. Second, the proposed facility is also nearly located within the 100-year floodplain, as can be seen in the FEMA Flood Map for this area, attached to this letter as **Exhibit 4**. Third, many of the soil types found at this latitude and longitude have a "very high" likelihood of runoff during rain and storm events, as shown on pages 11 and 19 of the Custom Soil Resource Report in Young's CNMP, which are attached hereto as **Exhibit 5**. Fourth, one of Young's proposed sites for a stacking shed is directly beside unstable topography, as shown in one of the drawings included in Young's CNMP, which is attached hereto as **Exhibit 6**.

These four characteristics of the proposed parcel's latitude and longitude each make it much more likely that the Little River, its resources, its ecosystems, and the general public will be harmed as a result of the operation of this facility, especially when rain and storm events cause runoff from this facility. For the protection of all, additional siting requirements should be imposed to move this facility further away from the Little River, the 100-year floodplain, and unstable soil and topography.

While the facility's proximity to the Little River, its tributaries, and its wetlands certainly call for even more protective measures, it appears that DHEC staff, at one point, at least partially considered ways to reduce impacts to water and wetlands. In the Notice of Permit Decision letter, attached hereto as **Exhibit 1**, the last sentence of the third paragraph reads: "Additionally, the permit requires the applicant to maintain the existing evergreen buffers around the facility and also to plant an evergreen buffer in the areas that don't currently have an existing evergreen buffer."

However, in the Permit itself, also in **Exhibit 1**, this evergreen buffer permit term is not mentioned. To complicate matters more, in Young's CNMP, the drawing in the CNMP showing a vegetated buffer only shows the buffer on one side of the facility, as shown in the drawing attached hereto as **Exhibit 7**. If the evergreen buffer is a Permit requirement, it should be spelled out clearly in the terms and reflected in the drawings submitted by Young to DHEC. This Board should demand that this requirement, along with additional siting requirements needed to fully account for the unique, natural features of this site, be included in the Permit issued to Young.

## 2. Nutrient Management Plan

Further, Young's Nutrient Management Plan for this facility also shows why additional siting requirements are so crucial in this instance. First, Young's CNMP states that the facilities plan to have two stacking sheds that are 40 feet by 200 feet in size. However, the CNMP also details that the sizing of these stacking sheds is *a minimum*, as shown on page 40 of Young's CNMP, which is attached hereto as **Exhibit 8**. As discussed in the prior paragraph, one of the proposed stacking sheds for this facility is located directly adjacent to unstable topography.<sup>10</sup> The lack of detail in the CNMP about how the stacking sheds might be expanded is extremely relevant to determining the potential impacts of this proposed facility. Second, Young's CNMP also states that one of the purposes of the Animal Mortality Facility is to "[d]ecrease non-point source pollution of surface and groundwater resources," as shown on page 10 of the CNMP, which is attached hereto as **Exhibit 9**. However, DHEC regulations require that this Permit be a no-discharge permit,<sup>11</sup> meaning that *any* pollution from this facility is a violation of the Permit's terms and of state and federal law. The CNMP should not be discussing a *decrease* in pollutants; instead,

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<sup>10</sup> See **Exhibit 6**.

<sup>11</sup> See, e.g., S.C. Code Ann. Regs. § 61-43.200.140(A).

it should make clear that *no pollutants* will be coming from this facility into surface and groundwater resources. Further, the design of the facility must be shown to be adequate to achieve that outcome.

Because of these two points in the CNMP that present a lack of specificity and clarity, additional siting restrictions should be imposed to protect the natural resources, ecosystems, and communities surrounding this facility. It is not clear from the CNMP that the Permittee here understands the importance of (1) disclosing the full information of this application and (2) ensuring that no pollutants escape from the facility into nearby waters. Thus, the Department should not have issued this Permit without additional siting guidelines that ensure stacking sheds will be placed only upon stable topography and that the facility is far enough away from the nearby water sources such that pollution does not occur.

**C. DHEC Staff Failed to Evaluate Possible Discharges into the Little River**

As mentioned briefly in the sections above, when DHEC issues an animal facility operating permit, that permit is a no-discharge permit.<sup>12</sup> This means that facility operators cannot allow any part of their facility to discharge pollutants into waters of the State.

In a majority of states, operators of a concentrated animal feeding operation (“CAFO”) are allowed to discharge pollutants into waters of the State and waters of the United States if they apply for and receive a National Pollutant Discharge Elimination System (“NPDES”) permit. In fact, the federal government has determined the floor of each state’s regulatory scheme through the provisions of 40 C.F.R. § 122.23(a):

Concentrated animal feeding operations (CAFOs) . . . are point sources, subject to NPDES permitting requirements as provided in this section. Once an animal feeding operation is defined as a CAFO for at least one type of animal, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the

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<sup>12</sup> See S.C. Code Ann. Regs. § 61-43.200.20(B).

operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

Because the federal regulations determine the baseline that each state must meet or exceed, South Carolina's regulations directly mirror 40 C.F.R. § 122.23 in S.C. Code Ann. Regs. § 61-9.122.23. As a result, the requirement in the federal regulations that an NPDES permit be in effect should any discharges occur also applies in the State of South Carolina. Further, under both the federal regulations and the State of South Carolina's regulations, an operator of a CAFO must apply for and receive an NPDES permit if they plan to discharge or know that their facility will discharge pollutants into waters of the United States or waters of the State, respectively.<sup>13</sup>

On its face, the South Carolina state law requirement that all operating permits issued to CAFOs be no-discharge permits seems to comply with federal law and protect water quality in the state. However, further examination of federal law reveals that there is a significant gap in South Carolina's NPDES regulations. Although discharges that occur under these CAFO operating permits are prohibited by South Carolina law, there is no regulatory mechanism in place that monitors whether discharges are, in fact, not occurring. This means that discharges very well can—and do—occur, but because South Carolina regulations presume no discharges are occurring, no oversight and monitoring is in place to ensure the no-discharge rule is being honored.

A similar situation recently occurred in the State of Idaho and was litigated in the U.S. Court of Appeals for the Ninth Circuit. In interpreting 40 C.F.R. § 122.23, which again is duplicated in South Carolina's state regulations, the Court found that simply stating a permit is a no-discharge permit does not make it so under the law. Specifically, the Court wrote:

[T]he Idaho Permit does not allow *any* discharges from the production area.<sup>14</sup>  
Without a requirement that CAFOs monitor waste containment structures for

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<sup>13</sup> See 40 C.F.R. 122.23(d); S.C. Code Ann. Regs. § 61-9.122.23(d).

<sup>14</sup> The term *production area* is defined as: “that part of an AFO that includes the animal

underground discharges, there is no way to ensure that production areas comply with the Permit's zero-discharge requirement. *See Waterkeeper Alliance, Inc. v. U.S. E.P.A.*, 399 F.3d 486, 499 (2d Cir. 2005) (failure of permit to include any mechanism for evaluating compliance with effluent limitation was arbitrary and capricious).<sup>15</sup>

This and other precedent from federal courts make clear that if a state issues a no-discharge permit, it must also require monitoring mechanisms as part of that permit to evaluate compliance with the no-discharge standard.

For the Permit at hand, this means that DHEC staff should have required comprehensive monitoring mechanisms as part of the issuance of this Permit to ensure that no discharges of pollutants are in fact taking place. The facility proposed by Young is a CAFO by definition because the proposed facility would have over 125,000 broilers and would use a dry-manure handling system.<sup>16</sup> Thus, under both federal and state law, the facility must either have an NPDES permit *or* it must have a no-discharge permit and appropriate monitoring mechanisms in place to ensure that no discharges occur. Because South Carolina does not give NPDES permits to CAFOs, and instead issues no-discharge operating permits, there must be sufficient monitoring mechanisms in place for Young's facility to be compliant with both state and federal law. Because DHEC staff have not required water monitoring mechanisms as part of this Permit, the Board should rescind the Permit or amend it to include proper monitoring and reporting requirements.

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confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. . .” 40 C.F.R. § 122.23(b)(8); S.C. Code Ann. Regs. § 61-9.122.23(b)(8).

<sup>15</sup> *Food & Water Watch v. U.S. Env'tl. Prot. Agency*, 20 F.4th 506, 517 (9th Cir. 2021).

<sup>16</sup> *See* S.C. Code Ann. Regs. § 61-9.122.23(b)(4)(x).

**D. DHEC Staff Failed to Honor South Carolina’s Water Quality Standards and Antidegradation Policies**

In addition to complying with the specific regulations relating to agricultural animal facilities, facilities like the one proposed in this instance must also adhere to the applicable regulations relating to water quality, air quality, waste disposal, and more.<sup>17</sup> In S.C. Code Ann. Regs. 61-43.200.40(H), water classifications and standards are expressly designated as a source of law that applies to agricultural animal facilities, which are found in S.C. Code Ann. Regs. 61-68. These water classifications and standards exist so that the State of South Carolina can “maintain reasonable standards of purity of the air and water resources of the State, consistent with the public health, safety and welfare of its citizens, maximum employment, the industrial development of the State, the propagation and protection of terrestrial and marine flora and fauna, and the protection of physical property and other resources.”<sup>18</sup>

Federal law requires that every state issue water quality standards and policies that protect each water body found in the state and designated uses delineated for those water bodies.<sup>19</sup> Specifically, every state must have an *antidegradation policy* ensuring each water body’s long-term ecological health and suitability for specific activities. South Carolina’s antidegradation policy declares: “Existing water uses and the level of water quality necessary to protect these existing uses shall be maintained and protected regardless of the water classification.”<sup>20</sup> For waters designated as Freshwater under the regulations, which is true of the Little River, the water quality standards provide: “Freshwaters (FW) are freshwaters suitable for primary and secondary contact

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<sup>17</sup> See S.C. Code Ann. Regs. § 61-43.200.40 (listing other DHEC regulatory chapters that often apply to agricultural animal facilities).

<sup>18</sup> S.C. Code Ann. § 48-1-20 (detailing the purpose of the South Carolina Pollution Control Act and its implementing regulations).

<sup>19</sup> See, e.g., 40 C.F.R. §§ 131.10–12.

<sup>20</sup> S.C. Code Ann. Regs. 61-68(D)(1).

recreation and as a source for drinking water supply after conventional treatment in accordance with the requirements of the Department. Suitable for fishing and the survival and propagation of a balanced indigenous aquatic community of fauna and flora. Suitable also for industrial and agricultural uses.”<sup>21</sup>

Turning to Young’s proposed facility, the antidegradation policy and the water quality standards for the Little River make clear that this Permit cannot be issued if the facility’s construction and operations could lead to degradation of the Little River and its tributaries. In addition to being a source of fecal coliform bacteria, as discussed earlier in this document, the EPA has determined that livestock operations and animal manure also spread other key pollutants to surrounding water bodies, including nitrogen, phosphorus, potassium, organic compounds, solids, salts, trace elements from feed additives and pesticide ingredients, volatile compounds include greenhouse gases, pathogens, antimicrobials, hormones, and other pollutants.<sup>22</sup> EPA created a table that lists each of these pollutants, a description of the pollutant, pathways to that the pollutant reaches the environment, and potential impacts of that pollutant upon the environment, which is attached hereto as **Exhibit 10**.<sup>23</sup> That table conclusively shows that facilities like Young’s often lead to degradation of water bodies that violate the antidegradation policies required by the federal and state governments.

With the antidegradation policy in mind, DHEC staff should not have issued this Permit without thorough consideration of the key pollutants that can result from poultry facilities and how those pollutants can reach water resources. This Permit cannot be issued unless DHEC staff are

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<sup>21</sup> *Id.* at 61-68(G).

<sup>22</sup> U.S. Env’tl. Prot. Agency, *Literature Review of Contaminants in Livestock and Poultry Manure and Implications for Water Quality*, <https://www.epa.gov/npdes/animal-feeding-operations-afos> (July 2013).

<sup>23</sup> *Id.*, Table 1-1.

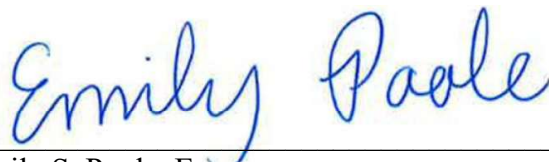
confident that the many different pathways to the environment for these pollutants are adequately determined and then eliminated for the protection of the Little River and its tributaries. For a water body that is already impaired, it is all the more imperative that this Board take the antidegradation policy very seriously and prevent this Permit from becoming the agency's final action.

### **III. CONCLUSION AND REQUEST FOR RELIEF**

In light of the foregoing, the Requestor urges the Board of Health and Environmental Control to conduct a final review conference to review and deny the above-referenced DHEC staff decision approving J. Young Broilers' construction and operating Permit where Requestor's members live, work, and own property; or condition such Permit to adequately protect the interests of Requestor's members from harm. Please direct all notices and communications related to this request for final review to the undersigned counsel.

Respectfully submitted,

**SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT**



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Pawleys Island, SC 29585  
(843) 527-0078  
emily@scelp.org

Greenville, South Carolina  
June 18, 2024

STATE OF SOUTH CAROLINA  
BEFORE THE BOARD OF THE DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL CONTROL

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South Carolinians for Responsible Agricultural Practices,

Requestor,

vs.

Jim Young (d/b/a J. Young Broilers), and South Carolina Department of Health  
and Environmental Control,

Respondents.

RE: Permit for Construction and Operation of Agricultural Animal Facility and  
Manure and Animal By-Products Treatment and Storage System

P/N#: ND0090174, AG-20599, HQ1-SB91-8TNXE

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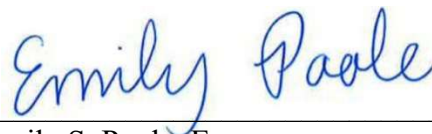
**CERTIFICATE OF SERVICE**

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I hereby certify that on this date I served Respondent SCDHEC by emailing and hand-delivering the foregoing Request for Final Review Conference at the address below, and I served Respondent Jim Young by placing a copy of the foregoing Request for Final Review Conference in the U.S. Mail to the address below:

South Carolina Board of DHEC  
Attention: Clerk of the Board  
2600 Bull Street  
Columbia, South Carolina 29201  
boardclerk@dhec.sc.gov

J. Young Broilers  
c/o Jim Young  
123 Sherwood Forest  
Laurens, South Carolina 29360



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Emily S. Poole, Esq.

Greenville, South Carolina  
June 18, 2024

# **EXHIBIT 1**



June 4, 2024

**Notice of Permit Decision**

J Young Broilers  
Facility ID# ND0090175  
Laurens County, South Carolina

Dear Sir or Madam,

Thank you for your interest and/or comments regarding the permit application from the above-referenced facility. The South Carolina Department of Health and Environmental Control ("Department") values all comments received during the permitting process and is committed to addressing and considering all relevant information prior to making a final permit decision. Public input is an important part of the permitting process and can result in changes to permit conditions and operational practices if a permit is issued.

After due consideration of all relevant comments received, the requirements and policies expressed in the Pollution Control Act of South Carolina and applicable regulations, the Department has made the decision to issue the construction permit.

Some comments received during the permitting process, such as those related to property values and road traffic, are outside the scope of the Department's regulations. Comments related to health, odors, and vectors are addressed by the Department's setbacks and other regulatory requirements which are included in the permit. The Comprehensive Nutrient Management Plan for the facility includes measures for controlling odors, vectors, and protecting surface water and groundwater. Additionally, the permit requires the applicant to maintain the existing evergreen buffers around the facility and also to plant an evergreen buffer in the areas that don't currently have an existing evergreen buffer.

The permit will be issued on June 4, 2024, with an effective date of June 19, 2024. Once the construction permit is issued, only an applicant, permittee, licensee, or an affected person(s) can request a review of the issuance of that permit, as outlined in the "Guide for Board Review" enclosed in this mailing.

If you have any further questions regarding the review procedures, you may contact the Legal Office, Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201 or by calling 803-898-3350.

Sincerely,

A handwritten signature in blue ink that reads "Lisa Appel".

Lisa Appel, Ag Permitting Project Manager  
Groundwater Protection & Agricultural Permitting Section  
Bureau of Water

Enclosure: Guide for Board Review  
Permit AG-20599 v1.0

cc: Natalie Kirkpatrick, Director, Upstate EA Greenwood Office  
Travis Fuss, Director, Midlands EA Aiken Office

**090**

**Permission is hereby granted to:**

Jim Young  
J YOUNG BROILERS  
6821 Lisbon Rd.  
Mountville, SC 29370

for the construction and operation of a **NO-DISCHARGE** agricultural animal facility, manure and animal by-products treatment and storage system in accordance with the construction plans, specifications, engineering report, Animal Facility Management Plan, and Construction Permit Application prepared by Adam Gaines, PE.

**County:** Laurens County

**Project Description:**

1. Construction of eight (8) new broiler houses.
2. Broilers raised on earthen floor covered with wood shavings.
3. Contract disposal of manure, utilizing a permitted manure broker.
4. Other conditions as stated in permit special conditions and animal facility management plan.
5. Treat a total of 1610 tons of manure generated as follows:
  - 8 houses X 33,000 Broilers per house = 264,000 birds at any one time.
  - 264,000 Broilers X 4.95 Lbs. Ave. Live Wt. = 1,306,800 Lbs. Normal Production Live Weight
  - 264,000 Broilers X 6.1 tons/1000 bird spaces/year = 1610 tons/year waste production

**Special Conditions:** (See attachments).

**Facility Permit Number:** ND0090175

**Permit Number:** AG-20600 v1.0

**Date of Issue:** 6/4/2024

**Effective Date:** 6/19/2024

**Expiration Dates:** Unless construction begins prior to 6/17/2026, and is completed prior to 6/16/2027, this permit will expire. In accepting this permit, the owner agrees to the admission of properly authorized persons at all reasonable hours for the purpose of sampling and inspection.

**Treatment Plant Classification:** Group 0

**WRITTEN APPROVAL TO OPERATE THIS FACILITY MUST BE OBTAINED FROM THE DEPARTMENT PRIOR TO PLACING ANIMALS IN THE FACILITY.**



Kelly Whitlock, Manager  
Groundwater Protection & Ag Permitting  
Bureau of Water

cc: Natalie Kirkpatrick, Director, Upstate EA Greenville/Spartanburg Office  
Travis Fuss, Director, Midlands EA Aiken Office

**SPECIAL CONDITIONS**  
**(Poultry)**

- 1. Operate and maintain the waste system, including all special conditions in accordance with Animal Facility Management Plan developed by Adam Gaines. Operate and maintain the waste management system in accordance with State and Federal law so as to prevent discharges to the environment. Should any part of the Animal Facility Management Plan fail to function as intended, additional controls or treatment of the wastes may be required.
- 2. The primary method of disposal of mortality will be by incineration until a rotary drum composter is installed. The excessive mortality method of disposal will be by burial. If a massive die-off occurs, notify your local inspector immediately, Travis Fuss, Midlands EA Aiken Office, 206 Beaufort Street, NE, Aiken, SC 29801, and phone number is (803) 642-1637, or email at [fusstr@dhec.sc.gov](mailto:fusstr@dhec.sc.gov). If you are calling after-hours, please call the Department's twenty-four-hour number (888)-481-0125 or (803)-253-6488. If you plan to bury the dead animals from a massive die-off, the Department recommends that you develop an emergency plan, and have it approved by the Department, prior to the occurrence. If you do not have a plan and site approved by the Department you will not be able to bury the animals. If the plan and site are approved, you would only be required to notify the Department of the massive die-off, and then implement the approved plan for disposal. The Department recommends following the Burial Guidance document when submitting your plan for approval. It can be found at [https://www.scdhec.gov/sites/default/files/media/document/Burial-Site-Guidance-6\\_28\\_17.pdf](https://www.scdhec.gov/sites/default/files/media/document/Burial-Site-Guidance-6_28_17.pdf).
- 3. If you have mortality on the farm that may be attributed to disease or toxin exposure, please contact Dr. Julie Helm of the State Veterinarian office at (803)-788-2260 for additional assistance in the handling and disposal of infected animals. The State Veterinarian's office recommends that the diagnostic lab evaluate samples for deaths in excess of 10% of a house population. This action can help identify disease outbreaks on the farm. The State Veterinarian's Office can also provide guidance in preventing the spread of diseases.
- 4. You are responsible for obtaining any other local or state permits that may be required for this project, including a stormwater permit. For information concerning stormwater, call (803) 898-4234, or <https://www.scdhec.gov/environment/water-quality/stormwater/stormwater-construction-activities/stormwater-construction>.
- 5. Drinking water wells installed on this site to provide water for animal and/or human consumption must be installed with at least the following minimum setbacks required in Regulation 61-71 (Well Standards & Regulations):
  - (a) Sewer lines ..... 20 feet
  - (b) Lakes, streams, surface-water bodies ..... 50 feet
  - (c) Septic tanks/tile fields ..... 75 feet
  - (d) Animal feedlots, barns, stables ..... 50 feet
  - (e) Waste disposal - land application sites ..... 100 feet
  - (f) Waste treatment lagoons ..... 100 feet
  - (g) Herbicide, pesticide & petroleum handling/storage sites ..... 100 feet

A permit for private wells must be obtained from the Department prior to installation and a Notice of Intent must be submitted, Regulation 61-44 (Individual Residential Well and Irrigation Well Permitting). Enclosed is a copy of the Notice of Intent. For information concerning well permitting, call (803)-898-3559 or <https://scdhec.gov/BOW/private-drinking-water-wells>

6. ***Annual reporting is required for this permit.***

*An annual report is due by June 19th of each year and must include the following:*

- a. Waste sampling results for the last year, if applicable, and the latest rolling average.*
- b. Soil monitoring results, if applicable.*
- c. Groundwater monitoring results, if applicable.*
- d. Calculated application rates for all waste utilization areas, if applicable.*
- e. The adjusted application rates, if applicable, based on the most recent animal waste sampling and soil samples. The application rate change could also be due to a change in field use, crop grown or other factors.*

**Annual Reports may be submitted through your ePermitting account or mailed to the following address:**

**SC Department of Health & Environmental Control  
Bureau of Water - Ag Permitting & Groundwater Protection Section  
Attn: Tonya O'Cain  
2600 Bull Street  
Columbia, SC 29201**

7. CAMM Certification is required within one year from the effective date of this permit. The next CAMM training is scheduled for February 4 or 18, 2025 (different locations). Please contact Bryan Smith with the Clemson Extension Service to inquire about future CAMM training classes for manure handling at (864)-984-2514.



June 4, 2024

Jim Young  
J Young Broilers  
123 Sherwood Forest  
Laurens, SC 29360

Re: Facility Permit #ND0090175 and Construction Permit #AG-20600 v1.0  
J Young Broilers  
Laurens County

Dear Jim Young:

Enclosed is a State Agricultural Permit for the above-referenced facility. Construction and operation is to be performed in accordance with this permit and the supporting agricultural facility management plan approved by this Office. Once the construction permit is issued, an applicant, permittee, licensee, or an affected resident can request a board review of the issuance of that permit, as outlined in the enclosed document "Guide to Board Review" dated December 1, 2022. If you have any questions regarding these review procedures, you may contact the Legal Office, Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201 or by calling (803)-898-3350. This permit does not cover the use of an incinerator or composter. Those will be permitted by Henry Gibson when plans and specs are received by this office.

Upon completion of construction, a letter must be submitted to the Environmental Affairs (EA) Regional office from the Agricultural Animal Facility Management Plan preparer certifying that the construction has been completed in accordance with the approved plan. A final inspection may then be scheduled. The EA Regional office will grant approval to operate (ATO) upon successful completion of the project. **In addition, Regulation 61-43 requires an operator of an animal facility or manure utilization area to complete CAMM training, created by Clemson University, on the operation of animal manure management systems. As the operator of this facility, you are required to complete this training program within one year from effective date of this permit. Please contact Bryan Smith with the Clemson Extension Service to inquire about future CAMM training classes for manure handling at (864)-984-2514.**

If you have any questions regarding the permit, please contact Lisa Appel at (803) 898-1745. This system cannot be placed into operation until the final ATO is granted by the appropriate EA Regional Office. Your Region contact is Travis Fuss, Midlands EA Aiken Office, 206 Beaufort Street, NE, Aiken, SC 29801, and phone number is (803) 642-1637, or email at [fusstr@dhec.sc.gov](mailto:fusstr@dhec.sc.gov). The EA Regional Office should be notified when construction begins.

Sincerely,

Kelly Whitlock, Manager  
Groundwater Protection & Ag Permitting  
Bureau of Water

cc: Natalie Kirkpatrick, Director, Upstate EA Greenville/Spartanburg Office  
Travis Fuss, Director, Midlands EA Aiken Office

# **EXHIBIT 2**

## 1.8. Natural Resource Concerns

If checked, the indicated resource concerns have been identified and addressed in this plan.

### Soil Quality Concerns

|   | <i>Soil Quality Concern</i> | <i>Activities to Address Concern</i> |
|---|-----------------------------|--------------------------------------|
| X | None                        |                                      |

### Water Quality Concerns

|   | <i>Water Quality Concern</i> | <i>Activities to Address Concern</i> |
|---|------------------------------|--------------------------------------|
| X | None                         |                                      |

### Other Concerns Addressed

|   | <i>Other Concern</i> | <i>Activities to Address Concern</i> |
|---|----------------------|--------------------------------------|
| X | Regulations          | CNMP Required by SC DHEC             |
| X | Litter Management    | Planned Stacking Shed                |
| X | Mortality Management | Planned Composter                    |
| X | Mortality Management | Planned Burial Site                  |
| X | Mortality Management | Planned Incinerator                  |

# **EXHIBIT 3**



Agri-Waste Technology, Inc.  
501 N Salem Street, Suite 203, Apex, NC 27502  
agrwaste.com | 919.859.0669

### Proposed Barn, Manure Storage & Burial Location

Jim Young  
Laurens Co., SC

Tax ID: 511-00-00-009



#### IMPORTANT NOTES

- 1.) Poultry houses/stacking shed/com poster/burial do NOT impact the 1,000' permanent residence buffer. No Waivers Needed
- 2.) Poultry houses, structures, and burial are closer than 800' from the property line (black dotted line). 1- 800' property line waiver is needed from Heath Coggins
- 3.) Poultry houses/structures/ burial are more than 100' from surface water and wetlands.
- 4.) Planned poultry houses and stacking sheds are more than 200' from neighbor's wells.
- 5.) Poultry houses are 55' x 600' and 50 feet apart.
- 6.) Burial location determined by AWT soil scientists and meet SC DHEC requirements.
- 7.) Mr. Young and Mr. Coggins property is currently one polygon. This map shows a preliminary property split in order to complete their facility's permit process.

Drawn By: Julie Davidson  
Reviewed By: Adam Gaines  
Date: 1/31/2024

**510-00-00-004**  
**Heath Coggins**

- Farmstead
- Burial Mass
- Lot Split (preliminary)
- Property Line Buffer 800'
- Surface Water AWT Verified 5/13/2016
- Wetland AWT Verified 5/13/2016
- Wetland Buffer 100'
- Surface Water Buffer 100'
- Residence Buffer 1,000'
- Proposed Farmstead
- Critical Area Planting
- Composter 10' x 70'
- Incinerator 10' x 40'
- Stacking shed 40' x 200'
- Proposed Poultry Barn 55' x 600'
- Load Out (150' Deep)
- Waiver Needed
- 800' Property Line Waiver

Lisbon Rd



098

# **EXHIBIT 4**



# **EXHIBIT 5**

## Laurens County, South Carolina

### Ca—Cartecay-Toccoa complex

#### Map Unit Setting

*National map unit symbol:* 4cmx

*Elevation:* 450 to 1,500 feet

*Mean annual precipitation:* 41 to 54 inches

*Mean annual air temperature:* 47 to 73 degrees F

*Frost-free period:* 173 to 216 days

*Farmland classification:* Prime farmland if drained and either protected from flooding or not frequently flooded during the growing season

#### Map Unit Composition

*Cartecay and similar soils:* 55 percent

*Toccoa and similar soils:* 40 percent

*Minor components:* 5 percent

*Estimates are based on observations, descriptions, and transects of the mapunit.*

#### Description of Cartecay

##### Setting

*Landform:* Flood plains

*Landform position (three-dimensional):* Tread

*Down-slope shape:* Linear

*Across-slope shape:* Linear

*Parent material:* Loamy alluvium

##### Typical profile

*Ap - 0 to 14 inches:* sandy loam

*C - 14 to 30 inches:* sandy loam

*Cg - 30 to 79 inches:* fine sandy loam

##### Properties and qualities

*Slope:* 0 to 2 percent

*Depth to restrictive feature:* More than 80 inches

*Drainage class:* Somewhat poorly drained

*Runoff class:* Very high

*Capacity of the most limiting layer to transmit water (Ksat):* High (1.98 to 5.95 in/hr)

*Depth to water table:* About 6 to 18 inches

*Frequency of flooding:* Occasional

*Frequency of ponding:* None

*Available water supply, 0 to 60 inches:* Low (about 5.3 inches)

##### Interpretive groups

*Land capability classification (irrigated):* None specified

*Land capability classification (nonirrigated):* 3w

*Hydrologic Soil Group:* A/D

*Ecological site:* F136XY610GA - Flood plain forest, wet

*Hydric soil rating:* No

#### Description of Toccoa

##### Setting

*Landform:* Flood plains

## **WkD—Wilkes sandy loam, 6 to 15 percent slopes**

### **Map Unit Setting**

*National map unit symbol:* 4cpb  
*Elevation:* 340 to 750 feet  
*Mean annual precipitation:* 41 to 54 inches  
*Mean annual air temperature:* 47 to 73 degrees F  
*Frost-free period:* 173 to 216 days  
*Farmland classification:* Not prime farmland

### **Map Unit Composition**

*Wilkes and similar soils:* 100 percent  
*Estimates are based on observations, descriptions, and transects of the mapunit.*

### **Description of Wilkes**

#### **Setting**

*Landform:* Interfluves  
*Landform position (two-dimensional):* Backslope  
*Landform position (three-dimensional):* Side slope  
*Down-slope shape:* Convex  
*Across-slope shape:* Convex  
*Parent material:* Loamy residuum weathered from hornblende, diorite, or gabbro

#### **Typical profile**

*Ap - 0 to 7 inches:* sandy loam  
*Bt - 7 to 12 inches:* sandy clay loam  
*Cr - 12 to 24 inches:* weathered bedrock  
*R - 24 to 79 inches:* unweathered bedrock

#### **Properties and qualities**

*Slope:* 6 to 15 percent  
*Depth to restrictive feature:* 10 to 20 inches to paralithic bedrock; 20 to 40 inches to lithic bedrock  
*Drainage class:* Well drained  
*Runoff class:* Very high  
*Capacity of the most limiting layer to transmit water (Ksat):* Very low to moderately low (0.00 to 0.01 in/hr)  
*Depth to water table:* More than 80 inches  
*Frequency of flooding:* None  
*Frequency of ponding:* None  
*Available water supply, 0 to 60 inches:* Very low (about 1.8 inches)

#### **Interpretive groups**

*Land capability classification (irrigated):* None specified  
*Land capability classification (nonirrigated):* 6e  
*Hydrologic Soil Group:* D  
*Ecological site:* F136XY730SC - Basic upland forest, depth restriction, dry  
*Hydric soil rating:* No

# **EXHIBIT 6**



Agri-Waste Technology, Inc.  
501 N Salem Street, Suite 203, Apex, NC 27502  
agrwaste.com | 919.859.0669

### Proposed Manure Storage & Burial Site w Soil Borings

Jim Young  
Laurens Co., SC

Tax ID: 511-00-00-009



Soil evaluation was completed on 11/9/2023 by Chris McGee of AWT. Chris is a licensed Soil Scientist.

Details shown here summarizes Chris's determination for stacking shed, compost and burial location for NRCS/SCDHEC approval.

#### Soil Boring Evaluation:

Area 1 suitable for stacking shed and compost = 140,742 sq.ft.

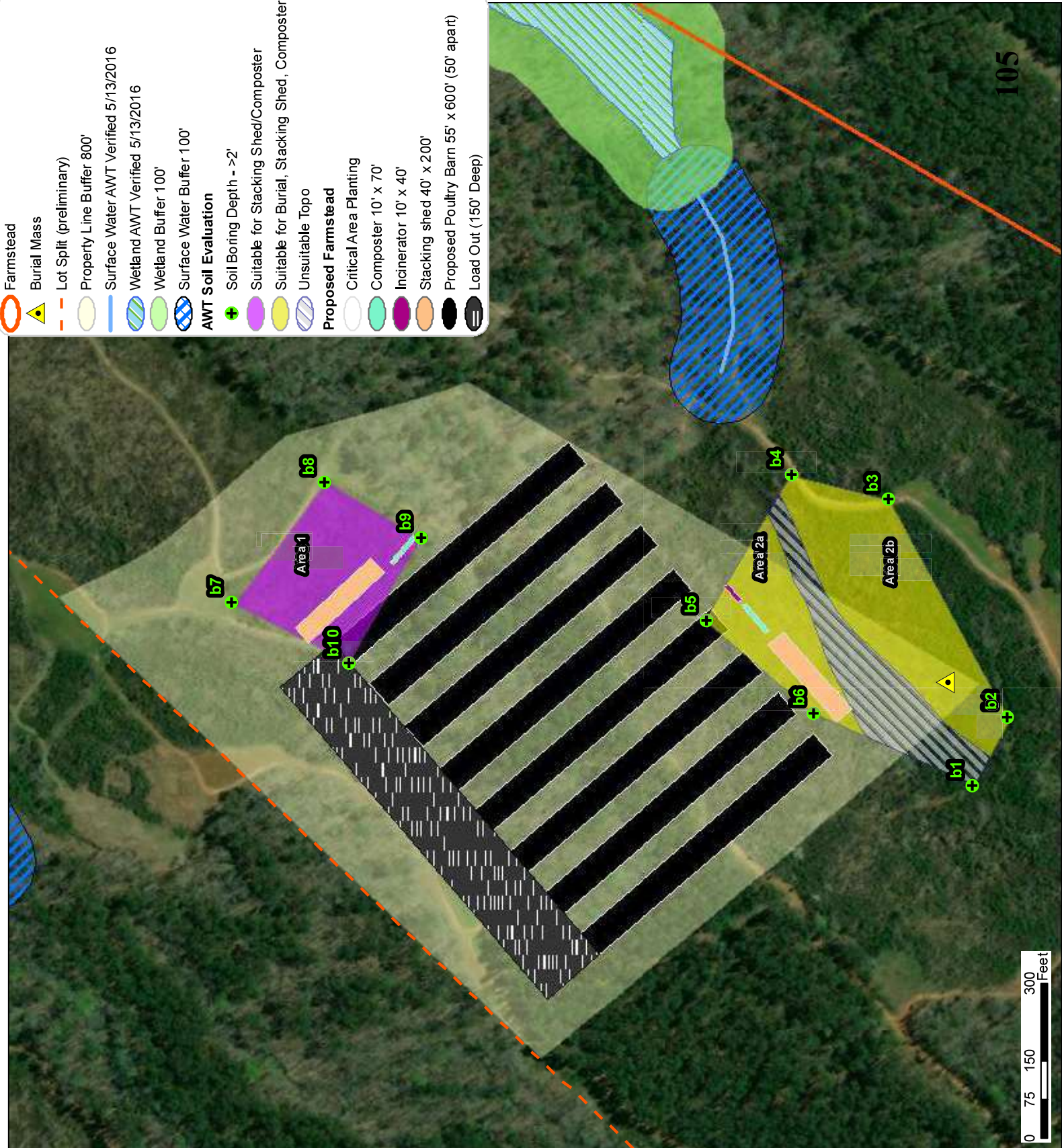
Area 2a suitable for burial, compost and stacking shed = 48,195 sq.ft.

Area 2b suitable for burial, compost and stacking shed = 92,547 sq.ft.

#### Additional Note:

Mr. Young and Heath Coggins plan to split this property. For now, the lot split shown here is preliminary.

Drawn By: Julie Davidson  
Reviewed By: Adam Gaines  
Date: 1/18/2024



# **EXHIBIT 7**



Agri-Waste Technology, Inc.  
501 N Salem Street, Suite 203, Apex, NC 27502  
agriwaste.com | 919.859.0669

### Preliminary Farmstead Flood Hazard

Jim Young  
Laurens Co., SC

Tax ID: 511-00-00-009



Mr. Young and Heath Coggins  
plan to split their property.  
For now, the lot split shown  
here is preliminary.

Drawn By: Julie Davidson  
Reviewed By: Adam Gaines  
Date: 1/31/2024

- Farmstead
- Burial Mass
- Access Road
- Lot Split (preliminary)
- Vegetated Buffer 25'
- Proposed Farmstead**
- Critical Area Planting
- Composter 10' x 70'
- Incinerator 10' x 40'
- Stacking shed 40' x 200'
- Proposed Poultry Barn 55' x 600'
- Load Out (150' Deep)
- FEMA Flood Hazard**
- A-100 yr floodplain



# **EXHIBIT 8**

Two planned 40' x 200' (minimum) stacking shed will hold litter following crusting before collection by a broker. Cleanouts will be collected directly by a manure broker out of the house. Each shed will have capacity for 550 tons of litter. The stacking shed will have enough storage for a full years' worth of crustings and provide emergency storage from cleanouts in case a broker is not able to come the same day. The stacking shed will have concrete put down to make cleaning the stacking shed easier and to prevent damaging the ground and causing erosion.

Web soil survey lists the soil type as mostly Enon sandy loam (EnC) with 6-10% slopes and a seasonal high-water table of >80". During an onsite investigation, soil borings were taken in several locations. AWT was able to get 10 borings to >24" without encountering a shallow seasonal high-water table. Picture below show the measurement and the soil at the construction site. These boring were taken in the build site parameters.

# **EXHIBIT 9**

7. Monitor temperatures at different points in the pile frequently. If temperatures exceed 190°F, or if the material is smoldering, prepare to remove material from the building. This includes notifying the local fire department to be on hand. A smoldering pile could burst into flames if exposed to air. A garden hose could be inadequate to extinguish the fire.
8. Do not store equipment in the litter storage structure.
9. At least twice per year, when the facility is empty, inspect wooden parts, hardware, or other replaceable parts that are damaged or show excessive wear or decay.
10. All disturbed areas around the facilities should be vegetated or covered with gravel to prevent erosion.
11. Warning signs, fences, guardrails, and other safety features will be installed and maintained to prevent unauthorized entry to any structure.

### **Animal Mortality Facility (316)**

An on-farm facility for the treatment or disposal of livestock and poultry carcasses.

This practice may be applied as part of a conservation management system to support one or more of the following purposes:

- Decrease non-point source pollution of surface and groundwater resources
- Reduce the impact of odors that result from improperly handled animal mortality
- Decrease the likelihood of the spread of disease or other pathogens that result from the interaction of animal mortality and predators
- To provide contingencies for normal and catastrophic mortality events

### **Roofs and Covers (367)**

A rigid, semirigid, or flexible manufactured membrane, composite material, or roof structure placed over a waste management facility, agrichemical handling facility, or an on-farm secondary containment facility.

- For enclosed waste facilities, exercise caution and care during cover removal or access. If opening of the cover is required for facility management, include provisions to prevent exposure of workers to hazardous gases.
- If personnel are or may be required to enter an enclosed waste facility, include safety provisions recommended by the National Institute for Occupational Safety and Health (NIOSH) for working in confined spaces including, but not limited to, using a positive-pressure self-contained breathing apparatus, safety line, and standby personnel.

### **Emergency Animal Mortality Management (368)**

A means or method for the management of animal carcasses from catastrophic mortality events.

- This practice is used to accomplish one or more of the following purposes:
- Reduce impacts to surface water and ground water including downstream drinking water sources
- Reduce the impact of odors.
- Decrease the spread of pathogens

Plan, design, and construct this practice to comply with all Federal, State, Tribal, and local regulations. The landowner must obtain all necessary permissions from regulatory agencies or document that no permits are required. The landowner and contractor are responsible for locating all buried utilities in the project area, including drainage tile and other structural measures.

Address biosecurity concerns in all aspects of planning, installation, operation, and maintenance of a catastrophic animal mortality operation. Provide warning signs, fences, refrigeration unit locks, and other devices, as appropriate, to ensure the safety of humans and livestock. Include provisions in the design for closing or removing temporary components of the emergency mortality management operation, where required.

# **EXHIBIT 10**

**Table 1-1. Key pollutants from livestock operations and animal manure.**

| Pollutant                                     | Description of Pollutant                                                                                                                                                   | Pathways to the Environment                                                                                                                               | Potential Impacts                                                                                                                                                                             |
|-----------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Nitrogen                                      | Organic forms (e.g., urea) and inorganic forms (e.g., ammonium and nitrate) in manure may be assimilated by plants and algae.                                              | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> <li>• Atmospheric deposition as ammonia</li> </ul> | <ul style="list-style-type: none"> <li>• Eutrophication and harmful algal blooms (HABs)</li> <li>• Ammonia toxicity to aquatic life</li> <li>• Nitrate linked to methemoglobinemia</li> </ul> |
| Phosphorus                                    | As manure ages, phosphorus mineralizes to inorganic phosphate compounds that may be assimilated by plants.                                                                 | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water (water soluble forms)</li> </ul>                        | <ul style="list-style-type: none"> <li>• Eutrophication and HABs</li> </ul>                                                                                                                   |
| Potassium                                     | Most potassium in manure is in an inorganic form available for plant assimilation; it can also be stored in soil for future plant uptake.                                  | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> </ul>                                              | <ul style="list-style-type: none"> <li>• Increased salinity in surface water and ground water</li> </ul>                                                                                      |
| Organic Compounds                             | Carbon-based compounds decomposed by micro-organisms. Creates biochemical oxygen demand because decomposition consumes dissolved oxygen in the water.                      | <ul style="list-style-type: none"> <li>• Overland discharge</li> </ul>                                                                                    | <ul style="list-style-type: none"> <li>• Eutrophication and HABs</li> <li>• Dissolved oxygen depletion, and potentially anoxia</li> <li>• Decreased aquatic biodiversity</li> </ul>           |
| Solids                                        | Includes manure, feed, bedding, hair, feathers, and dead livestock.                                                                                                        | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Atmospheric deposition</li> </ul>                                                  | <ul style="list-style-type: none"> <li>• Turbidity</li> <li>• Siltation</li> </ul>                                                                                                            |
| Salts                                         | Includes cations (sodium, potassium, calcium, magnesium) and anions (chloride, sulfate, bicarbonate, carbonate, nitrate).                                                  | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> </ul>                                              | <ul style="list-style-type: none"> <li>• Reduction in aquatic life</li> <li>• Increased soil salinity</li> <li>• Increased drinking water treatment costs</li> </ul>                          |
| Trace Elements                                | Includes feed additives (arsenic, copper, selenium, zinc, cadmium), trace metals (molybdenum, nickel, lead, iron, manganese, aluminum), and pesticide ingredients (boron). | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> </ul>                                              | <ul style="list-style-type: none"> <li>• Aquatic toxicity at elevated concentrations</li> </ul>                                                                                               |
| Volatile Compounds Including Greenhouse Gases | Includes carbon dioxide, methane, nitrous oxide, hydrogen sulfide, and ammonia gases generated during manure decomposition.                                                | <ul style="list-style-type: none"> <li>• Inhalation</li> <li>• Atmospheric deposition of ammonia</li> </ul>                                               | <ul style="list-style-type: none"> <li>• Eutrophication</li> <li>• Human health effects</li> <li>• Climate change</li> </ul>                                                                  |
| Pathogens                                     | Includes a range of disease-causing organisms, including bacteria, viruses, protozoa, fungi, prions and helminths.                                                         | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Potential growth in receiving waters</li> </ul>                                    | <ul style="list-style-type: none"> <li>• Animal, human health effects</li> </ul>                                                                                                              |
| Antimicrobials                                | Includes antibiotics and vaccines used for therapeutic and growth promotion purposes.                                                                                      | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> <li>• Atmospheric deposition</li> </ul>            | <ul style="list-style-type: none"> <li>• Facilitates the growth of antimicrobial-resistance</li> <li>• Unknown human health and aquatic life effects</li> </ul>                               |
| Hormones                                      | Includes natural and synthetic hormones used to promote animal growth and control reproductive cycles.                                                                     | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> </ul>                                              | <ul style="list-style-type: none"> <li>• Endocrine disruption in fish</li> <li>• Unknown human health effects</li> </ul>                                                                      |
| Other Pollutants                              | Includes pesticides, soaps, and disinfectants.                                                                                                                             | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> </ul>                                              | <ul style="list-style-type: none"> <li>• Unknown human health and ecological effects</li> <li>• Potential endocrine disruption in aquatic organisms</li> </ul>                                |

*Adapted from USEPA (2002a) Exhibit 2-2.*



Seema Shrivastava-Patel, Chairman  
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman  
Charles M. Joye, II, P.E., Secretary

**Board:**  
J.B. (Sonny) Kinney  
Morris E. Brown, III, MD, FAAFP  
William D. Richmond, MD

June 19, 2024

**Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1425 3353 23**

Emily S. Poole, Esquire  
Email: [emily@scelp.org](mailto:emily@scelp.org)  
Lauren Megill Milton, Esquire  
Email: [lauren@scelp.org](mailto:lauren@scelp.org)  
South Carolina Environmental Law Project  
Post Office Box 1380  
Pawleys Island, SC 29585

**Via Electronic Mail and US Mail**

Heath Coggins Broilers  
Attn: Heath Coggins  
Email: [heathcoggins@yahoo.com](mailto:heathcoggins@yahoo.com)  
2254 Easy Rd.  
Laurens, SC 29360

**Via Electronic Mail Delivery**

Stephen Hightower, Esquire  
Email: [hightosp@dhec.sc.gov](mailto:hightosp@dhec.sc.gov)  
Sara V. Martinez, Esquire  
Email: [martinsv@dhec.sc.gov](mailto:martinsv@dhec.sc.gov)  
SCHEC – Office of General Counsel  
2600 Bull Street  
Columbia, SC 29201

**RE: Docket No. 24-RFR-67, Heath Coggins Broilers**  
Issuance of Permit to Construct, Permit No. AG-20599v.1.0, Laurens County

Mr. Coggins and Counsel of Record:

Pursuant to the enclosed Standing Order issued on May 21, 2024, the South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.

## **CONTESTED CASE GUIDANCE**

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office  
South Carolina Administrative Law Court  
Edgar A. Brown Building  
1205 Pendleton St., Suite 224  
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



M. Denise Crawford  
Clerk of the Board  
S.C. Board of Health and Environmental Control

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

# **SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL**

## **STANDING ORDER**

*RE: Appeals from Department Decisions Giving Rise to Contested Cases,  
S.C. Code Section 44-1-60*

**Whereas**, the South Carolina Board of Health and Environmental Control (the “Board”) may conduct such administrative reviews as may be required by law, as considered necessary by the Board to render a final agency determination in matters involving the issuance, denial, renewal or revocation of permits, licenses, or other actions of the department which may give rise to a contested case pursuant to Chapter 23 of Title 1. See S.C. Code § 44-1-50.

**Whereas**, all Department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses or other actions of the Department which may give rise to a contested case shall be made using the procedures set forth in S.C. Code Section 44-1-60. See S.C. Code § 44-1-60.

**Whereas**, the Board approved a Final Review Procedure, the most recent version effective December 1, 2022, to provide for the administration of the procedures set forth in S.C. Code Section 44-1-60.

**Whereas**, an applicant, permittee, licensee, or affected person may file a request with the Administrative Law Court for a contested case hearing within thirty days after: (1) notice is mailed to the applicant, permittee, licensee, and affected person that the board declined to hold a final review conference; or (2) the sixty day deadline to hold the final review conference lapses and no conference has been held; or (3) the final agency decision resulting from the final review conference is received by the parties.

**Whereas**, pursuant to Act 60 of 2023, the South Carolina Department of Health and Environmental Control and the Board are abolished, effective July 1, 2024.

**NOW THEREFORE**, considering the foregoing and to ensure properly filed requests for review pursuant to S.C. Code Section 44-1-60 are timely addressed:

1. the Chairwoman, in her sole discretion, may direct the Clerk of the Board to adjust time frames and procedures contained in the Final Review Procedure that was effective December 1, 2022, to provide for processing of requests for final review properly filed pursuant to S.C. Code Section 44-1-60 prior to **May 24, 2024**;
2. the Board declines to conduct a final review conference if it receives a properly filed request for final review of a staff decision pursuant to S.C. Code Section 44-1-60 on or after **May 24, 2024**;

3. the Clerk of the Board is hereby instructed to provide a copy of this Order and the requisite written notice of the Board's decision to decline to conduct a final review conference in the event the Clerk of the Board receives such a request on or after **May 24, 2024**;
4. because July 1, 2024, falls on a Monday, requests for Board review will not be accepted for filing after **5:00 PM** on **Friday, June 28, 2024**; and
5. the attached Board Review Procedure (Attachment 1) is adopted for requests filed on or after **May 24, 2024**.

**IT IS SO ORDERED.**



Seema Shrivastava-Patel, Chairwoman  
Board of Health and Environmental Control  
For the Board

May 21, 2024

## Attachment 1

### South Carolina Board of Health and Environmental Control

#### Final Review Procedure for Requests for Review (RFRs) filed on or after May 24, 2024

Staff sends the Guide to Board Review [Exhibit 1] to the applicant, permittee, licensee, and/or affected persons with every notice of decision involving the issuance, denial, renewal, suspension or revocation of permits, licenses, or other actions of the Department which may give rise to a contested case. Alternatively, the cover letter for the decision may reference the website where the Guide can be found and provide instructions for obtaining a copy of the Guide if internet access is not available. The Guide can be found at the following website address:

<https://scdhec.gov/about-dhec/sc-board-health-environmental-control/guide-board-review>

#### Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by the Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15<sup>th</sup> day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day.
2. **Until June 10, 2024**, RFRs should be filed on-line ([scdhec.gov/FileRFR](https://scdhec.gov/FileRFR)) or in person or by mail at the following address:

South Carolina Board of Health and Environmental Control  
Attention: Clerk of the Board  
2600 Bull Street  
Columbia, South Carolina 29201

**After June 10, 2024**, RFRs should be filed in person at the above-referenced address.

RFRs may be filed at any time with the Clerk by electronic mail ([boardclerk@dhec.sc.gov](mailto:boardclerk@dhec.sc.gov)) until 5:00 PM on Friday, June 28, 2024.

3. Pursuant to to Act 60 of 2023, the Board is abolished, effective Monday, July 1, 2024. **No RFRs will be accepted after 5:00 PM on Friday, June 28, 2024.**
4. RFRs shall be in writing and should include, at a minimum, the following information:
  - the grounds for amending, modifying, or rescinding the staff decision;
  - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
  - the relief requested;

- a copy of the decision for which review is requested; and
- the name of the Requestor and the Requestor's mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted. If the Requestor consists of a group of individuals, a representative of the group should be identified to receive all notices and communications related to the RFR for the group.

All information submitted is subject to release under the Freedom of Information Act. If the RFR and accompanying documentation contain information the Requestor believes should not be released, such information should be identified.

5. The filing fee may be paid by cash, check or credit card and must be received by the 15<sup>th</sup> day. Credit card payments may be made by phone (803-898-3460, option 2) or prior to June 10, 2024, on-line at [scdhec.gov/FileRFR](http://scdhec.gov/FileRFR).
6. If there is any perceived discrepancy in compliance with this RFR filing procedure or any other procedural question, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
7. **RFRs filed with the Board on or after May 24, 2024, shall be denied.** The Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

## NOTICE

Pursuant to Act 60 of 2023, the South Carolina Board of Health and Environmental Control is abolished, effective Monday, July 1, 2024. Additionally, the South Carolina Department of Health and Environmental Control (DHEC) will become two, new separate agencies — the South Carolina Departments of Environmental Services (SCDES) and Public Health (DPH). This Guide to Board Review is applicable to requests filed with the Board on or after May 24, 2024.

### Exhibit 1

#### South Carolina Board of Health and Environmental Control

#### Guide to Board Review

#### Pursuant to S.C. Code Ann. § 44-1-60

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with the Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

#### I. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15<sup>th</sup> day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day.
2. **Until June 10, 2024**, RFRs should be filed on-line ([scdhec.gov/FileRFR](https://scdhec.gov/FileRFR)) or in person or by mail at the following address:

South Carolina Board of Health and Environmental Control  
Attention: Clerk of the Board  
2600 Bull Street  
Columbia, South Carolina 29201

**After June 10, 2024**, RFRs should be filed in person at the above-referenced address.

RFRs may be filed at any time prior to 5:00 PM on Friday, June 28, 2024, with the Clerk by electronic mail ([boardclerk@dhec.sc.gov](mailto:boardclerk@dhec.sc.gov)).

3. Pursuant to Act 60 of 2023, the Board is abolished, effective Monday, July 1, 2024. **No RFRs will be accepted after 5:00 PM on Friday, June 28, 2024.**
4. RFRs shall be in writing and should include, at a minimum, the following information:
  - The grounds for amending, modifying, or rescinding the staff decision;
  - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
  - the relief requested;
  - a copy of the decision for which review is requested; and

- the name of the Requestor and the Requestor's mailing address, email address, if applicable, and phone number(s) at which the Requestor can be contacted. If the Requestor consists of a group of individuals, a representative of the group should be identified to receive all notices and communications related to the RFR for the group.

All information submitted is subject to release under the Freedom of Information Act. If the RFR and accompanying documentation contain information the Requestor believes should not be released, such information should be identified.

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6. If there is any perceived discrepancy in compliance with this RFR filing procedure or any other procedural question, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
7. **Pursuant to the Standing Order approved by the Board on May 21, 2024, any RFR filed with the Board on or after May 24, 2024, will be denied.** The Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

**The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.**



Seema Shrivastava-Patel, Chairman  
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman  
Charles M. Joye, II, P.E., Secretary

**Board:**  
J.B. (Sonny) Kinney  
Morris E. Brown, III, MD, FAAFP  
William D. Richmond, MD

June 19, 2024

**Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1425 3352 62**

Emily S. Poole, Esquire  
Email: [emily@scelp.org](mailto:emily@scelp.org)  
Lauren Megill Milton, Esquire  
Email: [lauren@scelp.org](mailto:lauren@scelp.org)  
South Carolina Environmental Law Project  
Post Office Box 1380  
Pawleys Island, SC 29585

**Via Electronic Mail and US Mail**

J. Young Broilers  
Attn: Jim Young  
Email: [clemsontigerman02@gmail.com](mailto:clemsontigerman02@gmail.com)  
123 Sherwood Forest  
Laurens, SC 29360

**Via Electronic Mail Delivery**

Stephen Hightower, Esquire  
Email: [hightosp@dhec.sc.gov](mailto:hightosp@dhec.sc.gov)  
Sara V. Martinez, Esquire  
Email: [martinsv@dhec.sc.gov](mailto:martinsv@dhec.sc.gov)  
SCHEC – Office of General Counsel  
2600 Bull Street  
Columbia, SC 29201

**RE: Docket No. 24-RFR-66, J. Young Broilers**  
Issuance of Permit to Construct, Permit No. AG-20600v.1.0, Laurens County

Mr. Young and Counsel of Record:

Pursuant to the enclosed Standing Order issued on May 21, 2024, the South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.

## **CONTESTED CASE GUIDANCE**

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office  
South Carolina Administrative Law Court  
Edgar A. Brown Building  
1205 Pendleton St., Suite 224  
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



M. Denise Crawford  
Clerk of the Board  
S.C. Board of Health and Environmental Control

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

# **SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL**

## **STANDING ORDER**

*RE: Appeals from Department Decisions Giving Rise to Contested Cases,  
S.C. Code Section 44-1-60*

**Whereas**, the South Carolina Board of Health and Environmental Control (the “Board”) may conduct such administrative reviews as may be required by law, as considered necessary by the Board to render a final agency determination in matters involving the issuance, denial, renewal or revocation of permits, licenses, or other actions of the department which may give rise to a contested case pursuant to Chapter 23 of Title 1. See S.C. Code § 44-1-50.

**Whereas**, all Department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses or other actions of the Department which may give rise to a contested case shall be made using the procedures set forth in S.C. Code Section 44-1-60. See S.C. Code § 44-1-60.

**Whereas**, the Board approved a Final Review Procedure, the most recent version effective December 1, 2022, to provide for the administration of the procedures set forth in S.C. Code Section 44-1-60.

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**Whereas**, pursuant to Act 60 of 2023, the South Carolina Department of Health and Environmental Control and the Board are abolished, effective July 1, 2024.

**NOW THEREFORE**, considering the foregoing and to ensure properly filed requests for review pursuant to S.C. Code Section 44-1-60 are timely addressed:

1. the Chairwoman, in her sole discretion, may direct the Clerk of the Board to adjust time frames and procedures contained in the Final Review Procedure that was effective December 1, 2022, to provide for processing of requests for final review properly filed pursuant to S.C. Code Section 44-1-60 prior to **May 24, 2024**;
2. the Board declines to conduct a final review conference if it receives a properly filed request for final review of a staff decision pursuant to S.C. Code Section 44-1-60 on or after **May 24, 2024**;

3. the Clerk of the Board is hereby instructed to provide a copy of this Order and the requisite written notice of the Board's decision to decline to conduct a final review conference in the event the Clerk of the Board receives such a request on or after **May 24, 2024**;
4. because July 1, 2024, falls on a Monday, requests for Board review will not be accepted for filing after **5:00 PM** on **Friday, June 28, 2024**; and
5. the attached Board Review Procedure (Attachment 1) is adopted for requests filed on or after **May 24, 2024**.

**IT IS SO ORDERED.**



Seema Shrivastava-Patel, Chairwoman  
Board of Health and Environmental Control  
For the Board

May 21, 2024

## Attachment 1

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#### Final Review Procedure for Requests for Review (RFRs) filed on or after May 24, 2024

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**The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.**



**SOUTH CAROLINA  
ENVIRONMENTAL  
LAW PROJECT**

*Lawyers for the Wild Side*

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /  
[www.scelp.org](http://www.scelp.org)

**Executive Director & General Counsel**  
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Benjamin D. Cunningham | ben@scelp.org  
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Emily S. Poole | emily@scelp.org  
Madison R. Martin | madison@scelp.org  
Monica K. Whalen | monica@scelp.org

July 19, 2024

**VIA U.S. MAIL AND EMAIL**

Ms. Jana E. Shealy, Clerk  
South Carolina Administrative Law Court  
Edgar A. Brown Building  
1205 Pendleton Street, Suite 224  
Columbia, SC 29201

**RE: Request for a Contested Case Hearing  
Heath Coggins (d/b/a Heath Coggins Broilers) Permit Nos. ND0090174, AG-20599**

Dear Ms. Shealy:

On behalf of South Carolinians for Responsible Agricultural Practices, please find enclosed for filing the original Request for Contested Case Hearing Form and the required filing fee which concerns the above-referenced matter. I have enclosed a copy of this Request as well. Please file-stamp this copy and return it to me in the envelope provided herein.

If you have any questions or concerns regarding this submission, please do not hesitate to contact me. Thank you for your assistance in this matter.

Respectfully,

Emily S. Poole, Esq.

cc: South Carolinians for Responsible Agricultural Practices  
Heath Coggins (d/b/a Heath Coggins Broilers)  
South Carolina Department of Environmental Services – Office of General Counsel

**South Carolina Administrative Law Court (SC ALC)**  
**Request for Contested Case Hearing FORM**  
**Mail to: 1205 Pendleton St., Suite 224, Columbia, SC 29201**

|                                                                               |                         |                                       |                                                          |                                     |
|-------------------------------------------------------------------------------|-------------------------|---------------------------------------|----------------------------------------------------------|-------------------------------------|
| Last Name:<br><b>South Carolinians for Responsible Agricultural Practices</b> |                         | First:<br><b></b>                     | Middle:<br><b></b>                                       | Docket No. (To Be Completed by ALC) |
| Mailing Address:<br><b>3771 Hwy 56 South</b>                                  |                         | City:<br><b>Clinton</b>               |                                                          | State and Zip:<br><b>SC 29325</b>   |
| Home Number:<br><b>(864) 923-2203</b>                                         | Work Number:<br><b></b> | Cell Number:<br><b>(864) 684-1230</b> | *E-Mail Address:<br><b>charlesblackmon1948@gmail.com</b> |                                     |

\*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

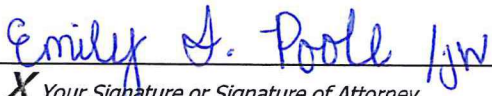
**REPRESENTATION**

|                                                                                                         |                                                                                |
|---------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| Are you representing yourself? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No      |                                                                                |
| Are you represented by an Attorney? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Name of Attorney: <b>Emily S. Poole, Esq. &amp; Lauren Megill Milton, Esq.</b> |
| Attorney Mailing Address:<br><b>South Carolina Environmental Law Project</b>                            | City, State and Zip:<br><b>P.O. Box 1380, Pawleys Island, SC 29585</b>         |
| Attorney Work Number and Cell Number:<br><b>(843) 527-0078</b>                                          | Attorney E-Mail Address:<br><b>emily@scelp.org &amp; lauren@scelp.org</b>      |

**CASE INFORMATION**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|
| <b>Name of Agency that Issued the Decision:</b> (Example – Dept. of Revenue, Dept. of Insurance, DHEC)<br><b>Department of Environmental Services (formerly the Department of Health and Environmental Control)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                      |
| In order to have your case processed, <b>you must attach the agency decision.</b> Is it attached?:<br><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | If no, please explain:                               |
| Date the decision was issued: <b>June 19, 2024</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Date the decision was received: <b>June 19, 2024</b> |
| Please provide a brief statement regarding why the hearing is being requested and the relief sought:<br>Pursuant to S.C. Code Ann. §§ 48-6-30 and 48-6-40, the hearing is requested regarding Permit Nos. ND0090174 and AG-20599 as explained in the attached request for final review conference dated June 18, 2024. For the reasons stated in the attached request for final review conference and any that may be included in Petitioner's Pre-Hearing Statement, Petitioner requests that the staff decision to issue the permit for construction and operation of an agricultural animal facility and manure and animal by-products treatment and storage system be reversed. |                                                      |
| <b>Payment</b> (applicable <b>filing fee pursuant to</b> ALC Rule 71) is being submitted today to the Administrative Law Court<br>via <input checked="" type="checkbox"/> Check <input type="checkbox"/> Money Order <input type="checkbox"/> Cash<br>via <input checked="" type="checkbox"/> U.S. Postal Service <input type="checkbox"/> Hand-delivery                                                                                                                                                                                                                                                                                                                            |                                                      |
| <br><b>X</b> Your Signature or Signature of Attorney                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <b>07/19/2024</b><br>Date                            |

**PROOF OF SERVICE (MUST BE COMPLETED)**

|                                                                                                                                                                                                                                                                                                                    |                         |                           |                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|---------------------------|----------------------------------------------|
| Your Name: <b>Emily S. Poole</b>                                                                                                                                                                                                                                                                                   |                         | Date: <b>07/18/2024</b>   | City: <b>Pawleys Island</b> State: <b>SC</b> |
| I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing <b>on all other parties</b> to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names): |                         |                           |                                              |
| Heath Coggins (d/b/a Heath Coggins Broilers)                                                                                                                                                                                                                                                                       | <b>2254 Easy Road</b>   | <b>Laurens, SC 29360</b>  |                                              |
| Name and/or Agency Name                                                                                                                                                                                                                                                                                            | Address                 | City, State and Zip       |                                              |
| <b>SCDES Office of General Counsel</b>                                                                                                                                                                                                                                                                             | <b>2600 Bull Street</b> | <b>Columbia, SC 29201</b> |                                              |
| Name and/or Agency Name                                                                                                                                                                                                                                                                                            | Address                 | City, State and Zip       |                                              |
| <br><b>X</b> Your Signature or Signature of Attorney                                                                                                                                                                            |                         | <b>07/19/2024</b><br>Date |                                              |

**131**

**Attention:** All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website [www.scalc.net](http://www.scalc.net) or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.



Seema Shrivastava-Patel, Chairman  
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman  
Charles M. Joye, II, P.E., Secretary

**Board:**  
J.B. (Sonny) Kinney  
Morris E. Brown, III, MD, FAAFP  
William D. Richmond, MD

June 19, 2024

**Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1425 3353 23**

Emily S. Poole, Esquire  
Email: [emily@scelp.org](mailto:emily@scelp.org)  
Lauren Megill Milton, Esquire  
Email: [lauren@scelp.org](mailto:lauren@scelp.org)  
South Carolina Environmental Law Project  
Post Office Box 1380  
Pawleys Island, SC 29585

**Via Electronic Mail and US Mail**

Heath Coggins Broilers  
Attn: Heath Coggins  
Email: [heathcoggins@yahoo.com](mailto:heathcoggins@yahoo.com)  
2254 Easy Rd.  
Laurens, SC 29360

**Via Electronic Mail Delivery**

Stephen Hightower, Esquire  
Email: [hightosp@dhec.sc.gov](mailto:hightosp@dhec.sc.gov)  
Sara V. Martinez, Esquire  
Email: [martinsv@dhec.sc.gov](mailto:martinsv@dhec.sc.gov)  
SCHEC – Office of General Counsel  
2600 Bull Street  
Columbia, SC 29201

**RE: Docket No. 24-RFR-67, Heath Coggins Broilers**  
Issuance of Permit to Construct, Permit No. AG-20599v.1.0, Laurens County

Mr. Coggins and Counsel of Record:

Pursuant to the enclosed Standing Order issued on May 21, 2024, the South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.

## **CONTESTED CASE GUIDANCE**

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office  
South Carolina Administrative Law Court  
Edgar A. Brown Building  
1205 Pendleton St., Suite 224  
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



M. Denise Crawford  
Clerk of the Board  
S.C. Board of Health and Environmental Control

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

# **SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL**

## **STANDING ORDER**

*RE: Appeals from Department Decisions Giving Rise to Contested Cases,  
S.C. Code Section 44-1-60*

**Whereas**, the South Carolina Board of Health and Environmental Control (the "Board") may conduct such administrative reviews as may be required by law, as considered necessary by the Board to render a final agency determination in matters involving the issuance, denial, renewal or revocation of permits, licenses, or other actions of the department which may give rise to a contested case pursuant to Chapter 23 of Title 1. See S.C. Code § 44-1-50.

**Whereas**, all Department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses or other actions of the Department which may give rise to a contested case shall be made using the procedures set forth in S.C. Code Section 44-1-60. See S.C. Code § 44-1-60.

**Whereas**, the Board approved a Final Review Procedure, the most recent version effective December 1, 2022, to provide for the administration of the procedures set forth in S.C. Code Section 44-1-60.

**Whereas**, an applicant, permittee, licensee, or affected person may file a request with the Administrative Law Court for a contested case hearing within thirty days after: (1) notice is mailed to the applicant, permittee, licensee, and affected person that the board declined to hold a final review conference; or (2) the sixty day deadline to hold the final review conference lapses and no conference has been held; or (3) the final agency decision resulting from the final review conference is received by the parties.

**Whereas**, pursuant to Act 60 of 2023, the South Carolina Department of Health and Environmental Control and the Board are abolished, effective July 1, 2024.

**NOW THEREFORE**, considering the foregoing and to ensure properly filed requests for review pursuant to S.C. Code Section 44-1-60 are timely addressed:

1. the Chairwoman, in her sole discretion, may direct the Clerk of the Board to adjust time frames and procedures contained in the Final Review Procedure that was effective December 1, 2022, to provide for processing of requests for final review properly filed pursuant to S.C. Code Section 44-1-60 prior to **May 24, 2024**;
2. the Board declines to conduct a final review conference if it receives a properly filed request for final review of a staff decision pursuant to S.C. Code Section 44-1-60 on or after **May 24, 2024**;

3. the Clerk of the Board is hereby instructed to provide a copy of this Order and the requisite written notice of the Board's decision to decline to conduct a final review conference in the event the Clerk of the Board receives such a request on or after **May 24, 2024**;
4. because July 1, 2024, falls on a Monday, requests for Board review will not be accepted for filing after **5:00 PM** on **Friday, June 28, 2024**; and
5. the attached Board Review Procedure (Attachment 1) is adopted for requests filed on or after **May 24, 2024**.

**IT IS SO ORDERED.**



Seema Shrivastava-Patel, Chairwoman  
Board of Health and Environmental Control  
For the Board

May 21, 2024

## Attachment 1

### South Carolina Board of Health and Environmental Control

#### Final Review Procedure for Requests for Review (RFRs) filed on or after May 24, 2024

Staff sends the Guide to Board Review [Exhibit 1] to the applicant, permittee, licensee, and/or affected persons with every notice of decision involving the issuance, denial, renewal, suspension or revocation of permits, licenses, or other actions of the Department which may give rise to a contested case. Alternatively, the cover letter for the decision may reference the website where the Guide can be found and provide instructions for obtaining a copy of the Guide if internet access is not available. The Guide can be found at the following website address:

<https://scdhec.gov/about-dhec/sc-board-health-environmental-control/guide-board-review>

#### Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by the Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15<sup>th</sup> day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day.
2. **Until June 10, 2024**, RFRs should be filed on-line ([scdhec.gov/FileRFR](https://scdhec.gov/FileRFR)) or in person or by mail at the following address:

South Carolina Board of Health and Environmental Control  
Attention: Clerk of the Board  
2600 Bull Street  
Columbia, South Carolina 29201

**After June 10, 2024**, RFRs should be filed in person at the above-referenced address.

RFRs may be filed at any time with the Clerk by electronic mail ([boardclerk@dhec.sc.gov](mailto:boardclerk@dhec.sc.gov)) until 5:00 PM on Friday, June 28, 2024.

3. Pursuant to Act 60 of 2023, the Board is abolished, effective Monday, July 1, 2024. **No RFRs will be accepted after 5:00 PM on Friday, June 28, 2024.**
4. RFRs shall be in writing and should include, at a minimum, the following information:
  - the grounds for amending, modifying, or rescinding the staff decision;
  - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
  - the relief requested;

- a copy of the decision for which review is requested; and
- the name of the Requestor and the Requestor's mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted. If the Requestor consists of a group of individuals, a representative of the group should be identified to receive all notices and communications related to the RFR for the group.

All information submitted is subject to release under the Freedom of Information Act. If the RFR and accompanying documentation contain information the Requestor believes should not be released, such information should be identified.

5. The filing fee may be paid by cash, check or credit card and must be received by the 15<sup>th</sup> day. Credit card payments may be made by phone (803-898-3460, option 2) or prior to June 10, 2024, on-line at [scdhec.gov/FileRFR](http://scdhec.gov/FileRFR).
6. If there is any perceived discrepancy in compliance with this RFR filing procedure or any other procedural question, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
7. **RFRs filed with the Board on or after May 24, 2024, shall be denied.** The Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

## NOTICE

Pursuant to Act 60 of 2023, the South Carolina Board of Health and Environmental Control is abolished, effective Monday, July 1, 2024. Additionally, the South Carolina Department of Health and Environmental Control (DHEC) will become two, new separate agencies — the South Carolina Departments of Environmental Services (SCDES) and Public Health (DPH). This Guide to Board Review is applicable to requests filed with the Board on or after May 24, 2024.

### Exhibit 1

#### South Carolina Board of Health and Environmental Control

#### Guide to Board Review

#### Pursuant to S.C. Code Ann. § 44-1-60

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with the Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

#### I. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15<sup>th</sup> day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day.
2. **Until June 10, 2024**, RFRs should be filed on-line ([scdhec.gov/FileRFR](https://scdhec.gov/FileRFR)) or in person or by mail at the following address:

South Carolina Board of Health and Environmental Control  
Attention: Clerk of the Board  
2600 Bull Street  
Columbia, South Carolina 29201

**After June 10, 2024**, RFRs should be filed in person at the above-referenced address.

RFRs may be filed at any time prior to 5:00 PM on Friday, June 28, 2024, with the Clerk by electronic mail ([boardclerk@dhec.sc.gov](mailto:boardclerk@dhec.sc.gov)).

3. Pursuant to Act 60 of 2023, the Board is abolished, effective Monday, July 1, 2024. **No RFRs will be accepted after 5:00 PM on Friday, June 28, 2024.**
4. RFRs shall be in writing and should include, at a minimum, the following information:
  - The grounds for amending, modifying, or rescinding the staff decision;
  - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
  - the relief requested;
  - a copy of the decision for which review is requested; and

- the name of the Requestor and the Requestor's mailing address, email address, if applicable, and phone number(s) at which the Requestor can be contacted. If the Requestor consists of a group of individuals, a representative of the group should be identified to receive all notices and communications related to the RFR for the group.

All information submitted is subject to release under the Freedom of Information Act. If the RFR and accompanying documentation contain information the Requestor believes should not be released, such information should be identified.

5. The filing fee may be paid by cash, check or credit card and must be received by the 15<sup>th</sup> day. Credit card payments may be made by phone (803-898-3460, option 2) or prior to June 10, 2024, on-line at [scdhec.gov/FileRFR](https://scdhec.gov/FileRFR).
6. If there is any perceived discrepancy in compliance with this RFR filing procedure or any other procedural question, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
7. **Pursuant to the Standing Order approved by the Board on May 21, 2024, any RFR filed with the Board on or after May 24, 2024, will be denied.** The Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

**The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.**

STATE OF SOUTH CAROLINA  
BEFORE THE BOARD OF THE DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL CONTROL

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South Carolinians for Responsible Agricultural Practices,

Requestor,

vs.

Heath Coggins (d/b/a Heath Coggins Broilers), and South Carolina Department of  
Health and Environmental Control,

Respondents.

RE: Permit for Construction and Operation of Agricultural Animal Facility and  
Manure and Animal By-Products Treatment and Storage System in Laurens  
County

P/N#: ND0090174, AG-20599, HQ1-SB91-8TNXE

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**REQUEST FOR FINAL REVIEW CONFERENCE**

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South Carolinians for Responsible Agricultural Practices (“SCRAP” or “the Requestor”), pursuant to S.C. Code Ann. § 44-1-60, hereby respectfully requests that the Board of the South Carolina Department of Health and Environmental Control (“Board”) conduct a Final Review Conference in connection with the DHEC staff’s decision to issue a permit for the construction and operation of an agricultural animal facility and manure and animal by-products treatment and storage system (hereinafter “the Permit”), Permit Number AG-20599 and Facility Permit Number ND0090174, to Heath Coggins, doing business as Heath Coggins Broilers (“Coggins” or “Permittee”). Coggins proposes to build eight poultry barns 55’ by 600’ in size that will hold 264,000 broilers with a normal production live weight of 1,306,800 pounds and will result in an

annual litter production of 1,610 tons. This facility would be located in Mountville, SC along the Little River and its tributaries on TMS # 511-00-00-009. DHEC's Office of Groundwater Protection and Agricultural Permitting issued the Permit on June 4, 2024, and a copy of the Notice of the Permit Decision letter and the Permit issued to Coggins are attached hereto as **Exhibit 1**. SCRAP requests that the Board reverse the staff's decision because it fails to comply with state laws, regulations, and policies.

## **I. THE REQUESTOR AND THEIR INTEREST**

Requestor South Carolinians for Responsible Agricultural Practices ("SCRAP") is an association of concerned residents in the Mountville area who seek to protect their rural community from the over-proliferation of chicken houses. Since 2016, this association has sought better permitting, oversight, and enforcement from DHEC as it pertains to the dozens upon dozens of poultry barns in their area. SCRAP and its members desire to see their rural community and its treasures, like the Little River, protected from the pollution and destruction of the poultry facilities that have overrun their community, impacting their homes and properties. Further, SCRAP's members—all of whom are affected persons within the definition of S.C. Code Ann. § 44-1-65(E)—breathe the air; drink the water; enjoy viewing plant and wildlife; and recreate, use, and appreciate the natural resources in and around the proposed facility, including the Little River. All of these activities and interests are at risk of harm if Coggins constructs and operates the proposed agricultural animal facility as authorized by DHEC staff in the Permit decision.

## **II. DHEC'S ISSUANCE OF THE PERMIT VIOLATES SOUTH CAROLINA LAW**

One of the most central provisions of the animal facility permitting regulations states: "The Department *shall act* on all permits *to prevent*, so far as reasonably possible considering relevant standards under state and federal laws, *an increase in pollution of the waters and air of the State*

from any new or enlarged sources.”<sup>1</sup> This and other mandates found in the regulations require DHEC to impose heightened protections and more stringent requirements for the proposed facility at issue here in order to minimize water quality impacts, protect the surrounding ecosystem, and preserve the health and welfare of the community’s residents. Because the terms of Coggins’ Permit do not allow for adequate protection of the surrounding water bodies, the Permit should not have been issued by DHEC staff, and the Permit should be rescinded by this Board.

**A. DHEC Staff Failed to Consider This Facility’s Proximity to the Little River**

Because one of the principal purposes of DHEC’s animal facility permitting regulatory scheme is to prevent an increase in pollution of waters of the State, the Department has crafted many regulatory provisions to ensure compliance with this mandate. In S.C. Code Ann. Regs. § 61-43.200.140, the Department declares:

A. There *shall* be no discharge of pollutants from the operation into surface Waters of the State (including ephemeral and intermittent streams). There *shall* be no discharge of pollutants into groundwater, which could cause groundwater quality not to comply with the groundwater standards established in R.61-68.

...

C. The following cases *shall* be evaluated for additional or more stringent requirements:

1. Source water protection. Facilities and manure utilization areas located within a state-approved source water protection area.
2. 303(d) Impaired Water Bodies List. Facilities and manure utilization areas located upstream of an impaired waterbody.
3. Proximity to Outstanding Resource Waters, trout waters, shellfish waters, or potential to adversely affect a federally listed endangered or threatened species, its habitat, or a proposed or designated critical habitat.
4. Aquifer Vulnerability Area, an area where groundwater recharge may affect an aquifer.<sup>2</sup>

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<sup>1</sup> S.C. Code Ann. Regs. § 61-43.200.70(E) (emphasis added).

<sup>2</sup> S.C. Code Ann. Regs. § 61-43.200.140 (emphasis added).

These unequivocal provisions establish a general rule and a set of more specific rules, as applicable, that the Department must impose upon animal facility permit applicants to protect water quality. The general rule is that *no discharge of pollutants* from these facilities can occur in either surface waters or groundwaters of the State. The next section cited above then details specific situations that call for more stringent requirements to be evaluated, including when a proposed animal facility is located upstream of an impaired waterbody. The strength and stringency of these regulations have been confirmed through judicial review, establishing precedent that is extremely relevant here. In 2022, the South Carolina Court of Appeals stressed that to comply with the plain language of the regulations, DHEC *must* meaningfully evaluate agricultural facilities being sited in a waterbody listed on the impaired waterbodies list in making permit decisions.<sup>3</sup>

Turning to the Permit at hand, Coggins is planning to build a new poultry facility on a parcel that the Little River runs directly through (TMS # 511-00-00-009). This means that this facility is located upstream of the Little River and that any discharges from this facility, whether point source or nonpoint source pollution, will inevitably run into the Little River. Since 2004, the Little River and its tributaries “have been placed on the South Carolina § 303(d) list of impaired waters for violations of the fecal coliform standard.”<sup>4</sup> Therefore, because of this facility’s proximity to the Little River, which has been designated as an impaired waterbody by the Environmental Protection Agency (“EPA”), this Permit is governed by the terms of S.C. Code

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<sup>3</sup> See *Blackmon v. S.C. Dept. of Health & Envtl. Control*, 441 S.C. 342, 357–61, 893 S.E.2d 578, 586–89 (2022).

<sup>4</sup> S.C. Dept. of Health & Envtl. Control, *Total Maximum Daily Load Development for the Little River Watershed*, [https://scdhec.gov/sites/default/files/docs/HomeAndEnvironment/Docs/tmdl\\_littleRvr\\_fc.pdf](https://scdhec.gov/sites/default/files/docs/HomeAndEnvironment/Docs/tmdl_littleRvr_fc.pdf) (Sept. 29, 2004).

Ann. Regs. § 61-43.200.140(C)(2), cited above. This means that DHEC was required to make a meaningful evaluation of more stringent permitting requirements to protect water quality.

Unfortunately, the permit application submitted to DHEC makes clear that Coggins has not taken and does not plan to take any action to protect the already-impaired Little River. On page 7 of Coggins' Comprehensive Nutrient Management Plan ("CNMP"), attached hereto as **Exhibit 2**, the CNMP leaves space for the Permittee to identify natural resource concerns considered in the permit application process. This page of the CNMP states, "If checked, the indicated resource concerns have been identified and addressed in this plan." Crucially, under the separate boxes meant to house Water Quality Concerns and Soil Quality Concerns, the Permittee simply wrote, "None." Correspondingly, the boxes where the Permittee details their planned Activities to Address Concerns are blank in the CNMP.

Because the permit application submitted to DHEC did not contain any information from which the Department could consider additional or more stringent requirements for the protection of the impaired Little River, DHEC staff should not have issued this Permit as written. Issuing the Permit as submitted, in which water quality concerns and the impaired Little River were not considered, violates S.C. Code Ann. Regs. § 61-43.200.140(C)(2), cited above. Therefore, the Board should either rescind the Permit or amend the Permit to impose the more stringent requirements contemplated by the regulation. In the report that created a Total Maximum Daily Load ("TMDL") for the Little River as it pertains to fecal coliform, DHEC found that agricultural operations, including poultry facilities, are a "source[ ] of fecal coliform bacteria" and recommended best management practices (BMPs) for these facilities.<sup>5</sup> These same BMPs, as well as other measures, might be used by the Board as the more stringent requirements imposed upon

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<sup>5</sup> *Id.*

Coggins to protect the Little River from further degradation.

In the public meeting DHEC hosted on this permit application, several of Requestor's members asked about how the Department planned on meeting its burden under S.C. Code Ann. Regs. § 61-43.200.140(C)(2). The Department did not give a clear answer at that time, and one spokesperson for DHEC indicated they were not aware that there was a TMDL on the Little River. This is deeply concerning to the Requestor and its members—all of whom are counting on DHEC to protect the Little River from further harm. Even if Coggins did not consider the impaired Little River, the Department was undoubtedly required to do so. This Board should not allow this Permit to become final until the TMDL has been properly considered and stricter requirements are imposed upon the facility.

**B. DHEC Staff Failed to Address the Particular Needs of This Site**

Recognizing again that the central goal of DHEC's animal facility permitting regulatory scheme is to prevent an increase in pollution of waters of the State, the Department also requires proposed animal facilities to comply with several siting requirements. The following siting requirements apply to all animal facilities:

1. The minimum separation distance between an animal facility (animal growing areas, houses, pens or barns, not including range areas or manure utilization areas) and a public or private drinking water well (excluding the applicant's well) is 200 feet. The minimum separation distance between an animal facility and a potable water well owned by the applicant is 50 feet (as required by R.61-71).
2. The minimum separation distance between an animal facility and Waters of the State (including ephemeral and intermittent streams) located down slope from the facility is 100 feet.
3. Except for site drainage, the minimum separation distance required between an animal facility and a ditch or swale located down slope from the facility is 50 feet.
4. A new animal facility or an expansion of an established animal facility shall not be located in the 100-year floodplain.

5. The separation distance required between a small animal facility or growing areas (pens or barns not including range areas) and the lot line of real property owned by another person is 200 feet and 1,000 feet from the nearest residence.

6. The separation distance required between large or X-large animal facilities or growing areas (pens or barns not including range areas) and the lot line of real property owned by another person is 400 feet and 1,000 feet from the nearest residence.<sup>6</sup>

In addition, the siting requirements for the animal facility's specific storage structures that hold dry animal manure and other animal by-products, "including, but not limited to, stacking sheds, burial sites, incinerators, manure, and dead animal composters," are largely similar to those above:

1. The minimum separation distance between a dry animal manure and other animal by-products treatment or storage facility and a public or private drinking water well (excluding the applicant's well) is 100 feet. The minimum separation distance between a dry animal manure and other animal by-products treatment or storage facility and a potable water well owned by the applicant is 50 feet.

2. Except for site drainage, the minimum separation distance required between a dry animal manure and other animal by-products treatment or storage facility and a ditch or swale located down slope from the facility is 50 feet.

3. The minimum separation distance between a dry animal manure and other animal by-products treatment or storage facility and Waters of the State including ephemeral and intermittent streams located down slope from the facility is 100 feet.

4. A new dry animal manure and other animal by-products treatment or storage facility or an expansion of an established dry animal manure and other animal by-products treatment or storage facility shall not be located in the 100-year floodplain.

5. The separation distance required between a dry animal manure and other animal by-products treatment or storage facility operated at an animal growing facility and the lot line of real property and a residence owned by another person shall be equivalent to the setback required for the animal growing areas or houses.

6. The minimum separation distance required between a dry animal manure and other animal by-products treatment or storage facility operated by a manure broker

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<sup>6</sup> S.C. Code Ann. Regs. § 61-43.200.80(A).

and the lot line of real property owned by another person is 200 feet and 1,000 feet to the nearest residence.<sup>7</sup>

The Department's regulations make clear that the siting requirements cited above are the *minimum requirements* for every animal facility and its storage structures. As part of DHEC's review of a permit application, the Department must also determine if *additional* siting restrictions are necessary:

F. The setback limits given in Part 200 are siting requirements. The Department shall evaluate the following factors to determine if any special conditions are necessary:

1. Latitude and Longitude;
2. Down-wind receptors; and
3. Nutrient Management Plan.<sup>8</sup>

For the Permit at issue here, DHEC determined that Coggins met the minimum siting requirements detailed in S.C. Code Ann. Regs. § 61-43.200.80(A) and (C). However, DHEC did not evaluate whether special conditions are necessary for the siting of these facilities in order “to prevent . . . an increase in pollution of the waters and air of the State.”<sup>9</sup> As detailed in the paragraphs below, mandatory considerations, including the latitude and longitude and Nutrient Management Plan for this facility, strongly indicate that additional siting restrictions are necessary in this case.

*1.     Latitude and Longitude*

The latitude and longitude of Coggins' proposed facility and storage structures illustrate why additional siting conditions are necessary to protect the natural resources, water quality,

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<sup>7</sup> S.C. Code Ann. Regs. § 61-43.200.80(C).

<sup>8</sup> S.C. Code Ann. Regs. § 61-43.200.70(F).

<sup>9</sup> *Id.* at 61-43.200.70(E).

ecosystems, and residents around this site. First, as stated before, the Little River runs through the property where Coggins has proposed this facility. As a result, the barns and stacking sheds proposed are extremely close to surface water and wetlands, as shown in one of the drawings included in Coggins' CNMP, which is attached hereto as **Exhibit 3**. Second, the proposed facility is also nearly located within the 100-year floodplain, as can be seen in the FEMA Flood Map for this area, attached to this letter as **Exhibit 4**. Third, many of the soil types found at this latitude and longitude have a "very high" likelihood of runoff during rain and storm events, as shown on pages 11 and 19 of the Custom Soil Resource Report in Coggins' CNMP, which are attached hereto as **Exhibit 5**. Fourth, one of Coggins' proposed sites for a stacking shed is directly beside unstable topography, as shown in one of the drawings included in Coggins' CNMP, which is attached hereto as **Exhibit 6**.

These four characteristics of the proposed parcel's latitude and longitude each make it much more likely that the Little River, its resources, its ecosystems, and the general public will be harmed as a result of the operation of this facility, especially when rain and storm events cause runoff from this facility. For the protection of all, additional siting requirements should be imposed to move this facility further away from the Little River, the 100-year floodplain, and unstable soil and topography.

While the facility's proximity to the Little River, its tributaries, and its wetlands certainly call for even more protective measures, it appears that DHEC staff, at one point, at least partially considered ways to reduce impacts to water and wetlands. In the Notice of Permit Decision letter, attached hereto as **Exhibit 1**, the last sentence of the third paragraph reads: "Additionally, the permit requires the applicant to maintain the existing evergreen buffers around the facility and also to plant an evergreen buffer in the areas that don't currently have an existing evergreen buffer."

However, in the Permit itself, also in **Exhibit 1**, this evergreen buffer permit term is not mentioned. To complicate matters more, in Coggins' CNMP, the drawing in the CNMP showing a vegetated buffer only shows the buffer on one side of the facility, as shown in the drawing attached hereto as **Exhibit 7**. If the evergreen buffer is a Permit requirement, it should be spelled out clearly in the terms and reflected in the drawings submitted by Coggins to DHEC. This Board should demand that this requirement, along with additional siting requirements needed to fully account for the unique, natural features of this site, be included in the Permit issued to Coggins.

## 2. Nutrient Management Plan

Further, Coggins' Nutrient Management Plan for this facility also shows why additional siting requirements are so crucial in this instance. First, Coggins' CNMP states that the facilities plan to have two stacking sheds that are 40 feet by 200 feet in size. However, the CNMP also details that the sizing of these stacking sheds is *a minimum*, as shown on page 40 of Coggins' CNMP, which is attached hereto as **Exhibit 8**. As discussed in the prior paragraph, one of the proposed stacking sheds for this facility is located directly adjacent to unstable topography.<sup>10</sup> The lack of detail in the CNMP about how the stacking sheds might be expanded is extremely relevant to determining the potential impacts of this proposed facility. Second, Coggins' CNMP also states that one of the purposes of the Animal Mortality Facility is to “[d]ecrease non-point source pollution of surface and groundwater resources,” as shown on page 10 of the CNMP, which is attached hereto as **Exhibit 9**. However, DHEC regulations require that this Permit be a no-discharge permit,<sup>11</sup> meaning that *any* pollution from this facility is a violation of the Permit's terms and of state and federal law. The CNMP should not be discussing a *decrease* in pollutants; instead,

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<sup>10</sup> See **Exhibit 6**.

<sup>11</sup> See, e.g., S.C. Code Ann. Regs. § 61-43.200.140(A).

it should make clear that *no pollutants* will be coming from this facility into surface and groundwater resources. Further, the design of the facility must be shown to be adequate to achieve that outcome.

Because of these two points in the CNMP that present a lack of specificity and clarity, additional siting restrictions should be imposed to protect the natural resources, ecosystems, and communities surrounding this facility. It is not clear from the CNMP that the Permittee here understands the importance of (1) disclosing the full information of this application and (2) ensuring that no pollutants escape from the facility into nearby waters. Thus, the Department should not have issued this Permit without additional siting guidelines that ensure stacking sheds will be placed only upon stable topography and that the facility is far enough away from the nearby water sources such that pollution does not occur.

### **C. DHEC Staff Failed to Evaluate Possible Discharges into the Little River**

As mentioned briefly in the sections above, when DHEC issues an animal facility operating permit, that permit is a no-discharge permit.<sup>12</sup> This means that facility operators cannot allow any part of their facility to discharge pollutants into waters of the State.

In a majority of states, operators of a concentrated animal feeding operation (“CAFO”) are allowed to discharge pollutants into waters of the State and waters of the United States if they apply for and receive a National Pollutant Discharge Elimination System (“NPDES”) permit. In fact, the federal government has determined the floor of each state’s regulatory scheme through the provisions of 40 C.F.R. § 122.23(a):

Concentrated animal feeding operations (CAFOs) . . . are point sources, subject to NPDES permitting requirements as provided in this section. Once an animal feeding operation is defined as a CAFO for at least one type of animal, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the

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<sup>12</sup> See S.C. Code Ann. Regs. § 61-43.200.20(B).

operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

Because the federal regulations determine the baseline that each state must meet or exceed, South Carolina's regulations directly mirror 40 C.F.R. § 122.23 in S.C. Code Ann. Regs. § 61-9.122.23. As a result, the requirement in the federal regulations that an NPDES permit be in effect should any discharges occur also applies in the State of South Carolina. Further, under both the federal regulations and the State of South Carolina's regulations, an operator of a CAFO must apply for and receive an NPDES permit if they plan to discharge or know that their facility will discharge pollutants into waters of the United States or waters of the State, respectively.<sup>13</sup>

On its face, the South Carolina state law requirement that all operating permits issued to CAFOs be no-discharge permits seems to comply with federal law and protect water quality in the state. However, further examination of federal law reveals that there is a significant gap in South Carolina's NPDES regulations. Although discharges that occur under these CAFO operating permits are prohibited by South Carolina law, there is no regulatory mechanism in place that monitors whether discharges are, in fact, not occurring. This means that discharges very well can—and do—occur, but because South Carolina regulations presume no discharges are occurring, no oversight and monitoring is in place to ensure the no-discharge rule is being honored.

A similar situation recently occurred in the State of Idaho and was litigated in the U.S. Court of Appeals for the Ninth Circuit. In interpreting 40 C.F.R. § 122.23, which again is duplicated in South Carolina's state regulations, the Court found that simply stating a permit is a no-discharge permit does not make it so under the law. Specifically, the Court wrote:

[T]he Idaho Permit does not allow *any* discharges from the production area.<sup>14</sup>  
Without a requirement that CAFOs monitor waste containment structures for

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<sup>13</sup> See 40 C.F.R. 122.23(d); S.C. Code Ann. Regs. § 61-9.122.23(d).

<sup>14</sup> The term *production area* is defined as: “that part of an AFO that includes the animal

underground discharges, there is no way to ensure that production areas comply with the Permit's zero-discharge requirement. *See Waterkeeper Alliance, Inc. v. U.S. E.P.A.*, 399 F.3d 486, 499 (2d Cir. 2005) (failure of permit to include any mechanism for evaluating compliance with effluent limitation was arbitrary and capricious).<sup>15</sup>

This and other precedent from federal courts make clear that if a state issues a no-discharge permit, it must also require monitoring mechanisms as part of that permit to evaluate compliance with the no-discharge standard.

For the Permit at hand, this means that DHEC staff should have required comprehensive monitoring mechanisms as part of the issuance of this Permit to ensure that no discharges of pollutants are in fact taking place. The facility proposed by Coggins is a CAFO by definition because the proposed facility would have over 125,000 broilers and would use a dry-manure handling system.<sup>16</sup> Thus, under both federal and state law, the facility must either have an NPDES permit *or* it must have a no-discharge permit and appropriate monitoring mechanisms in place to ensure that no discharges occur. Because South Carolina does not give NPDES permits to CAFOs, and instead issues no-discharge operating permits, there must be sufficient monitoring mechanisms in place for Coggins' facility to be compliant with both state and federal law. Because DHEC staff have not required water monitoring mechanisms as part of this Permit, the Board should rescind the Permit or amend it to include proper monitoring and reporting requirements.

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confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. . .” 40 C.F.R. § 122.23(b)(8); S.C. Code Ann. Regs. § 61-9.122.23(b)(8).

<sup>15</sup> *Food & Water Watch v. U.S. Env'tl. Prot. Agency*, 20 F.4th 506, 517 (9th Cir. 2021).

<sup>16</sup> *See* S.C. Code Ann. Regs. § 61-9.122.23(b)(4)(x).

**D. DHEC Staff Failed to Honor South Carolina’s Water Quality Standards and Antidegradation Policies**

In addition to complying with the specific regulations relating to agricultural animal facilities, facilities like the one proposed in this instance must also adhere to the applicable regulations relating to water quality, air quality, waste disposal, and more.<sup>17</sup> In S.C. Code Ann. Regs. 61-43.200.40(H), water classifications and standards are expressly designated as a source of law that applies to agricultural animal facilities, which are found in S.C. Code Ann. Regs. 61-68. These water classifications and standards exist so that the State of South Carolina can “maintain reasonable standards of purity of the air and water resources of the State, consistent with the public health, safety and welfare of its citizens, maximum employment, the industrial development of the State, the propagation and protection of terrestrial and marine flora and fauna, and the protection of physical property and other resources.”<sup>18</sup>

Federal law requires that every state issue water quality standards and policies that protect each water body found in the state and designated uses delineated for those water bodies.<sup>19</sup> Specifically, every state must have an *antidegradation policy* ensuring each water body’s long-term ecological health and suitability for specific activities. South Carolina’s antidegradation policy declares: “Existing water uses and the level of water quality necessary to protect these existing uses shall be maintained and protected regardless of the water classification.”<sup>20</sup> For waters designated as Freshwater under the regulations, which is true of the Little River, the water quality standards provide: “Freshwaters (FW) are freshwaters suitable for primary and secondary contact

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<sup>17</sup> See S.C. Code Ann. Regs. § 61-43.200.40 (listing other DHEC regulatory chapters that often apply to agricultural animal facilities).

<sup>18</sup> S.C. Code Ann. § 48-1-20 (detailing the purpose of the South Carolina Pollution Control Act and its implementing regulations).

<sup>19</sup> See, e.g., 40 C.F.R. §§ 131.10–12.

<sup>20</sup> S.C. Code Ann. Regs. 61-68(D)(1).

recreation and as a source for drinking water supply after conventional treatment in accordance with the requirements of the Department. Suitable for fishing and the survival and propagation of a balanced indigenous aquatic community of fauna and flora. Suitable also for industrial and agricultural uses.”<sup>21</sup>

Turning to Coggins’ proposed facility, the antidegradation policy and the water quality standards for the Little River make clear that this Permit cannot be issued if the facility’s construction and operations could lead to degradation of the Little River and its tributaries. In addition to being a source of fecal coliform bacteria, as discussed earlier in this document, the EPA has determined that livestock operations and animal manure also spread other key pollutants to surrounding water bodies, including nitrogen, phosphorus, potassium, organic compounds, solids, salts, trace elements from feed additives and pesticide ingredients, volatile compounds include greenhouse gases, pathogens, antimicrobials, hormones, and other pollutants.<sup>22</sup> EPA created a table that lists each of these pollutants, a description of the pollutant, pathways to that the pollutant reaches the environment, and potential impacts of that pollutant upon the environment, which is attached hereto as **Exhibit 10**.<sup>23</sup> That table conclusively shows that facilities like Coggins’ often lead to degradation of water bodies that violate the antidegradation policies required by the federal and state governments.

With the antidegradation policy in mind, DHEC staff should not have issued this Permit without thorough consideration of the key pollutants that can result from poultry facilities and how those pollutants can reach water resources. This Permit cannot be issued unless DHEC staff are

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<sup>21</sup> *Id.* at 61-68(G).

<sup>22</sup> U.S. Env’tl. Prot. Agency, *Literature Review of Contaminants in Livestock and Poultry Manure and Implications for Water Quality*, <https://www.epa.gov/npdes/animal-feeding-operations-afos> (July 2013).

<sup>23</sup> *Id.*, Table 1-1.

confident that the many different pathways to the environment for these pollutants are adequately determined and then eliminated for the protection of the Little River and its tributaries. For a water body that is already impaired, it is all the more imperative that this Board take the antidegradation policy very seriously and prevent this Permit from becoming the agency's final action.

### **III. CONCLUSION AND REQUEST FOR RELIEF**

In light of the foregoing, the Requestor urges the Board of Health and Environmental Control to conduct a final review conference to review and deny the above-referenced DHEC staff decision approving Heath Coggins Broilers' construction and operating Permit where Requestor's members live, work, and own property; or condition such Permit to adequately protect the interests of Requestor's members from harm. Please direct all notices and communications related to this request for final review to the undersigned counsel.

Respectfully submitted,

**SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT**



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Emily S. Poole, Esq.  
Lauren Megill Milton, Esq.  
P.O. Box 1380  
Pawleys Island, SC 29585  
(843) 527-0078  
emily@scelp.org

Greenville, South Carolina  
June 18, 2024

STATE OF SOUTH CAROLINA  
BEFORE THE BOARD OF THE DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL CONTROL

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South Carolinians for Responsible Agricultural Practices,

Requestor,

vs.

Heath Coggins (d/b/a Heath Coggins Broilers), and South Carolina Department of  
Health and Environmental Control,

Respondents.

RE: Permit for Construction and Operation of Agricultural Animal Facility and  
Manure and Animal By-Products Treatment and Storage System

P/N#: ND0090174, AG-20599, HQ1-SB91-8TNXE

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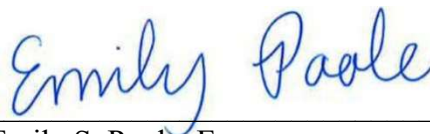
**CERTIFICATE OF SERVICE**

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I hereby certify that on this date I served Respondent SCDHEC by emailing and hand-delivering the foregoing Request for Final Review Conference at the address below, and I served Respondent Heath Coggins by placing a copy of the foregoing Request for Final Review Conference in the U.S. Mail to the address below:

South Carolina Board of DHEC  
Attention: Clerk of the Board  
2600 Bull Street  
Columbia, South Carolina 29201  
boardclerk@dhec.sc.gov

Heath Coggins Broilers  
c/o Heath Coggins  
2254 Easy Road  
Laurens, South Carolina 29360



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Emily S. Poole, Esq.

Greenville, South Carolina  
June 18, 2024

# **EXHIBIT 1**



June 4, 2024

**Notice of Permit Decision**

Heath Coggins Broilers  
Facility ID# ND0090174  
Laurens County, South Carolina

Dear Sir or Madam,

Thank you for your interest and/or comments regarding the permit application from the above-referenced facility. The South Carolina Department of Health and Environmental Control ("Department") values all comments received during the permitting process and is committed to addressing and considering all relevant information prior to making a final permit decision. Public input is an important part of the permitting process and can result in changes to permit conditions and operational practices if a permit is issued.

After due consideration of all relevant comments received, the requirements and policies expressed in the Pollution Control Act of South Carolina and applicable regulations, the Department has made the decision to issue the construction permit.

Some comments received during the permitting process, such as those related to property values and road traffic, are outside the scope of the Department's regulations. Comments related to health, odors, and vectors are addressed by the Department's setbacks and other regulatory requirements which are included in the permit. The Comprehensive Nutrient Management Plan for the facility includes measures for controlling odors, vectors, and protecting surface water and groundwater. Additionally, the permit requires the applicant to maintain the existing evergreen buffers around the facility and also to plant an evergreen buffer in the areas that don't currently have an existing evergreen buffer.

The permit will be issued on June 4, 2024, with an effective date of June 19, 2024. Once the construction permit is issued, only an applicant, permittee, licensee, or an affected person(s) can request a review of the issuance of that permit, as outlined in the "Guide for Board Review" enclosed in this mailing.

If you have any further questions regarding the review procedures, you may contact the Legal Office, Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201 or by calling 803-898-3350.

Sincerely,

Lisa Appel, Ag Permitting Project Manager  
Groundwater Protection & Agricultural Permitting Section  
Bureau of Water

Enclosure: Guide for Board Review  
Permit AG-20599 v1.0

cc: Natalie Kirkpatrick, Director, Upstate EA Greenwood Office  
Travis Fuss, Director, Midlands EA Aiken Office

**Permission is hereby granted to:**

Heath Coggins  
Heath Coggins Broilers  
6821 Lisbon Road  
Mountville, SC 29371

for the construction and operation of a **NO-DISCHARGE** agricultural animal facility, manure and animal by-products treatment and storage system in accordance with the construction plans, specifications, engineering report, Animal Facility Management Plan, and Construction Permit Application prepared by Adam Gaines, PE.

**County:** Laurens County

**Project Description:**

1. Construction of eight (8) new broiler houses.
2. Broilers raised on earthen floor covered with wood shavings.
3. Contract disposal of manure, utilizing a permitted manure broker.
4. Other conditions as stated in permit special conditions and animal facility management plan.
5. Treat a total of 1610 tons of manure generated as follows:
  - 8 houses X 33,000 Broilers per house = 264,000 birds at any one time.
  - 264,000 Broilers X 4.95 Lbs. Ave. Live Wt. = 1,306,800 Lbs. Normal Production Live Weight
  - 264,000 Broilers X 6.1 tons/1000 bird spaces/year = 1610 tons/year waste production

**Special Conditions:** (See attachments).

**Facility Permit Number:** ND0090174

**Permit Number:** AG-20599 v1.0

**Date of Issue:** 6/4/2024

**Effective Date:** 6/19/2024

**Expiration Dates:** Unless construction begins prior to 6/17/2026 and is completed prior to 6/16/2027, this permit will expire. In accepting this permit, the owner agrees to the admission of properly authorized persons at all reasonable hours for the purpose of sampling and inspection.

**Treatment Plant Classification:** Group 0

**WRITTEN APPROVAL TO OPERATE THIS FACILITY MUST BE OBTAINED FROM THE DEPARTMENT PRIOR TO PLACING ANIMALS IN THE FACILITY.**



Kelly Whitlock, Manager  
Groundwater Protection & Ag Permitting  
Bureau of Water

cc: Natalie Kirkpatrick, Director, Upstate EA Greenville/Spartanburg Office  
Travis Fuss, Director, Midlands EA Aiken Office

SPECIAL CONDITIONS  
(Poultry)

1. Operate and maintain the waste system, including all special conditions in accordance with Animal Facility Management Plan developed by Adam Gaines, PE. Operate and maintain the waste management system in accordance with State and Federal law so as to prevent discharges to the environment. Should any part of the Animal Facility Management Plan fail to function as intended, additional controls or treatment of the wastes may be required.
2. The primary method of disposal of mortality will be by incineration until a rotary drum composter is installed. The excessive mortality method of disposal will be by burial. If a massive die-off occurs, notify your local inspector immediately, Travis Fuss, Midlands EA Aiken Office, 206 Beaufort Street, NE, Aiken, SC 29801, and phone number is (803) 642-1637, or email at [fusstr@dhec.sc.gov](mailto:fusstr@dhec.sc.gov). If you are calling after-hours, please call the Department's twenty four hour number (888)-481-0125 or (803)-253-6488. If you plan to bury the dead animals from a massive die-off, the Department recommends that you develop an emergency plan, and have it approved by the Department, prior to the occurrence. If you do not have a plan and site approved by the Department you will not be able to bury the animals. If the plan and site are approved, you would only be required to notify the Department of the massive die-off, and then implement the approved plan for disposal. The Department recommends following the Burial Guidance document when submitting your plan for approval. It can be found at [https://www.scdhec.gov/sites/default/files/media/document/Burial-Site-Guidance-6\\_28\\_17.pdf](https://www.scdhec.gov/sites/default/files/media/document/Burial-Site-Guidance-6_28_17.pdf).
3. If you have mortality on the farm that may be attributed to disease or toxin exposure, please contact Dr. Julie Helm of the State Veterinarian office at (803)-788-2260 for additional assistance in the handling and disposal of infected animals. The State Veterinarian's office recommends that the diagnostic lab evaluate samples for deaths in excess of 10% of a house population. This action can help identify disease outbreaks on the farm. The State Veterinarian's Office can also provide guidance in preventing the spread of diseases.
4. You are responsible for obtaining any other local or state permits that may be required for this project, including a **stormwater permit**. For information concerning stormwater, call (803) 898-4234, or <https://www.scdhec.gov/environment/water-quality/stormwater/stormwater-construction-activities/stormwater-construction>.
5. Drinking water wells installed on this site to provide water for animal and/or human consumption must be installed with at least the following minimum setbacks required in Regulation 61-71 (Well Standards & Regulations):
 

|                                                                   |          |
|-------------------------------------------------------------------|----------|
| (a) Sewer lines .....                                             | 20 feet  |
| (b) Lakes, streams, surface-water bodies .....                    | 50 feet  |
| (c) Septic tanks/tile fields .....                                | 75 feet  |
| (d) Animal feedlots, barns, stables .....                         | 50 feet  |
| (e) Waste disposal - land application sites .....                 | 100 feet |
| (f) Waste treatment lagoons .....                                 | 100 feet |
| (g) Herbicide, pesticide & petroleum handling/storage sites ..... | 100 feet |

A permit for private wells must be obtained from the Department prior to installation and a Notice of Intent must be submitted, Regulation 61-44 (Individual Residential Well and Irrigation Well Permitting). Enclosed is a copy of the Notice of Intent. For information concerning well permitting, call (803)-898-3559 or <https://scdhec.gov/BOW/private-drinking-water-wells>

6. ***Annual reporting is required for this permit.***

*An annual report is due by June 19th of each year and must include the following:*

- a. Waste sampling results for the last year, if applicable, and the latest rolling average.*
- b. Soil monitoring results, if applicable.*
- c. Groundwater monitoring results, if applicable.*
- d. Calculated application rates for all waste utilization areas, if applicable.*
- e. The adjusted application rates, if applicable, based on the most recent animal waste sampling and soil samples. The application rate change could also be due to a change in field use, crop grown or other factors.*

**Annual Reports may be submitted through your ePermitting account or mailed to the following address:**

**SC Department of Health & Environmental Control  
Bureau of Water - Ag Permitting & Groundwater Protection Section  
Attn: Tonya O'Cain  
2600 Bull Street  
Columbia, SC 29201**

7. CAMM Certification is required within one year from the effective date of this permit. The next CAMM training is scheduled for February 4 or 18, 2025 (different locations). Please contact Bryan Smith with the Clemson Extension Service to inquire about future CAMM training classes for manure handling at (864)-984-2514 .



June 4, 2024

Heath Coggins  
Heath Coggins Broilers  
2254 Easy Rd.  
Laurens, SC 29360

Re: Facility Permit #ND0090174 and Construction Permit #AG-20599 v1.0  
Heath Coggins Broilers  
Laurens County

Dear Heath Coggins:

Enclosed is a State Agricultural Permit for the above-referenced facility. Construction and operation is to be performed in accordance with this permit and the supporting agricultural facility management plan approved by this Office. Once the construction permit is issued, an applicant, permittee, licensee, or an affected resident can request a board review of the issuance of that permit, as outlined in the enclosed document "Guide to Board Review" dated December 1, 2022. If you have any questions regarding these review procedures, you may contact the Legal Office, Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201 or by calling (803)-898-3350. This permit does not cover the use of an incinerator or composter. Those will be permitted by Henry Gibson when plans and specs are received by this office.

Upon completion of construction, a letter must be submitted to the Environmental Affairs (EA) Regional office from the Agricultural Animal Facility Management Plan preparer certifying that the construction has been completed in accordance with the approved plan. A final inspection may then be scheduled. The EA Regional office will grant approval to operate (ATO) upon successful completion of the project. **In addition, Regulation 61-43 requires an operator of an animal facility or manure utilization area to complete CAMM training, created by Clemson University, on the operation of animal manure management systems. As the operator of this facility, you are required to complete this training program within one year from effective date of this permit. Please contact Bryan Smith with the Clemson Extension Service to inquire about future CAMM training classes for manure handling at (864)-984-2514.**

If you have any questions regarding the permit, please contact Lisa Appel at (803)-898-1745. This system cannot be placed into operation until the final ATO is granted by the appropriate EA Regional Office. Your Region contact is Travis Fuss, Midlands EA Aiken Office, 206 Beaufort Street, NE, Aiken, SC 29801, and phone number is (803) 642-1637, or email at [fusstr@dhec.sc.gov](mailto:fusstr@dhec.sc.gov). The EA Regional Office should be notified when construction begins.

Sincerely,

Kelly Whitlock, Manager  
Groundwater Protection & Ag Permitting  
Bureau of Water

cc: Natalie Kirkpatrick, Director, Upstate EA Greenville/Spartanburg Office  
Travis Fuss, Director, Midlands EA Aiken Office

# **EXHIBIT 2**

## 1.8. Natural Resource Concerns

If checked, the indicated resource concerns have been identified and addressed in this plan.

### Soil Quality Concerns

|   | <i>Soil Quality Concern</i> | <i>Activities to Address Concern</i> |
|---|-----------------------------|--------------------------------------|
| X | None                        |                                      |

### Water Quality Concerns

|   | <i>Water Quality Concern</i> | <i>Activities to Address Concern</i> |
|---|------------------------------|--------------------------------------|
| X | None                         |                                      |

### Other Concerns Addressed

|   | <i>Other Concern</i> | <i>Activities to Address Concern</i> |
|---|----------------------|--------------------------------------|
| X | Regulations          | CNMP Required by SC DHEC             |
| X | Litter Management    | Planned Stacking Shed                |
| X | Mortality Management | Planned Composter                    |
| X | Mortality Management | Planned Burial Site                  |
| X | Mortality Management | Planned Incinerator                  |

# **EXHIBIT 3**



Agri-Waste Technology, Inc.  
501 N Salem Street, Suite 203, Apex, NC 27502  
agrwaste.com | 919.859.0669

### Proposed Barn, Manure Storage & Burial Location

Heath Coggins  
Laurens Co., SC

TAX PIN:  
511-00-00-004

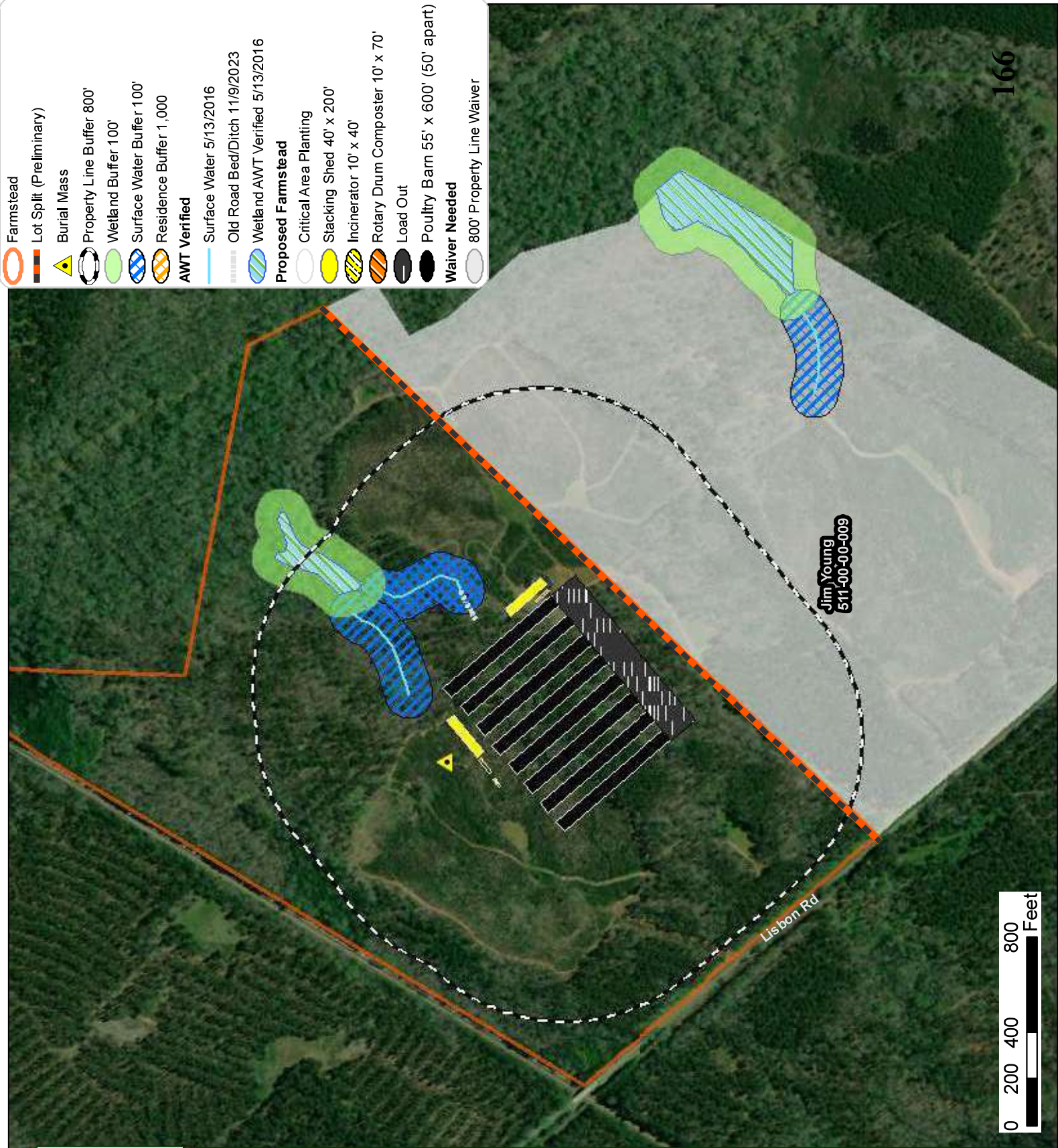


#### IMPORTANT NOTES

- 1.) Poultry houses/stacking shed/com poster/burial do NOT impact the 1,000' permanent residence buffer. No Waivers Needed
- 2.) Poultry houses, structures, and burial are closer than 800' from the property line (black dotted line). 1- 800' property line waiver is needed from Jim Young,
- 3.) Poultry houses/structures/ burial are more than 100' from surface water and wetlands.
- 4.) Planned poultry houses and stacking sheds are more than 200' from neighbor's wells.
- 5.) Poultry houses are 55' x 600' and 50 feet apart.
- 6.) Burial location determined by AWT soil scientists and meet SC DHEC requirements.
- 7.) Mr. Young and Mr. Coggins property is currently one polygon. This map shows a preliminary property split in order to complete their facility's permit process.

Drawn By: Julie Davidson  
Reviewed By: Adam Gaines  
Date: 2/16/2024

- Farmstead
- Lot Split (Preliminary)
- Burial Mass
- Property Line Buffer 800'
- Wetland Buffer 100'
- Surface Water Buffer 100'
- Residence Buffer 1,000'
- AWT Verified
- Surface Water 5/13/2016
- Old Road Bed/Ditch 11/9/2023
- Wetland AWT Verified 5/13/2016
- Proposed Farmstead
- Critical Area Planting
- Stacking Shed 40' x 200'
- Incinerator 10' x 40'
- Rotary Drum Composter 10' x 70'
- Load Out
- Poultry Barn 55' x 600' (50' apart)
- Waiver Needed
- 800' Property Line Waiver



# **EXHIBIT 4**



# **EXHIBIT 5**

## Laurens County, South Carolina

### Ca—Cartecay-Toccoa complex

#### Map Unit Setting

*National map unit symbol:* 4cmx

*Elevation:* 450 to 1,500 feet

*Mean annual precipitation:* 41 to 54 inches

*Mean annual air temperature:* 47 to 73 degrees F

*Frost-free period:* 173 to 216 days

*Farmland classification:* Prime farmland if drained and either protected from flooding or not frequently flooded during the growing season

#### Map Unit Composition

*Cartecay and similar soils:* 55 percent

*Toccoa and similar soils:* 40 percent

*Minor components:* 5 percent

*Estimates are based on observations, descriptions, and transects of the mapunit.*

#### Description of Cartecay

##### Setting

*Landform:* Flood plains

*Landform position (three-dimensional):* Tread

*Down-slope shape:* Linear

*Across-slope shape:* Linear

*Parent material:* Loamy alluvium

##### Typical profile

*Ap - 0 to 14 inches:* sandy loam

*C - 14 to 30 inches:* sandy loam

*Cg - 30 to 79 inches:* fine sandy loam

##### Properties and qualities

*Slope:* 0 to 2 percent

*Depth to restrictive feature:* More than 80 inches

*Drainage class:* Somewhat poorly drained

*Runoff class:* Very high

*Capacity of the most limiting layer to transmit water (Ksat):* High (1.98 to 5.95 in/hr)

*Depth to water table:* About 6 to 18 inches

*Frequency of flooding:* Occasional

*Frequency of ponding:* None

*Available water supply, 0 to 60 inches:* Low (about 5.3 inches)

##### Interpretive groups

*Land capability classification (irrigated):* None specified

*Land capability classification (nonirrigated):* 3w

*Hydrologic Soil Group:* A/D

*Ecological site:* F136XY610GA - Flood plain forest, wet

*Hydric soil rating:* No

#### Description of Toccoa

##### Setting

*Landform:* Flood plains

## **WkD—Wilkes sandy loam, 6 to 15 percent slopes**

### **Map Unit Setting**

*National map unit symbol:* 4cpb  
*Elevation:* 340 to 750 feet  
*Mean annual precipitation:* 41 to 54 inches  
*Mean annual air temperature:* 47 to 73 degrees F  
*Frost-free period:* 173 to 216 days  
*Farmland classification:* Not prime farmland

### **Map Unit Composition**

*Wilkes and similar soils:* 100 percent  
*Estimates are based on observations, descriptions, and transects of the mapunit.*

### **Description of Wilkes**

#### **Setting**

*Landform:* Interfluves  
*Landform position (two-dimensional):* Backslope  
*Landform position (three-dimensional):* Side slope  
*Down-slope shape:* Convex  
*Across-slope shape:* Convex  
*Parent material:* Loamy residuum weathered from hornblende, diorite, or gabbro

#### **Typical profile**

*Ap - 0 to 7 inches:* sandy loam  
*Bt - 7 to 12 inches:* sandy clay loam  
*Cr - 12 to 24 inches:* weathered bedrock  
*R - 24 to 79 inches:* unweathered bedrock

#### **Properties and qualities**

*Slope:* 6 to 15 percent  
*Depth to restrictive feature:* 10 to 20 inches to paralithic bedrock; 20 to 40 inches to lithic bedrock  
*Drainage class:* Well drained  
*Runoff class:* Very high  
*Capacity of the most limiting layer to transmit water (Ksat):* Very low to moderately low (0.00 to 0.01 in/hr)  
*Depth to water table:* More than 80 inches  
*Frequency of flooding:* None  
*Frequency of ponding:* None  
*Available water supply, 0 to 60 inches:* Very low (about 1.8 inches)

#### **Interpretive groups**

*Land capability classification (irrigated):* None specified  
*Land capability classification (nonirrigated):* 6e  
*Hydrologic Soil Group:* D  
*Ecological site:* F136XY730SC - Basic upland forest, depth restriction, dry  
*Hydric soil rating:* No

# **EXHIBIT 6**

## Proposed Manure Storage & Burial Site w Soil Borings

Heath Coggins  
Laurens Co., SC

TAX PIN:  
511-00-00-009



Soil evaluation was completed on 11/9/2023 by Chris McGee of AWT. Chris is a licensed Soil Scientist.

Details shown here summarizes Chris's determination for stacking shed, compost and burial location for NRCS/SCDHEC approval.

### Soil Boring Evaluation:

Area 1a- suitable for burial, stacking shed, compost= 45,395 sq. ft.

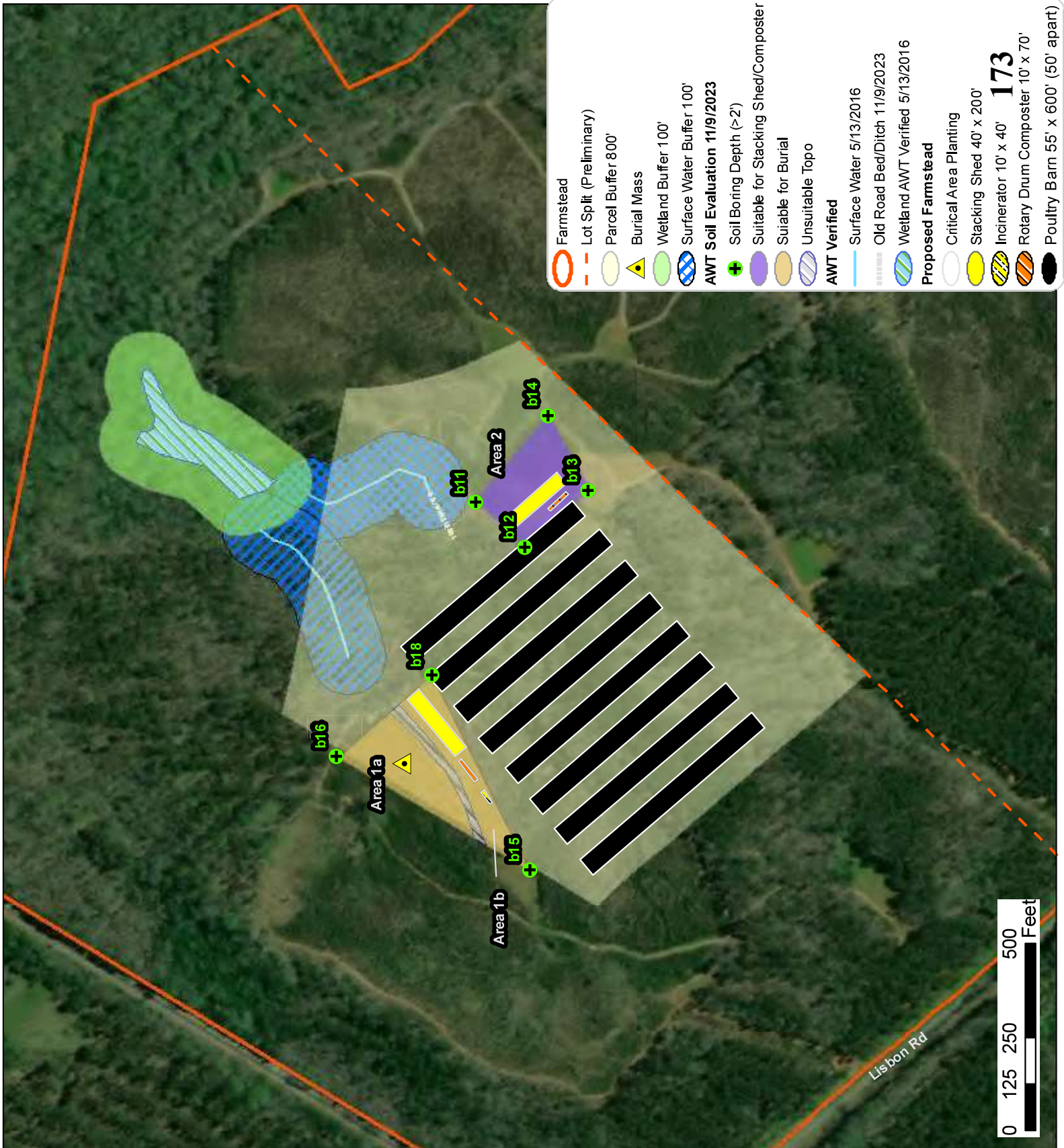
Area 1b-suitable for burial, stacking shed, compost= 38,803 sq. ft.

Area 2 suitable for compost and stacking shed= 53,059 sq. ft.

### Additional Note:

Mr. Coggins and Jim Young plan to split this property. For now, the lot split shown here is preliminary.

Drawn By: Julie Davidson  
Reviewed By: Adam Gaines  
Date: 2/14/2024



# **EXHIBIT 7**



Agri-Waste Technology, Inc.  
501 N Salem Street, Suite 203, Apex, NC 27502  
agriwaste.com | 919.859.0669

### Farmstead Flood Hazard

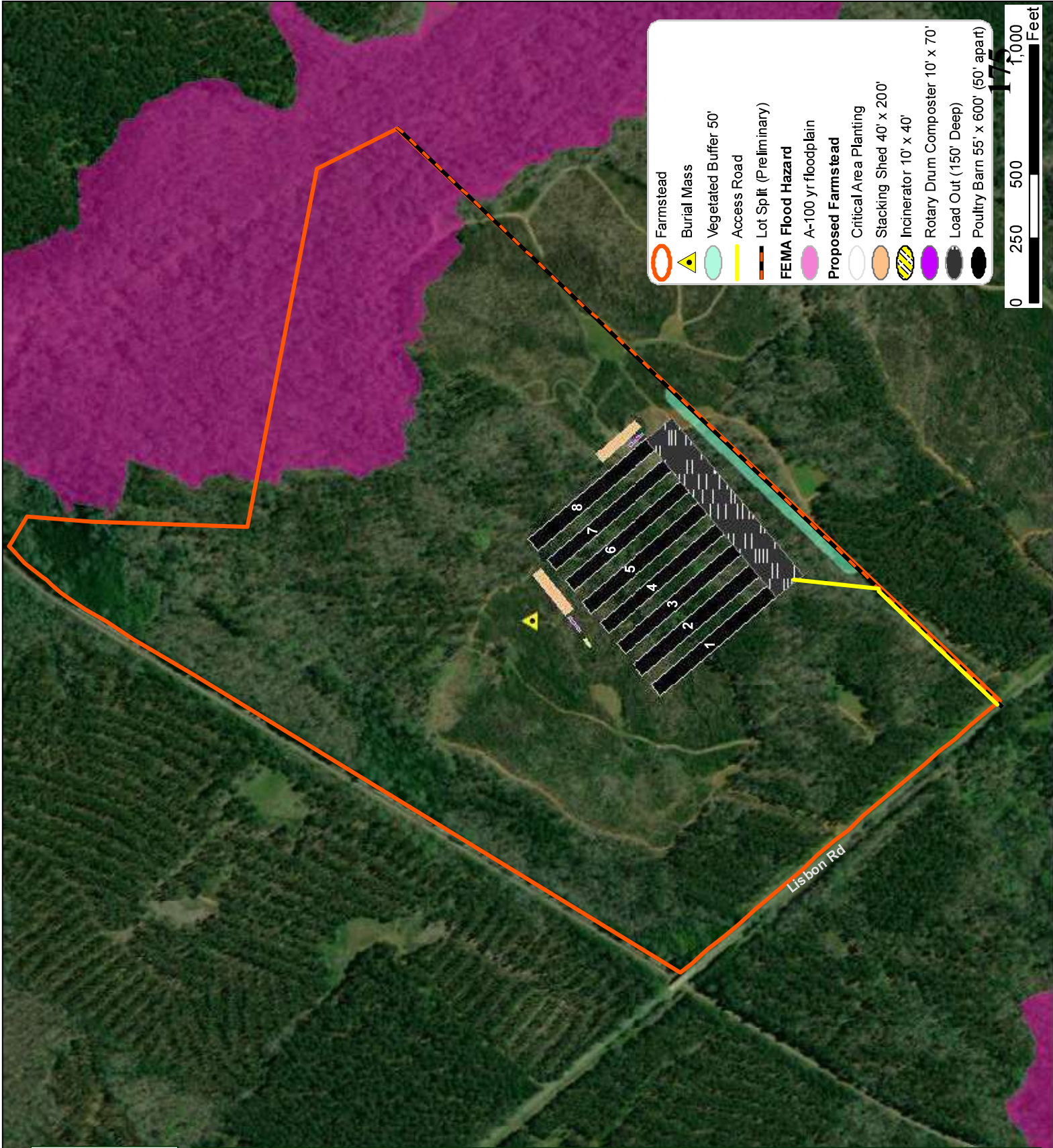
Heath Coggins  
Laurens Co., SC

TAX PIN:  
511-00-00-004



Mr. Coggins and Jim Young  
plan to split their property.  
For now, the lot split shown  
here is preliminary.

Drawn By: Julie Davidson  
Reviewed By: Adam Gaines  
Date: 2/19/2024



- Farmstead
- Burial Mass
- Vegetated Buffer 50'
- Access Road
- Lot Split (Preliminary)
- FEMA Flood Hazard
- A-100 yr floodplain
- Proposed Farmstead
- Critical Area Planting
- Stacking Shed 40' x 200'
- Incinerator 10' x 40'
- Rotary Drum Composter 10' x 70'
- Load Out (150' Deep)
- Poultry Barn 55' x 600' (50' apart)



# **EXHIBIT 8**

Two planned 40' x 200' (minimum) stacking shed will hold litter following crusting before collection by a broker. Cleanouts will be collected directly by a manure broker out of the house. Each shed will have capacity for 550 tons of litter. The stacking shed will have enough storage for a full years' worth of crustings and provide emergency storage from cleanouts in case a broker is not able to come the same day. The stacking shed will have concrete put down to make cleaning the stacking shed easier and to prevent damaging the ground and causing erosion.

Web soil survey lists the primary soil type as Cecil sandy clay loam (CmC2) with 6-10% slopes and a seasonal high-water table of >80" for borings 15, 16, and 18. Borings 11, 12, 13, and 14 have a primary soil type as Wilkes sandy loam (WkD) with 6-15% slopes and a seasonal high water table of >80". During an onsite investigation, soil borings were taken in several locations. AWT was able to get seven borings to >24" without encountering a shallow seasonal high-water table. Picture below show the measurement and the soil at the construction site. These boring were taken in the build site parameters.

# **EXHIBIT 9**

7. Monitor temperatures at different points in the pile frequently. If temperatures exceed 190°F, or if the material is smoldering, prepare to remove material from the building. This includes notifying the local fire department to be on hand. A smoldering pile could burst into flames if exposed to air. A garden hose could be inadequate to extinguish the fire.
8. Do not store equipment in the litter storage structure.
9. At least twice per year, when the facility is empty, inspect wooden parts, hardware, or other replaceable parts that are damaged or show excessive wear or decay.
10. All disturbed areas around the facilities should be vegetated or covered with gravel to prevent erosion.
11. Warning signs, fences, guardrails, and other safety features will be installed and maintained to prevent unauthorized entry to any structure.

### **Animal Mortality Facility (316)**

An on-farm facility for the treatment or disposal of livestock and poultry carcasses.

This practice may be applied as part of a conservation management system to support one or more of the following purposes:

- Decrease non-point source pollution of surface and groundwater resources
- Reduce the impact of odors that result from improperly handled animal mortality
- Decrease the likelihood of the spread of disease or other pathogens that result from the interaction of animal mortality and predators
- To provide contingencies for normal and catastrophic mortality events

### **Roofs and Covers (367)**

A rigid, semirigid, or flexible manufactured membrane, composite material, or roof structure placed over a waste management facility, agrichemical handling facility, or an on-farm secondary containment facility.

- For enclosed waste facilities, exercise caution and care during cover removal or access. If opening of the cover is required for facility management, include provisions to prevent exposure of workers to hazardous gases.
- If personnel are or may be required to enter an enclosed waste facility, include safety provisions recommended by the National Institute for Occupational Safety and Health (NIOSH) for working in confined spaces including, but not limited to, using a positive-pressure self-contained breathing apparatus, safety line, and standby personnel.

### **Emergency Animal Mortality Management (368)**

A means or method for the management of animal carcasses from catastrophic mortality events.

- This practice is used to accomplish one or more of the following purposes:
- Reduce impacts to surface water and ground water including downstream drinking water sources
- Reduce the impact of odors.
- Decrease the spread of pathogens

Plan, design, and construct this practice to comply with all Federal, State, Tribal, and local regulations. The landowner must obtain all necessary permissions from regulatory agencies or document that no permits are required. The landowner and contractor are responsible for locating all buried utilities in the project area, including drainage tile and other structural measures.

Address biosecurity concerns in all aspects of planning, installation, operation, and maintenance of a catastrophic animal mortality operation. Provide warning signs, fences, refrigeration unit locks, and other devices, as

# **EXHIBIT 10**

**Table 1-1. Key pollutants from livestock operations and animal manure.**

| Pollutant                                     | Description of Pollutant                                                                                                                                                   | Pathways to the Environment                                                                                                                               | Potential Impacts                                                                                                                                                                             |
|-----------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Nitrogen                                      | Organic forms (e.g., urea) and inorganic forms (e.g., ammonium and nitrate) in manure may be assimilated by plants and algae.                                              | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> <li>• Atmospheric deposition as ammonia</li> </ul> | <ul style="list-style-type: none"> <li>• Eutrophication and harmful algal blooms (HABs)</li> <li>• Ammonia toxicity to aquatic life</li> <li>• Nitrate linked to methemoglobinemia</li> </ul> |
| Phosphorus                                    | As manure ages, phosphorus mineralizes to inorganic phosphate compounds that may be assimilated by plants.                                                                 | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water (water soluble forms)</li> </ul>                        | <ul style="list-style-type: none"> <li>• Eutrophication and HABs</li> </ul>                                                                                                                   |
| Potassium                                     | Most potassium in manure is in an inorganic form available for plant assimilation; it can also be stored in soil for future plant uptake.                                  | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> </ul>                                              | <ul style="list-style-type: none"> <li>• Increased salinity in surface water and ground water</li> </ul>                                                                                      |
| Organic Compounds                             | Carbon-based compounds decomposed by micro-organisms. Creates biochemical oxygen demand because decomposition consumes dissolved oxygen in the water.                      | <ul style="list-style-type: none"> <li>• Overland discharge</li> </ul>                                                                                    | <ul style="list-style-type: none"> <li>• Eutrophication and HABs</li> <li>• Dissolved oxygen depletion, and potentially anoxia</li> <li>• Decreased aquatic biodiversity</li> </ul>           |
| Solids                                        | Includes manure, feed, bedding, hair, feathers, and dead livestock.                                                                                                        | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Atmospheric deposition</li> </ul>                                                  | <ul style="list-style-type: none"> <li>• Turbidity</li> <li>• Siltation</li> </ul>                                                                                                            |
| Salts                                         | Includes cations (sodium, potassium, calcium, magnesium) and anions (chloride, sulfate, bicarbonate, carbonate, nitrate).                                                  | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> </ul>                                              | <ul style="list-style-type: none"> <li>• Reduction in aquatic life</li> <li>• Increased soil salinity</li> <li>• Increased drinking water treatment costs</li> </ul>                          |
| Trace Elements                                | Includes feed additives (arsenic, copper, selenium, zinc, cadmium), trace metals (molybdenum, nickel, lead, iron, manganese, aluminum), and pesticide ingredients (boron). | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> </ul>                                              | <ul style="list-style-type: none"> <li>• Aquatic toxicity at elevated concentrations</li> </ul>                                                                                               |
| Volatile Compounds Including Greenhouse Gases | Includes carbon dioxide, methane, nitrous oxide, hydrogen sulfide, and ammonia gases generated during manure decomposition.                                                | <ul style="list-style-type: none"> <li>• Inhalation</li> <li>• Atmospheric deposition of ammonia</li> </ul>                                               | <ul style="list-style-type: none"> <li>• Eutrophication</li> <li>• Human health effects</li> <li>• Climate change</li> </ul>                                                                  |
| Pathogens                                     | Includes a range of disease-causing organisms, including bacteria, viruses, protozoa, fungi, prions and helminths.                                                         | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Potential growth in receiving waters</li> </ul>                                    | <ul style="list-style-type: none"> <li>• Animal, human health effects</li> </ul>                                                                                                              |
| Antimicrobials                                | Includes antibiotics and vaccines used for therapeutic and growth promotion purposes.                                                                                      | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> <li>• Atmospheric deposition</li> </ul>            | <ul style="list-style-type: none"> <li>• Facilitates the growth of antimicrobial-resistance</li> <li>• Unknown human health and aquatic life effects</li> </ul>                               |
| Hormones                                      | Includes natural and synthetic hormones used to promote animal growth and control reproductive cycles.                                                                     | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> </ul>                                              | <ul style="list-style-type: none"> <li>• Endocrine disruption in fish</li> <li>• Unknown human health effects</li> </ul>                                                                      |
| Other Pollutants                              | Includes pesticides, soaps, and disinfectants.                                                                                                                             | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> </ul>                                              | <ul style="list-style-type: none"> <li>• Unknown human health and ecological effects</li> <li>• Potential endocrine disruption in aquatic organisms</li> </ul>                                |

*Adapted from USEPA (2002a) Exhibit 2-2.*



**SOUTH CAROLINA  
ENVIRONMENTAL  
LAW PROJECT**

*Lawyers for the Wild Side*

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /  
[www.scelp.org](http://www.scelp.org)

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Monica K. Whalen | monica@scelp.org

July 19, 2024

**VIA U.S. MAIL AND EMAIL**

Ms. Jana E. Shealy, Clerk  
South Carolina Administrative Law Court  
Edgar A. Brown Building  
1205 Pendleton Street, Suite 224  
Columbia, SC 29201

**RE: Request for a Contested Case Hearing  
Jim Young (d/b/a J. Young Broilers) Permit Nos. ND0090175, AG-20600**

Dear Ms. Shealy:

On behalf of South Carolinians for Responsible Agricultural Practices, please find enclosed for filing the original Request for Contested Case Hearing Form and the required filing fee which concerns the above-referenced matter. I have enclosed a copy of this Request as well. Please file-stamp this copy and return it to me in the envelope provided herein.

If you have any questions or concerns regarding this submission, please do not hesitate to contact me. Thank you for your assistance in this matter.

Respectfully,

Emily S. Poole, Esq.

cc: South Carolinians for Responsible Agricultural Practices  
Jim Young (d/b/a J. Young Broilers)  
South Carolina Department of Environmental Services – Office of General Counsel

**South Carolina Administrative Law Court (SC ALC)**  
**Request for Contested Case Hearing FORM**  
**Mail to: 1205 Pendleton St., Suite 224, Columbia, SC 29201**

|                                                                               |                  |                                       |                                                          |                                         |
|-------------------------------------------------------------------------------|------------------|---------------------------------------|----------------------------------------------------------|-----------------------------------------|
| Last Name:<br><b>South Carolinians for Responsible Agricultural Practices</b> |                  | First:<br>                            | Middle:<br>                                              | Docket No. (To Be Completed by ALC)<br> |
| Mailing Address:<br><b>3771 Hwy 56 South</b>                                  |                  | City:<br><b>Clinton</b>               | State and Zip:<br><b>SC 29325</b>                        |                                         |
| Home Number:<br><b>(864) 923-2203</b>                                         | Work Number:<br> | Cell Number:<br><b>(864) 684-1230</b> | *E-Mail Address:<br><b>charlesblackmon1948@gmail.com</b> |                                         |

\*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

**REPRESENTATION**

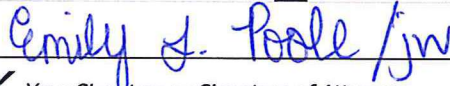
|                                                                                                         |  |                                                                                |  |
|---------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------|--|
| Are you representing yourself? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No      |  |                                                                                |  |
| Are you represented by an Attorney? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |  | Name of Attorney: <b>Emily S. Poole, Esq. &amp; Lauren Megill Milton, Esq.</b> |  |
| Attorney Mailing Address:<br><b>South Carolina Environmental Law Project</b>                            |  | City, State and Zip:<br><b>P.O. Box 1380, Pawleys Island, SC 29585</b>         |  |
| Attorney Work Number and Cell Number:<br><b>(843) 527-0078</b>                                          |  | Attorney E-Mail Address:<br><b>emily@scelp.org &amp; lauren@scelp.org</b>      |  |

**CASE INFORMATION**

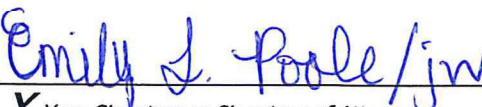
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|
| <b>Name of Agency that Issued the Decision:</b> (Example – Dept. of Revenue, Dept. of Insurance, DHEC)<br><b>Department of Environmental Services (formerly the Department of Health and Environmental Control)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                      |
| In order to have your case processed, <b>you must attach the agency decision.</b> Is it attached?:<br><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | If no, please explain:<br>                           |
| Date the decision was issued: <b>June 19, 2024</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Date the decision was received: <b>June 19, 2024</b> |
| Please provide a brief statement regarding why the hearing is being requested and the relief sought:<br>Pursuant to S.C. Code Ann. §§ 48-6-30 and 48-6-40, the hearing is requested regarding Permit Nos. ND0090175 and AG-20600 as explained in the attached request for final review conference dated June 18, 2024. For the reasons stated in the attached request for final review conference and any that may be included in Petitioner's Pre-Hearing Statement, Petitioner requests that the staff decision to issue the permit for construction and operation of an agricultural animal facility and manure and animal by-products treatment and storage system be reversed. |                                                      |

**Payment** (applicable **filing fee pursuant to ALC Rule 71**) is being submitted today to the Administrative Law Court

via ☒ Check ☐ Money Order ☐ Cash  
via ☒ U.S. Postal Service ☐ Hand-delivery

|                                                                                                                                         |                           |
|-----------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| <br><b>X</b> Your Signature or Signature of Attorney | <b>07/19/2024</b><br>Date |
|-----------------------------------------------------------------------------------------------------------------------------------------|---------------------------|

**PROOF OF SERVICE (MUST BE COMPLETED)**

|                                                                                                                                                                                                                                                                                                                    |                            |                           |                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|---------------------------|----------------------------------------------|
| Your Name: <b>Emily S. Poole</b>                                                                                                                                                                                                                                                                                   |                            | Date: <b>07/18/2024</b>   | City: <b>Pawleys Island</b> State: <b>SC</b> |
| I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing <u>on all other parties</u> to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names): |                            |                           |                                              |
| Jim Young (d/b/a J. Young Broilers)                                                                                                                                                                                                                                                                                | <b>123 Sherwood Forest</b> | <b>Laurens, SC 29360</b>  |                                              |
| Name and/or Agency Name                                                                                                                                                                                                                                                                                            | Address                    | City, State and Zip       |                                              |
| <b>SCDES Office of General Counsel</b>                                                                                                                                                                                                                                                                             | <b>2600 Bull Street</b>    | <b>Columbia, SC 29201</b> |                                              |
| Name and/or Agency Name                                                                                                                                                                                                                                                                                            | Address                    | City, State and Zip       |                                              |
| <br><b>X</b> Your Signature or Signature of Attorney                                                                                                                                                                            |                            | <b>07/19/2024</b><br>Date |                                              |

**183**

**Attention:** All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website [www.scalc.net](http://www.scalc.net) or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.



Seema Shrivastava-Patel, Chairman  
Robert R. Morgan, Jr., MD, MBA, Vice-Chairman  
Charles M. Joye, II, P.E., Secretary

**Board:**  
J.B. (Sonny) Kinney  
Morris E. Brown, III, MD, FAAFP  
William D. Richmond, MD

June 19, 2024

**Via Electronic Mail and US Mail Certified 9214 8969 0099 9790 1425 3352 62**

Emily S. Poole, Esquire  
Email: [emily@scelp.org](mailto:emily@scelp.org)  
Lauren Megill Milton, Esquire  
Email: [lauren@scelp.org](mailto:lauren@scelp.org)  
South Carolina Environmental Law Project  
Post Office Box 1380  
Pawleys Island, SC 29585

**Via Electronic Mail and US Mail**

J. Young Broilers  
Attn: Jim Young  
Email: [clemsontigerman02@gmail.com](mailto:clemsontigerman02@gmail.com)  
123 Sherwood Forest  
Laurens, SC 29360

**Via Electronic Mail Delivery**

Stephen Hightower, Esquire  
Email: [hightosp@dhec.sc.gov](mailto:hightosp@dhec.sc.gov)  
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SCHEC – Office of General Counsel  
2600 Bull Street  
Columbia, SC 29201

**RE: Docket No. 24-RFR-66, J. Young Broilers**  
Issuance of Permit to Construct, Permit No. AG-20600v.1.0, Laurens County

Mr. Young and Counsel of Record:

Pursuant to the enclosed Standing Order issued on May 21, 2024, the South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.

## **CONTESTED CASE GUIDANCE**

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office  
South Carolina Administrative Law Court  
Edgar A. Brown Building  
1205 Pendleton St., Suite 224  
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



M. Denise Crawford  
Clerk of the Board  
S.C. Board of Health and Environmental Control

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

# **SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL**

## **STANDING ORDER**

*RE: Appeals from Department Decisions Giving Rise to Contested Cases,  
S.C. Code Section 44-1-60*

**Whereas**, the South Carolina Board of Health and Environmental Control (the “Board”) may conduct such administrative reviews as may be required by law, as considered necessary by the Board to render a final agency determination in matters involving the issuance, denial, renewal or revocation of permits, licenses, or other actions of the department which may give rise to a contested case pursuant to Chapter 23 of Title 1. See S.C. Code § 44-1-50.

**Whereas**, all Department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses or other actions of the Department which may give rise to a contested case shall be made using the procedures set forth in S.C. Code Section 44-1-60. See S.C. Code § 44-1-60.

**Whereas**, the Board approved a Final Review Procedure, the most recent version effective December 1, 2022, to provide for the administration of the procedures set forth in S.C. Code Section 44-1-60.

**Whereas**, an applicant, permittee, licensee, or affected person may file a request with the Administrative Law Court for a contested case hearing within thirty days after: (1) notice is mailed to the applicant, permittee, licensee, and affected person that the board declined to hold a final review conference; or (2) the sixty day deadline to hold the final review conference lapses and no conference has been held; or (3) the final agency decision resulting from the final review conference is received by the parties.

**Whereas**, pursuant to Act 60 of 2023, the South Carolina Department of Health and Environmental Control and the Board are abolished, effective July 1, 2024.

**NOW THEREFORE**, considering the foregoing and to ensure properly filed requests for review pursuant to S.C. Code Section 44-1-60 are timely addressed:

1. the Chairwoman, in her sole discretion, may direct the Clerk of the Board to adjust time frames and procedures contained in the Final Review Procedure that was effective December 1, 2022, to provide for processing of requests for final review properly filed pursuant to S.C. Code Section 44-1-60 prior to **May 24, 2024**;
2. the Board declines to conduct a final review conference if it receives a properly filed request for final review of a staff decision pursuant to S.C. Code Section 44-1-60 on or after **May 24, 2024**;

3. the Clerk of the Board is hereby instructed to provide a copy of this Order and the requisite written notice of the Board's decision to decline to conduct a final review conference in the event the Clerk of the Board receives such a request on or after **May 24, 2024**;
4. because July 1, 2024, falls on a Monday, requests for Board review will not be accepted for filing after **5:00 PM** on **Friday, June 28, 2024**; and
5. the attached Board Review Procedure (Attachment 1) is adopted for requests filed on or after **May 24, 2024**.

**IT IS SO ORDERED.**



Seema Shrivastava-Patel, Chairwoman  
Board of Health and Environmental Control  
For the Board

May 21, 2024

## Attachment 1

### South Carolina Board of Health and Environmental Control

#### Final Review Procedure for Requests for Review (RFRs) filed on or after May 24, 2024

Staff sends the Guide to Board Review [Exhibit 1] to the applicant, permittee, licensee, and/or affected persons with every notice of decision involving the issuance, denial, renewal, suspension or revocation of permits, licenses, or other actions of the Department which may give rise to a contested case. Alternatively, the cover letter for the decision may reference the website where the Guide can be found and provide instructions for obtaining a copy of the Guide if internet access is not available. The Guide can be found at the following website address:

<https://scdhec.gov/about-dhec/sc-board-health-environmental-control/guide-board-review>

#### Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by the Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15<sup>th</sup> day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day.
2. **Until June 10, 2024**, RFRs should be filed on-line ([scdhec.gov/FileRFR](https://scdhec.gov/FileRFR)) or in person or by mail at the following address:

South Carolina Board of Health and Environmental Control  
Attention: Clerk of the Board  
2600 Bull Street  
Columbia, South Carolina 29201

**After June 10, 2024**, RFRs should be filed in person at the above-referenced address.

RFRs may be filed at any time with the Clerk by electronic mail ([boardclerk@dhec.sc.gov](mailto:boardclerk@dhec.sc.gov)) until 5:00 PM on Friday, June 28, 2024.

3. Pursuant to Act 60 of 2023, the Board is abolished, effective Monday, July 1, 2024. **No RFRs will be accepted after 5:00 PM on Friday, June 28, 2024.**
4. RFRs shall be in writing and should include, at a minimum, the following information:
  - the grounds for amending, modifying, or rescinding the staff decision;
  - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
  - the relief requested;

- a copy of the decision for which review is requested; and
- the name of the Requestor and the Requestor's mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted. If the Requestor consists of a group of individuals, a representative of the group should be identified to receive all notices and communications related to the RFR for the group.

All information submitted is subject to release under the Freedom of Information Act. If the RFR and accompanying documentation contain information the Requestor believes should not be released, such information should be identified.

5. The filing fee may be paid by cash, check or credit card and must be received by the 15<sup>th</sup> day. Credit card payments may be made by phone (803-898-3460, option 2) or prior to June 10, 2024, on-line at [scdhec.gov/FileRFR](http://scdhec.gov/FileRFR).
6. If there is any perceived discrepancy in compliance with this RFR filing procedure or any other procedural question, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
7. **RFRs filed with the Board on or after May 24, 2024, shall be denied.** The Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

## NOTICE

Pursuant to Act 60 of 2023, the South Carolina Board of Health and Environmental Control is abolished, effective Monday, July 1, 2024. Additionally, the South Carolina Department of Health and Environmental Control (DHEC) will become two, new separate agencies — the South Carolina Departments of Environmental Services (SCDES) and Public Health (DPH). This Guide to Board Review is applicable to requests filed with the Board on or after May 24, 2024.

### Exhibit 1

#### South Carolina Board of Health and Environmental Control

#### Guide to Board Review

#### Pursuant to S.C. Code Ann. § 44-1-60

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with the Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

#### I. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15<sup>th</sup> day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day.
2. **Until June 10, 2024**, RFRs should be filed on-line ([scdhec.gov/FileRFR](https://scdhec.gov/FileRFR)) or in person or by mail at the following address:

South Carolina Board of Health and Environmental Control  
Attention: Clerk of the Board  
2600 Bull Street  
Columbia, South Carolina 29201

**After June 10, 2024**, RFRs should be filed in person at the above-referenced address.

RFRs may be filed at any time prior to 5:00 PM on Friday, June 28, 2024, with the Clerk by electronic mail ([boardclerk@dhec.sc.gov](mailto:boardclerk@dhec.sc.gov)).

3. Pursuant to Act 60 of 2023, the Board is abolished, effective Monday, July 1, 2024. **No RFRs will be accepted after 5:00 PM on Friday, June 28, 2024.**
4. RFRs shall be in writing and should include, at a minimum, the following information:
  - The grounds for amending, modifying, or rescinding the staff decision;
  - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
  - the relief requested;
  - a copy of the decision for which review is requested; and

- the name of the Requestor and the Requestor's mailing address, email address, if applicable, and phone number(s) at which the Requestor can be contacted. If the Requestor consists of a group of individuals, a representative of the group should be identified to receive all notices and communications related to the RFR for the group.

All information submitted is subject to release under the Freedom of Information Act. If the RFR and accompanying documentation contain information the Requestor believes should not be released, such information should be identified.

5. The filing fee may be paid by cash, check or credit card and must be received by the 15<sup>th</sup> day. Credit card payments may be made by phone (803-898-3460, option 2) or prior to June 10, 2024, on-line at [scdhec.gov/FileRFR](https://scdhec.gov/FileRFR).
6. If there is any perceived discrepancy in compliance with this RFR filing procedure or any other procedural question, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
7. **Pursuant to the Standing Order approved by the Board on May 21, 2024, any RFR filed with the Board on or after May 24, 2024, will be denied.** The Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

**The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.**

STATE OF SOUTH CAROLINA  
BEFORE THE BOARD OF THE DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL CONTROL

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South Carolinians for Responsible Agricultural Practices,

Requestor,

vs.

Jim Young (d/b/a J. Young Broilers), and South Carolina Department of Health  
and Environmental Control,

Respondents.

RE: Permit for Construction and Operation of Agricultural Animal Facility and  
Manure and Animal By-Products Treatment and Storage System in Laurens  
County

P/N#: ND0090175, AG-20600, HQ1-XX01-HRRKG

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**REQUEST FOR FINAL REVIEW CONFERENCE**

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South Carolinians for Responsible Agricultural Practices (“SCRAP” or “the Requestor”), pursuant to S.C. Code Ann. § 44-1-60, hereby respectfully requests that the Board of the South Carolina Department of Health and Environmental Control (“Board”) conduct a Final Review Conference in connection with the DHEC staff’s decision to issue a permit for the construction and operation of an agricultural animal facility and manure and animal by-products treatment and storage system (hereinafter “the Permit”), Permit Number AG-20600 and Facility Permit Number ND0090175, to Jim Young, doing business as J. Young Broilers (“Young” or “Permittee”). Young proposes to build eight poultry barns 55’ by 600’ in size that will hold 264,000 broilers with a normal production live weight of 1,306,800 pounds and will result in an annual litter production

of 1,610 tons. This facility would be located in Mountville, SC along the Little River and its tributaries on TMS # 511-00-00-009. DHEC’s Office of Groundwater Protection and Agricultural Permitting issued the Permit on June 4, 2024, and a copy of the Notice of the Permit Decision letter and the Permit issued to Young are attached hereto as **Exhibit 1**. SCRAP requests that the Board reverse the staff’s decision because it fails to comply with state laws, regulations, and policies.

## **I. THE REQUESTOR AND THEIR INTEREST**

Requestor South Carolinians for Responsible Agricultural Practices (“SCRAP”) is an association of concerned residents in the Mountville area who seek to protect their rural community from the over-proliferation of chicken houses. Since 2016, this association has sought better permitting, oversight, and enforcement from DHEC as it pertains to the dozens upon dozens of poultry barns in their area. SCRAP and its members desire to see their rural community and its treasures, like the Little River, protected from the pollution and destruction of the poultry facilities that have overrun their community, impacting their homes and properties. Further, SCRAP’s members—all of whom are affected persons within the definition of S.C. Code Ann. § 44-1-65(E)—breathe the air; drink the water; enjoy viewing plant and wildlife; and recreate, use, and appreciate the natural resources in and around the proposed facility, including the Little River. All of these activities and interests are at risk of harm if Young constructs and operates the proposed agricultural animal facility as authorized by DHEC staff in the Permit decision.

## **II. DHEC’S ISSUANCE OF THE PERMIT VIOLATES SOUTH CAROLINA LAW**

One of the most central provisions of the animal facility permitting regulations states: “The Department *shall act* on all permits *to prevent*, so far as reasonably possible considering relevant standards under state and federal laws, *an increase in pollution of the waters and air of the State*

from any new or enlarged sources.”<sup>1</sup> This and other mandates found in the regulations require DHEC to impose heightened protections and more stringent requirements for the proposed facility at issue here in order to minimize water quality impacts, protect the surrounding ecosystem, and preserve the health and welfare of the community’s residents. Because the terms of Young’s Permit do not allow for adequate protection of the surrounding water bodies, the Permit should not have been issued by DHEC staff, and the Permit should be rescinded by this Board.

**A. DHEC Staff Failed to Consider This Facility’s Proximity to the Little River**

Because one of the principal purposes of DHEC’s animal facility permitting regulatory scheme is to prevent an increase in pollution of waters of the State, the Department has crafted many regulatory provisions to ensure compliance with this mandate. In S.C. Code Ann. Regs. § 61-43.200.140, the Department declares:

A. There *shall* be no discharge of pollutants from the operation into surface Waters of the State (including ephemeral and intermittent streams). There *shall* be no discharge of pollutants into groundwater, which could cause groundwater quality not to comply with the groundwater standards established in R.61-68.

...

C. The following cases *shall* be evaluated for additional or more stringent requirements:

1. Source water protection. Facilities and manure utilization areas located within a state-approved source water protection area.
2. 303(d) Impaired Water Bodies List. Facilities and manure utilization areas located upstream of an impaired waterbody.
3. Proximity to Outstanding Resource Waters, trout waters, shellfish waters, or potential to adversely affect a federally listed endangered or threatened species, its habitat, or a proposed or designated critical habitat.
4. Aquifer Vulnerability Area, an area where groundwater recharge may affect an aquifer.<sup>2</sup>

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<sup>1</sup> S.C. Code Ann. Regs. § 61-43.200.70(E) (emphasis added).

<sup>2</sup> S.C. Code Ann. Regs. § 61-43.200.140 (emphasis added).

These unequivocal provisions establish a general rule and a set of more specific rules, as applicable, that the Department must impose upon animal facility permit applicants to protect water quality. The general rule is that *no discharge of pollutants* from these facilities can occur in either surface waters or groundwaters of the State. The next section cited above then details specific situations that call for more stringent requirements to be evaluated, including when a proposed animal facility is located upstream of an impaired waterbody. The strength and stringency of these regulations have been confirmed through judicial review, establishing precedent that is extremely relevant here. In 2022, the South Carolina Court of Appeals stressed that to comply with the plain language of the regulations, DHEC *must* meaningfully evaluate agricultural facilities being sited in a waterbody listed on the impaired waterbodies list in making permit decisions.<sup>3</sup>

Turning to the Permit at hand, Young is planning to build a new poultry facility on a parcel that the Little River runs directly through (TMS # 511-00-00-009). This means that this facility is located upstream of the Little River and that any discharges from this facility, whether point source or nonpoint source pollution, will inevitably run into the Little River. Since 2004, the Little River and its tributaries “have been placed on the South Carolina § 303(d) list of impaired waters for violations of the fecal coliform standard.”<sup>4</sup> Therefore, because of this facility’s proximity to the Little River, which has been designated as an impaired waterbody by the Environmental Protection Agency (“EPA”), this Permit is governed by the terms of S.C. Code Ann. Regs. § 61-

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<sup>3</sup> See *Blackmon v. S.C. Dept. of Health & Envtl. Control*, 441 S.C. 342, 357–61, 893 S.E.2d 578, 586–89 (2022).

<sup>4</sup> S.C. Dept. of Health & Envtl. Control, *Total Maximum Daily Load Development for the Little River Watershed*, [https://scdhec.gov/sites/default/files/docs/HomeAndEnvironment/Docs/tmdl\\_littleRvr\\_fc.pdf](https://scdhec.gov/sites/default/files/docs/HomeAndEnvironment/Docs/tmdl_littleRvr_fc.pdf) (Sept. 29, 2004).

43.200.140(C)(2), cited above. This means that DHEC was required to make a meaningful evaluation of more stringent permitting requirements to protect water quality.

Unfortunately, the permit application submitted to DHEC makes clear that Young has not taken and does not plan to take any action to protect the already-impaired Little River. On page 7 of Young's Comprehensive Nutrient Management Plan ("CNMP"), attached hereto as **Exhibit 2**, the CNMP leaves space for the Permittee to identify natural resource concerns considered in the permit application process. This page of the CNMP states, "If checked, the indicated resource concerns have been identified and addressed in this plan." Crucially, under the separate boxes meant to house Water Quality Concerns and Soil Quality Concerns, the Permittee simply wrote, "None." Correspondingly, the boxes where the Permittee details their planned Activities to Address Concerns are blank in the CNMP.

Because the permit application submitted to DHEC did not contain any information from which the Department could consider additional or more stringent requirements for the protection of the impaired Little River, DHEC staff should not have issued this Permit as written. Issuing the Permit as submitted, in which water quality concerns and the impaired Little River were not considered, violates S.C. Code Ann. Regs. § 61-43.200.140(C)(2), cited above. Therefore, the Board should either rescind the Permit or amend the Permit to impose the more stringent requirements contemplated by the regulation. In the report that created a Total Maximum Daily Load ("TMDL") for the Little River as it pertains to fecal coliform, DHEC found that agricultural operations, including poultry facilities, are a "source[ ] of fecal coliform bacteria" and recommended best management practices (BMPs) for these facilities.<sup>5</sup> These same BMPs, as well as other measures, might be used by the Board as the more stringent requirements imposed upon

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<sup>5</sup> *Id.*

Young to protect the Little River from further degradation.

In the public meeting DHEC hosted on this permit application, several of Requestor's members asked about how the Department planned on meeting its burden under S.C. Code Ann. Regs. § 61-43.200.140(C)(2). The Department did not give a clear answer at that time, and one spokesperson for DHEC indicated they were not aware that there was a TMDL on the Little River. This is deeply concerning to the Requestor and its members—all of whom are counting on DHEC to protect the Little River from further harm. Even if Young did not consider the impaired Little River, the Department was undoubtedly required to do so. This Board should not allow this Permit to become final until the TMDL has been properly considered and stricter requirements are imposed upon the facility.

**B. DHEC Staff Failed to Address the Particular Needs of This Site**

Recognizing again that the central goal of DHEC's animal facility permitting regulatory scheme is to prevent an increase in pollution of waters of the State, the Department also requires proposed animal facilities to comply with several siting requirements. The following siting requirements apply to all animal facilities:

1. The minimum separation distance between an animal facility (animal growing areas, houses, pens or barns, not including range areas or manure utilization areas) and a public or private drinking water well (excluding the applicant's well) is 200 feet. The minimum separation distance between an animal facility and a potable water well owned by the applicant is 50 feet (as required by R.61-71).
2. The minimum separation distance between an animal facility and Waters of the State (including ephemeral and intermittent streams) located down slope from the facility is 100 feet.
3. Except for site drainage, the minimum separation distance required between an animal facility and a ditch or swale located down slope from the facility is 50 feet.
4. A new animal facility or an expansion of an established animal facility shall not be located in the 100-year floodplain.

5. The separation distance required between a small animal facility or growing areas (pens or barns not including range areas) and the lot line of real property owned by another person is 200 feet and 1,000 feet from the nearest residence.

6. The separation distance required between large or X-large animal facilities or growing areas (pens or barns not including range areas) and the lot line of real property owned by another person is 400 feet and 1,000 feet from the nearest residence.<sup>6</sup>

In addition, the siting requirements for the animal facility's specific storage structures that hold dry animal manure and other animal by-products, "including, but not limited to, stacking sheds, burial sites, incinerators, manure, and dead animal composters," are largely similar to those above:

1. The minimum separation distance between a dry animal manure and other animal by-products treatment or storage facility and a public or private drinking water well (excluding the applicant's well) is 100 feet. The minimum separation distance between a dry animal manure and other animal by-products treatment or storage facility and a potable water well owned by the applicant is 50 feet.

2. Except for site drainage, the minimum separation distance required between a dry animal manure and other animal by-products treatment or storage facility and a ditch or swale located down slope from the facility is 50 feet.

3. The minimum separation distance between a dry animal manure and other animal by-products treatment or storage facility and Waters of the State including ephemeral and intermittent streams located down slope from the facility is 100 feet.

4. A new dry animal manure and other animal by-products treatment or storage facility or an expansion of an established dry animal manure and other animal by-products treatment or storage facility shall not be located in the 100-year floodplain.

5. The separation distance required between a dry animal manure and other animal by-products treatment or storage facility operated at an animal growing facility and the lot line of real property and a residence owned by another person shall be equivalent to the setback required for the animal growing areas or houses.

6. The minimum separation distance required between a dry animal manure and other animal by-products treatment or storage facility operated by a manure broker

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<sup>6</sup> S.C. Code Ann. Regs. § 61-43.200.80(A).

and the lot line of real property owned by another person is 200 feet and 1,000 feet to the nearest residence.<sup>7</sup>

The Department's regulations make clear that the siting requirements cited above are the *minimum requirements* for every animal facility and its storage structures. As part of DHEC's review of a permit application, the Department must also determine if *additional* siting restrictions are necessary:

F. The setback limits given in Part 200 are siting requirements. The Department shall evaluate the following factors to determine if any special conditions are necessary:

1. Latitude and Longitude;
2. Down-wind receptors; and
3. Nutrient Management Plan.<sup>8</sup>

For the Permit at issue here, DHEC determined that Young met the minimum siting requirements detailed in S.C. Code Ann. Regs. § 61-43.200.80(A) and (C). However, DHEC did not evaluate whether special conditions are necessary for the siting of these facilities in order "to prevent . . . an increase in pollution of the waters and air of the State."<sup>9</sup> As detailed in the paragraphs below, mandatory considerations, including the latitude and longitude and Nutrient Management Plan for this facility, strongly indicate that additional siting restrictions are necessary in this case.

*1.      Latitude and Longitude*

The latitude and longitude of Young's proposed facility and storage structures illustrate why additional siting conditions are necessary to protect the natural resources, water quality,

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<sup>7</sup> S.C. Code Ann. Regs. § 61-43.200.80(C).

<sup>8</sup> S.C. Code Ann. Regs. § 61-43.200.70(F).

<sup>9</sup> *Id.* at 61-43.200.70(E).

ecosystems, and residents around this site. First, as stated before, the Little River runs through the property where Young has proposed this facility. As a result, the barns and stacking sheds proposed are extremely close to surface water and wetlands, as shown in one of the drawings included in Young's CNMP, which is attached hereto as **Exhibit 3**. Second, the proposed facility is also nearly located within the 100-year floodplain, as can be seen in the FEMA Flood Map for this area, attached to this letter as **Exhibit 4**. Third, many of the soil types found at this latitude and longitude have a "very high" likelihood of runoff during rain and storm events, as shown on pages 11 and 19 of the Custom Soil Resource Report in Young's CNMP, which are attached hereto as **Exhibit 5**. Fourth, one of Young's proposed sites for a stacking shed is directly beside unstable topography, as shown in one of the drawings included in Young's CNMP, which is attached hereto as **Exhibit 6**.

These four characteristics of the proposed parcel's latitude and longitude each make it much more likely that the Little River, its resources, its ecosystems, and the general public will be harmed as a result of the operation of this facility, especially when rain and storm events cause runoff from this facility. For the protection of all, additional siting requirements should be imposed to move this facility further away from the Little River, the 100-year floodplain, and unstable soil and topography.

While the facility's proximity to the Little River, its tributaries, and its wetlands certainly call for even more protective measures, it appears that DHEC staff, at one point, at least partially considered ways to reduce impacts to water and wetlands. In the Notice of Permit Decision letter, attached hereto as **Exhibit 1**, the last sentence of the third paragraph reads: "Additionally, the permit requires the applicant to maintain the existing evergreen buffers around the facility and also to plant an evergreen buffer in the areas that don't currently have an existing evergreen buffer."

However, in the Permit itself, also in **Exhibit 1**, this evergreen buffer permit term is not mentioned. To complicate matters more, in Young's CNMP, the drawing in the CNMP showing a vegetated buffer only shows the buffer on one side of the facility, as shown in the drawing attached hereto as **Exhibit 7**. If the evergreen buffer is a Permit requirement, it should be spelled out clearly in the terms and reflected in the drawings submitted by Young to DHEC. This Board should demand that this requirement, along with additional siting requirements needed to fully account for the unique, natural features of this site, be included in the Permit issued to Young.

## 2. Nutrient Management Plan

Further, Young's Nutrient Management Plan for this facility also shows why additional siting requirements are so crucial in this instance. First, Young's CNMP states that the facilities plan to have two stacking sheds that are 40 feet by 200 feet in size. However, the CNMP also details that the sizing of these stacking sheds is *a minimum*, as shown on page 40 of Young's CNMP, which is attached hereto as **Exhibit 8**. As discussed in the prior paragraph, one of the proposed stacking sheds for this facility is located directly adjacent to unstable topography.<sup>10</sup> The lack of detail in the CNMP about how the stacking sheds might be expanded is extremely relevant to determining the potential impacts of this proposed facility. Second, Young's CNMP also states that one of the purposes of the Animal Mortality Facility is to "[d]ecrease non-point source pollution of surface and groundwater resources," as shown on page 10 of the CNMP, which is attached hereto as **Exhibit 9**. However, DHEC regulations require that this Permit be a no-discharge permit,<sup>11</sup> meaning that *any* pollution from this facility is a violation of the Permit's terms and of state and federal law. The CNMP should not be discussing a *decrease* in pollutants; instead,

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<sup>10</sup> See **Exhibit 6**.

<sup>11</sup> See, e.g., S.C. Code Ann. Regs. § 61-43.200.140(A).

it should make clear that *no pollutants* will be coming from this facility into surface and groundwater resources. Further, the design of the facility must be shown to be adequate to achieve that outcome.

Because of these two points in the CNMP that present a lack of specificity and clarity, additional siting restrictions should be imposed to protect the natural resources, ecosystems, and communities surrounding this facility. It is not clear from the CNMP that the Permittee here understands the importance of (1) disclosing the full information of this application and (2) ensuring that no pollutants escape from the facility into nearby waters. Thus, the Department should not have issued this Permit without additional siting guidelines that ensure stacking sheds will be placed only upon stable topography and that the facility is far enough away from the nearby water sources such that pollution does not occur.

**C. DHEC Staff Failed to Evaluate Possible Discharges into the Little River**

As mentioned briefly in the sections above, when DHEC issues an animal facility operating permit, that permit is a no-discharge permit.<sup>12</sup> This means that facility operators cannot allow any part of their facility to discharge pollutants into waters of the State.

In a majority of states, operators of a concentrated animal feeding operation (“CAFO”) are allowed to discharge pollutants into waters of the State and waters of the United States if they apply for and receive a National Pollutant Discharge Elimination System (“NPDES”) permit. In fact, the federal government has determined the floor of each state’s regulatory scheme through the provisions of 40 C.F.R. § 122.23(a):

Concentrated animal feeding operations (CAFOs) . . . are point sources, subject to NPDES permitting requirements as provided in this section. Once an animal feeding operation is defined as a CAFO for at least one type of animal, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the

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<sup>12</sup> See S.C. Code Ann. Regs. § 61-43.200.20(B).

operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

Because the federal regulations determine the baseline that each state must meet or exceed, South Carolina's regulations directly mirror 40 C.F.R. § 122.23 in S.C. Code Ann. Regs. § 61-9.122.23. As a result, the requirement in the federal regulations that an NPDES permit be in effect should any discharges occur also applies in the State of South Carolina. Further, under both the federal regulations and the State of South Carolina's regulations, an operator of a CAFO must apply for and receive an NPDES permit if they plan to discharge or know that their facility will discharge pollutants into waters of the United States or waters of the State, respectively.<sup>13</sup>

On its face, the South Carolina state law requirement that all operating permits issued to CAFOs be no-discharge permits seems to comply with federal law and protect water quality in the state. However, further examination of federal law reveals that there is a significant gap in South Carolina's NPDES regulations. Although discharges that occur under these CAFO operating permits are prohibited by South Carolina law, there is no regulatory mechanism in place that monitors whether discharges are, in fact, not occurring. This means that discharges very well can—and do—occur, but because South Carolina regulations presume no discharges are occurring, no oversight and monitoring is in place to ensure the no-discharge rule is being honored.

A similar situation recently occurred in the State of Idaho and was litigated in the U.S. Court of Appeals for the Ninth Circuit. In interpreting 40 C.F.R. § 122.23, which again is duplicated in South Carolina's state regulations, the Court found that simply stating a permit is a no-discharge permit does not make it so under the law. Specifically, the Court wrote:

[T]he Idaho Permit does not allow *any* discharges from the production area.<sup>14</sup>  
Without a requirement that CAFOs monitor waste containment structures for

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<sup>13</sup> See 40 C.F.R. 122.23(d); S.C. Code Ann. Regs. § 61-9.122.23(d).

<sup>14</sup> The term *production area* is defined as: “that part of an AFO that includes the animal

underground discharges, there is no way to ensure that production areas comply with the Permit's zero-discharge requirement. *See Waterkeeper Alliance, Inc. v. U.S. E.P.A.*, 399 F.3d 486, 499 (2d Cir. 2005) (failure of permit to include any mechanism for evaluating compliance with effluent limitation was arbitrary and capricious).<sup>15</sup>

This and other precedent from federal courts make clear that if a state issues a no-discharge permit, it must also require monitoring mechanisms as part of that permit to evaluate compliance with the no-discharge standard.

For the Permit at hand, this means that DHEC staff should have required comprehensive monitoring mechanisms as part of the issuance of this Permit to ensure that no discharges of pollutants are in fact taking place. The facility proposed by Young is a CAFO by definition because the proposed facility would have over 125,000 broilers and would use a dry-manure handling system.<sup>16</sup> Thus, under both federal and state law, the facility must either have an NPDES permit *or* it must have a no-discharge permit and appropriate monitoring mechanisms in place to ensure that no discharges occur. Because South Carolina does not give NPDES permits to CAFOs, and instead issues no-discharge operating permits, there must be sufficient monitoring mechanisms in place for Young's facility to be compliant with both state and federal law. Because DHEC staff have not required water monitoring mechanisms as part of this Permit, the Board should rescind the Permit or amend it to include proper monitoring and reporting requirements.

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confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. . .” 40 C.F.R. § 122.23(b)(8); S.C. Code Ann. Regs. § 61-9.122.23(b)(8).

<sup>15</sup> *Food & Water Watch v. U.S. Env'tl. Prot. Agency*, 20 F.4th 506, 517 (9th Cir. 2021).

<sup>16</sup> *See* S.C. Code Ann. Regs. § 61-9.122.23(b)(4)(x).

**D. DHEC Staff Failed to Honor South Carolina’s Water Quality Standards and Antidegradation Policies**

In addition to complying with the specific regulations relating to agricultural animal facilities, facilities like the one proposed in this instance must also adhere to the applicable regulations relating to water quality, air quality, waste disposal, and more.<sup>17</sup> In S.C. Code Ann. Regs. 61-43.200.40(H), water classifications and standards are expressly designated as a source of law that applies to agricultural animal facilities, which are found in S.C. Code Ann. Regs. 61-68. These water classifications and standards exist so that the State of South Carolina can “maintain reasonable standards of purity of the air and water resources of the State, consistent with the public health, safety and welfare of its citizens, maximum employment, the industrial development of the State, the propagation and protection of terrestrial and marine flora and fauna, and the protection of physical property and other resources.”<sup>18</sup>

Federal law requires that every state issue water quality standards and policies that protect each water body found in the state and designated uses delineated for those water bodies.<sup>19</sup> Specifically, every state must have an *antidegradation policy* ensuring each water body’s long-term ecological health and suitability for specific activities. South Carolina’s antidegradation policy declares: “Existing water uses and the level of water quality necessary to protect these existing uses shall be maintained and protected regardless of the water classification.”<sup>20</sup> For waters designated as Freshwater under the regulations, which is true of the Little River, the water quality standards provide: “Freshwaters (FW) are freshwaters suitable for primary and secondary contact

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<sup>17</sup> See S.C. Code Ann. Regs. § 61-43.200.40 (listing other DHEC regulatory chapters that often apply to agricultural animal facilities).

<sup>18</sup> S.C. Code Ann. § 48-1-20 (detailing the purpose of the South Carolina Pollution Control Act and its implementing regulations).

<sup>19</sup> See, e.g., 40 C.F.R. §§ 131.10–12.

<sup>20</sup> S.C. Code Ann. Regs. 61-68(D)(1).

recreation and as a source for drinking water supply after conventional treatment in accordance with the requirements of the Department. Suitable for fishing and the survival and propagation of a balanced indigenous aquatic community of fauna and flora. Suitable also for industrial and agricultural uses.”<sup>21</sup>

Turning to Young’s proposed facility, the antidegradation policy and the water quality standards for the Little River make clear that this Permit cannot be issued if the facility’s construction and operations could lead to degradation of the Little River and its tributaries. In addition to being a source of fecal coliform bacteria, as discussed earlier in this document, the EPA has determined that livestock operations and animal manure also spread other key pollutants to surrounding water bodies, including nitrogen, phosphorus, potassium, organic compounds, solids, salts, trace elements from feed additives and pesticide ingredients, volatile compounds include greenhouse gases, pathogens, antimicrobials, hormones, and other pollutants.<sup>22</sup> EPA created a table that lists each of these pollutants, a description of the pollutant, pathways to that the pollutant reaches the environment, and potential impacts of that pollutant upon the environment, which is attached hereto as **Exhibit 10**.<sup>23</sup> That table conclusively shows that facilities like Young’s often lead to degradation of water bodies that violate the antidegradation policies required by the federal and state governments.

With the antidegradation policy in mind, DHEC staff should not have issued this Permit without thorough consideration of the key pollutants that can result from poultry facilities and how those pollutants can reach water resources. This Permit cannot be issued unless DHEC staff are

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<sup>21</sup> *Id.* at 61-68(G).

<sup>22</sup> U.S. Env’tl. Prot. Agency, *Literature Review of Contaminants in Livestock and Poultry Manure and Implications for Water Quality*, <https://www.epa.gov/npdes/animal-feeding-operations-afos> (July 2013).

<sup>23</sup> *Id.*, Table 1-1.

confident that the many different pathways to the environment for these pollutants are adequately determined and then eliminated for the protection of the Little River and its tributaries. For a water body that is already impaired, it is all the more imperative that this Board take the antidegradation policy very seriously and prevent this Permit from becoming the agency's final action.

### **III. CONCLUSION AND REQUEST FOR RELIEF**

In light of the foregoing, the Requestor urges the Board of Health and Environmental Control to conduct a final review conference to review and deny the above-referenced DHEC staff decision approving J. Young Broilers' construction and operating Permit where Requestor's members live, work, and own property; or condition such Permit to adequately protect the interests of Requestor's members from harm. Please direct all notices and communications related to this request for final review to the undersigned counsel.

Respectfully submitted,

**SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT**



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Emily S. Poole, Esq.  
Lauren Megill Milton, Esq.  
P.O. Box 1380  
Pawleys Island, SC 29585  
(843) 527-0078  
emily@scelp.org

Greenville, South Carolina  
June 18, 2024

STATE OF SOUTH CAROLINA  
BEFORE THE BOARD OF THE DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL CONTROL

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South Carolinians for Responsible Agricultural Practices,

Requestor,

vs.

Jim Young (d/b/a J. Young Broilers), and South Carolina Department of Health  
and Environmental Control,

Respondents.

RE: Permit for Construction and Operation of Agricultural Animal Facility and  
Manure and Animal By-Products Treatment and Storage System

P/N#: ND0090175, AG-20600, HQ1-XX01-HRRKG

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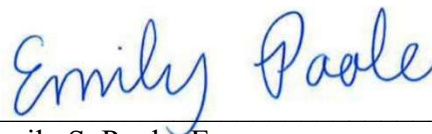
**CERTIFICATE OF SERVICE**

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I hereby certify that on this date I served Respondent SCDHEC by emailing and hand-delivering the foregoing Request for Final Review Conference at the address below, and I served Respondent Jim Young by placing a copy of the foregoing Request for Final Review Conference in the U.S. Mail to the address below:

South Carolina Board of DHEC  
Attention: Clerk of the Board  
2600 Bull Street  
Columbia, South Carolina 29201  
boardclerk@dhec.sc.gov

J. Young Broilers  
c/o Jim Young  
123 Sherwood Forest  
Laurens, South Carolina 29360



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Emily S. Poole, Esq.

Greenville, South Carolina  
June 18, 2024

# **EXHIBIT 1**



June 4, 2024

**Notice of Permit Decision**

J Young Broilers  
Facility ID# ND0090175  
Laurens County, South Carolina

Dear Sir or Madam,

Thank you for your interest and/or comments regarding the permit application from the above-referenced facility. The South Carolina Department of Health and Environmental Control ("Department") values all comments received during the permitting process and is committed to addressing and considering all relevant information prior to making a final permit decision. Public input is an important part of the permitting process and can result in changes to permit conditions and operational practices if a permit is issued.

After due consideration of all relevant comments received, the requirements and policies expressed in the Pollution Control Act of South Carolina and applicable regulations, the Department has made the decision to issue the construction permit.

Some comments received during the permitting process, such as those related to property values and road traffic, are outside the scope of the Department's regulations. Comments related to health, odors, and vectors are addressed by the Department's setbacks and other regulatory requirements which are included in the permit. The Comprehensive Nutrient Management Plan for the facility includes measures for controlling odors, vectors, and protecting surface water and groundwater. Additionally, the permit requires the applicant to maintain the existing evergreen buffers around the facility and also to plant an evergreen buffer in the areas that don't currently have an existing evergreen buffer.

The permit will be issued on June 4, 2024, with an effective date of June 19, 2024. Once the construction permit is issued, only an applicant, permittee, licensee, or an affected person(s) can request a review of the issuance of that permit, as outlined in the "Guide for Board Review" enclosed in this mailing.

If you have any further questions regarding the review procedures, you may contact the Legal Office, Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201 or by calling 803-898-3350.

Sincerely,

A handwritten signature in blue ink that reads "Lisa Appel".

Lisa Appel, Ag Permitting Project Manager  
Groundwater Protection & Agricultural Permitting Section  
Bureau of Water

Enclosure: Guide for Board Review  
Permit AG-20599 v1.0

cc: Natalie Kirkpatrick, Director, Upstate EA Greenwood Office  
Travis Fuss, Director, Midlands EA Aiken Office

**Permission is hereby granted to:**

Jim Young  
J YOUNG BROILERS  
6821 Lisbon Rd.  
Mountville, SC 29370

for the construction and operation of a **NO-DISCHARGE** agricultural animal facility, manure and animal by-products treatment and storage system in accordance with the construction plans, specifications, engineering report, Animal Facility Management Plan, and Construction Permit Application prepared by Adam Gaines, PE.

**County:** Laurens County

**Project Description:**

1. Construction of eight (8) new broiler houses.
2. Broilers raised on earthen floor covered with wood shavings.
3. Contract disposal of manure, utilizing a permitted manure broker.
4. Other conditions as stated in permit special conditions and animal facility management plan.
5. Treat a total of 1610 tons of manure generated as follows:
  - 8 houses X 33,000 Broilers per house = 264,000 birds at any one time.
  - 264,000 Broilers X 4.95 Lbs. Ave. Live Wt. = 1,306,800 Lbs. Normal Production Live Weight
  - 264,000 Broilers X 6.1 tons/1000 bird spaces/year = 1610 tons/year waste production

**Special Conditions:** (See attachments).

**Facility Permit Number:** ND0090175

**Permit Number:** AG-20600 v1.0

**Date of Issue:** 6/4/2024

**Effective Date:** 6/19/2024

**Expiration Dates:** Unless construction begins prior to 6/17/2026, and is completed prior to 6/16/2027, this permit will expire. In accepting this permit, the owner agrees to the admission of properly authorized persons at all reasonable hours for the purpose of sampling and inspection.

**Treatment Plant Classification:** Group 0

**WRITTEN APPROVAL TO OPERATE THIS FACILITY MUST BE OBTAINED FROM THE DEPARTMENT PRIOR TO PLACING ANIMALS IN THE FACILITY.**



Kelly Whitlock, Manager  
Groundwater Protection & Ag Permitting  
Bureau of Water

cc: Natalie Kirkpatrick, Director, Upstate EA Greenville/Spartanburg Office  
Travis Fuss, Director, Midlands EA Aiken Office

**SPECIAL CONDITIONS**  
**(Poultry)**

- 1. Operate and maintain the waste system, including all special conditions in accordance with Animal Facility Management Plan developed by Adam Gaines. Operate and maintain the waste management system in accordance with State and Federal law so as to prevent discharges to the environment. Should any part of the Animal Facility Management Plan fail to function as intended, additional controls or treatment of the wastes may be required.
- 2. The primary method of disposal of mortality will be by incineration until a rotary drum composter is installed. The excessive mortality method of disposal will be by burial. If a massive die-off occurs, notify your local inspector immediately, Travis Fuss, Midlands EA Aiken Office, 206 Beaufort Street, NE, Aiken, SC 29801, and phone number is (803) 642-1637, or email at [fusstr@dhec.sc.gov](mailto:fusstr@dhec.sc.gov). If you are calling after-hours, please call the Department's twenty-four-hour number (888)-481-0125 or (803)-253-6488. If you plan to bury the dead animals from a massive die-off, the Department recommends that you develop an emergency plan, and have it approved by the Department, prior to the occurrence. If you do not have a plan and site approved by the Department you will not be able to bury the animals. If the plan and site are approved, you would only be required to notify the Department of the massive die-off, and then implement the approved plan for disposal. The Department recommends following the Burial Guidance document when submitting your plan for approval. It can be found at [https://www.scdhec.gov/sites/default/files/media/document/Burial-Site-Guidance-6\\_28\\_17.pdf](https://www.scdhec.gov/sites/default/files/media/document/Burial-Site-Guidance-6_28_17.pdf).
- 3. If you have mortality on the farm that may be attributed to disease or toxin exposure, please contact Dr. Julie Helm of the State Veterinarian office at (803)-788-2260 for additional assistance in the handling and disposal of infected animals. The State Veterinarian's office recommends that the diagnostic lab evaluate samples for deaths in excess of 10% of a house population. This action can help identify disease outbreaks on the farm. The State Veterinarian's Office can also provide guidance in preventing the spread of diseases.
- 4. You are responsible for obtaining any other local or state permits that may be required for this project, including a **stormwater permit**. For information concerning stormwater, call (803) 898-4234, or <https://www.scdhec.gov/environment/water-quality/stormwater/stormwater-construction-activities/stormwater-construction>.
- 5. Drinking water wells installed on this site to provide water for animal and/or human consumption must be installed with at least the following minimum setbacks required in Regulation 61-71 (Well Standards & Regulations):
  - (a) Sewer lines ..... 20 feet
  - (b) Lakes, streams, surface-water bodies ..... 50 feet
  - (c) Septic tanks/tile fields ..... 75 feet
  - (d) Animal feedlots, barns, stables ..... 50 feet
  - (e) Waste disposal - land application sites ..... 100 feet
  - (f) Waste treatment lagoons ..... 100 feet
  - (g) Herbicide, pesticide & petroleum handling/storage sites ..... 100 feet

A permit for private wells must be obtained from the Department prior to installation and a Notice of Intent must be submitted, Regulation 61-44 (Individual Residential Well and Irrigation Well Permitting). Enclosed is a copy of the Notice of Intent. For information concerning well permitting, call (803)-898-3559 or <https://scdhec.gov/BOW/private-drinking-water-wells>

6. ***Annual reporting is required for this permit.***

*An annual report is due by June 19th of each year and must include the following:*

- a. Waste sampling results for the last year, if applicable, and the latest rolling average.*
- b. Soil monitoring results, if applicable.*
- c. Groundwater monitoring results, if applicable.*
- d. Calculated application rates for all waste utilization areas, if applicable.*
- e. The adjusted application rates, if applicable, based on the most recent animal waste sampling and soil samples. The application rate change could also be due to a change in field use, crop grown or other factors.*

**Annual Reports may be submitted through your ePermitting account or mailed to the following address:**

**SC Department of Health & Environmental Control  
Bureau of Water - Ag Permitting & Groundwater Protection Section  
Attn: Tonya O'Cain  
2600 Bull Street  
Columbia, SC 29201**

7. CAMM Certification is required within one year from the effective date of this permit. The next CAMM training is scheduled for February 4 or 18, 2025 (different locations). Please contact Bryan Smith with the Clemson Extension Service to inquire about future CAMM training classes for manure handling at (864)-984-2514.



June 4, 2024

Jim Young  
J Young Broilers  
123 Sherwood Forest  
Laurens, SC 29360

Re: Facility Permit #ND0090175 and Construction Permit #AG-20600 v1.0  
J Young Broilers  
Laurens County

Dear Jim Young:

Enclosed is a State Agricultural Permit for the above-referenced facility. Construction and operation is to be performed in accordance with this permit and the supporting agricultural facility management plan approved by this Office. Once the construction permit is issued, an applicant, permittee, licensee, or an affected resident can request a board review of the issuance of that permit, as outlined in the enclosed document "Guide to Board Review" dated December 1, 2022. If you have any questions regarding these review procedures, you may contact the Legal Office, Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201 or by calling (803)-898-3350. This permit does not cover the use of an incinerator or composter. Those will be permitted by Henry Gibson when plans and specs are received by this office.

Upon completion of construction, a letter must be submitted to the Environmental Affairs (EA) Regional office from the Agricultural Animal Facility Management Plan preparer certifying that the construction has been completed in accordance with the approved plan. A final inspection may then be scheduled. The EA Regional office will grant approval to operate (ATO) upon successful completion of the project. **In addition, Regulation 61-43 requires an operator of an animal facility or manure utilization area to complete CAMM training, created by Clemson University, on the operation of animal manure management systems. As the operator of this facility, you are required to complete this training program within one year from effective date of this permit. Please contact Bryan Smith with the Clemson Extension Service to inquire about future CAMM training classes for manure handling at (864)-984-2514.**

If you have any questions regarding the permit, please contact Lisa Appel at (803) 898-1745. This system cannot be placed into operation until the final ATO is granted by the appropriate EA Regional Office. Your Region contact is Travis Fuss, Midlands EA Aiken Office, 206 Beaufort Street, NE, Aiken, SC 29801, and phone number is (803) 642-1637, or email at [fusstr@dhec.sc.gov](mailto:fusstr@dhec.sc.gov). The EA Regional Office should be notified when construction begins.

Sincerely,

Kelly Whitlock, Manager  
Groundwater Protection & Ag Permitting  
Bureau of Water

cc: Natalie Kirkpatrick, Director, Upstate EA Greenville/Spartanburg Office  
Travis Fuss, Director, Midlands EA Aiken Office

# **EXHIBIT 2**

## 1.8. Natural Resource Concerns

If checked, the indicated resource concerns have been identified and addressed in this plan.

### Soil Quality Concerns

|   | <i>Soil Quality Concern</i> | <i>Activities to Address Concern</i> |
|---|-----------------------------|--------------------------------------|
| X | None                        |                                      |

### Water Quality Concerns

|   | <i>Water Quality Concern</i> | <i>Activities to Address Concern</i> |
|---|------------------------------|--------------------------------------|
| X | None                         |                                      |

### Other Concerns Addressed

|   | <i>Other Concern</i> | <i>Activities to Address Concern</i> |
|---|----------------------|--------------------------------------|
| X | Regulations          | CNMP Required by SC DHEC             |
| X | Litter Management    | Planned Stacking Shed                |
| X | Mortality Management | Planned Composter                    |
| X | Mortality Management | Planned Burial Site                  |
| X | Mortality Management | Planned Incinerator                  |

# **EXHIBIT 3**



Agri-Waste Technology, Inc.  
501 N Salem Street, Suite 203, Apex, NC 27502  
agrwaste.com | 919.859.0669

### Proposed Barn, Manure Storage & Burial Location

Jim Young  
Laurens Co., SC

Tax ID: 511-00-00-009



#### IMPORTANT NOTES

- 1.) Poultry houses/stacking shed/com poster/burial do NOT impact the 1,000' permanent residence buffer. No Waivers Needed
- 2.) Poultry houses, structures, and burial are closer than 800' from the property line (black dotted line). 1- 800' property line waiver is needed from Heath Coggins
- 3.) Poultry houses/structures/ burial are more than 100' from surface water and wetlands.
- 4.) Planned poultry houses and stacking sheds are more than 200' from neighbor's wells.
- 5.) Poultry houses are 55' x 600' and 50 feet apart.
- 6.) Burial location determined by AWT soil scientists and meet SC DHEC requirements.
- 7.) Mr. Young and Mr. Coggins property is currently one polygon. This map shows a preliminary property split in order to complete their facility's permit process.

Drawn By: Julie Davidson  
Reviewed By: Adam Gaines  
Date: 1/31/2024

**510-00-00-004**  
**Heath Coggins**

- Farmstead
- Burial Mass
- Lot Split (preliminary)
- Property Line Buffer 800'
- Surface Water AWT Verified 5/13/2016
- Wetland AWT Verified 5/13/2016
- Wetland Buffer 100'
- Surface Water Buffer 100'
- Residence Buffer 1,000'
- Proposed Farmstead
- Critical Area Planting
- Composter 10' x 70'
- Incinerator 10' x 40'
- Stacking shed 40' x 200'
- Proposed Poultry Barn 55' x 600'
- Load Out (150' Deep)
- Waiver Needed
- 800' Property Line Waiver

Lisbon Rd



# **EXHIBIT 4**

This map is for use in administering the National Flood Insurance Program. It does not constitute a contract or warranty by FEMA. Users are encouraged to consult the Federal Emergency Management Agency's National Flood Insurance Service Manual for more detailed information in areas where **Base Flood Elevations** (BFEs) are determined. BFEs have been determined for users who wish to consult the FIRI contained within the Flood Insurance Study (FIS) report that accompanies this FIRI. Users should be aware that BFEs shown on the FIRI represent rounded whole-foot elevations. These BFEs are intended for flood insurance rating purposes only and should not be used as the sole source of flood elevation information. Accordingly, they may differ from those obtained through other means such as sounding. The FIRI is for purposes of construction and/or floodplain management.

Coastal Base Flood Elevations (BFEs) shown on this map apply only landward of 0.0 North American Vertical Datum of 1988 (NAVD 88). Users of this FIRM should be aware that coastal flood elevations are also provided in the Summary of Stillwater Elevations in the Insurance Study report for this jurisdiction. Elevations shown on this map are based on the Summary of Stillwater Elevations and/or floodplain management purposes when they are higher than the elevations shown on this FIRM.

Certain areas not in Special Flood Hazard Areas may be protected by flood control structures. Refer to Section 2.4 "Flood Protection Measures" of the Flood Insurance Study report for information on flood control structures for this jurisdiction.

The projection used in the preparation of this map was State Plane South Carolina FIPS 3600. The horizontal datum was NAD83 HARN, GRS1980 spheroid. Differences in datum, spheroid, projection or State Plane zones used in the preparation of FIRMs for adjacent jurisdictions may result in slight positional differences in map features across jurisdiction boundaries. These differences do not affect the accuracy of this FIRM.

referred to the same **vertical datum**. For information regarding conversion between the National Geodetic Vertical Datum of 1929 and the North American Vertical Datum of 1989, visit the National Geodetic Survey website at <http://www.ngs.noaa.gov/> or contact the National Geodetic Survey at the following address:

NGS Information Services  
NOAA, NNGS-2  
National Geologic Survey  
SSMC-3, #9202

1315 East-West Highway  
Silver Spring, Maryland 20910-3282  
(301) 713-3242

To obtain current elevation, description, and/or location information for bench marks shown on this map, please contact the Information Services Branch of the National Geographic Survey at (301) 713-3242 or visit its website at <http://www.ngs.noaa.gov/>

Base map information shown on this FIRM was provided in digital format by Laurens County, South Carolina.

This map reflects more detailed and up-to-date stream channel configurations than those shown on the previous FIRM for this jurisdiction. The floodplains and

conform to these new stream channel configurations. As a result, the Flood Profiles floodways that were transferred from the previous FIRM may have been adjusted to conform to these new stream channel configurations. As a result, the Flood Profiles and Floodway Data tables in the Flood Insurance Study report (which contains

what is shown on this map.

of publication. Because changes due to annexations or de-annexations may have occurred after this map was published, map users should contact appropriate county or city officials to verify current corporate limit locations.

Please refer to the separately printed Map Index for an overview map of the county showing the layout of map panels; community map recognition addresses; and a

Listing of Communities table containing National Flood Insurance Program dates for each community as well as a listing of the panels on which each community is located.

For information and questions about this map, available products associated with this FIRM including historic versions of this FIRM, how to order products or the National

eXchange at 1-877-FEMA-MAP (1-877-336-2627) or visit the FEMA Map Service website at <http://www.msc.fema.gov>. Available products may include previously

this map. Many of these products can be ordered or obtained directly from the website. Users may determine the current map date for each FIRM panel by visiting the FEMA Map Service Center website or by calling the FEMA Map Information

The "profile base lines" depicted on this map represent the hydraulic modeling exchange.

baselines that match the flood profiles in the FIS report. As a result of improved topographic data, the "profile base line", in some cases, may deviate significantly from the channel centerline or appear outside the SFHA.

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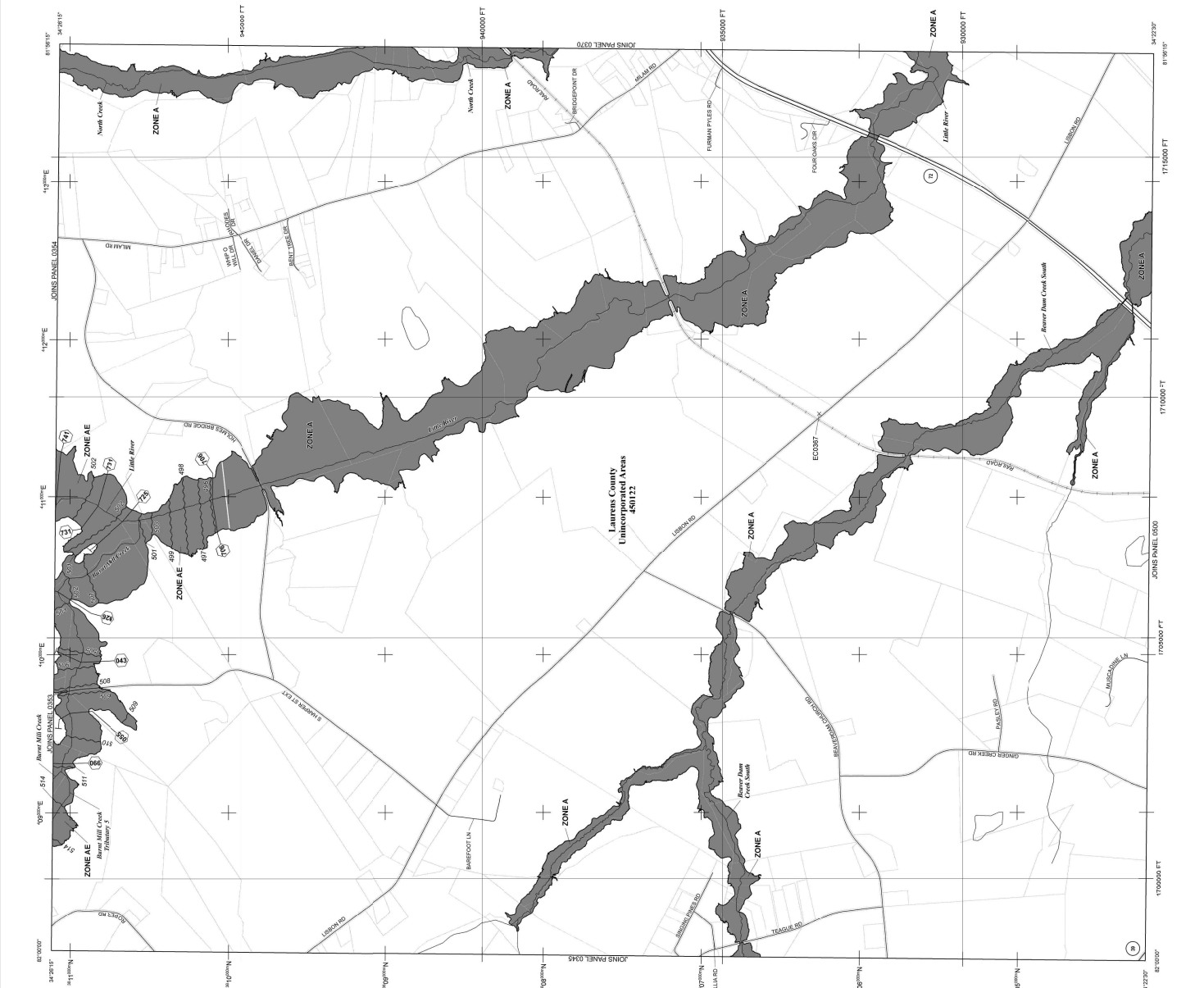
**DNR**  
This digital Flood Insurance Rate Map (FIRM) was produced through a unique

cooperative partnership between the State of South Carolina and the Federal Emergency Management Agency (FEMA). The State of South Carolina has implemented a long term approach of floodplain management to decrease the

costs associated with flooding. This is demonstrated by the State's commitment to major floodplain areas at this local level. As a part of this effort, the state of South Carolina has joined in a Cooperating Technical State agreement with FEMA to

produce and maintain this digital FLOW.

www.wiley.com

[illegible][illegible]

# **EXHIBIT 5**

## Laurens County, South Carolina

### Ca—Cartecay-Toccoa complex

#### Map Unit Setting

*National map unit symbol:* 4cmx

*Elevation:* 450 to 1,500 feet

*Mean annual precipitation:* 41 to 54 inches

*Mean annual air temperature:* 47 to 73 degrees F

*Frost-free period:* 173 to 216 days

*Farmland classification:* Prime farmland if drained and either protected from flooding or not frequently flooded during the growing season

#### Map Unit Composition

*Cartecay and similar soils:* 55 percent

*Toccoa and similar soils:* 40 percent

*Minor components:* 5 percent

*Estimates are based on observations, descriptions, and transects of the mapunit.*

#### Description of Cartecay

##### Setting

*Landform:* Flood plains

*Landform position (three-dimensional):* Tread

*Down-slope shape:* Linear

*Across-slope shape:* Linear

*Parent material:* Loamy alluvium

##### Typical profile

*Ap - 0 to 14 inches:* sandy loam

*C - 14 to 30 inches:* sandy loam

*Cg - 30 to 79 inches:* fine sandy loam

##### Properties and qualities

*Slope:* 0 to 2 percent

*Depth to restrictive feature:* More than 80 inches

*Drainage class:* Somewhat poorly drained

*Runoff class:* Very high

*Capacity of the most limiting layer to transmit water (Ksat):* High (1.98 to 5.95 in/hr)

*Depth to water table:* About 6 to 18 inches

*Frequency of flooding:* Occasional

*Frequency of ponding:* None

*Available water supply, 0 to 60 inches:* Low (about 5.3 inches)

##### Interpretive groups

*Land capability classification (irrigated):* None specified

*Land capability classification (nonirrigated):* 3w

*Hydrologic Soil Group:* A/D

*Ecological site:* F136XY610GA - Flood plain forest, wet

*Hydric soil rating:* No

#### Description of Toccoa

##### Setting

*Landform:* Flood plains

## **WkD—Wilkes sandy loam, 6 to 15 percent slopes**

### **Map Unit Setting**

*National map unit symbol:* 4cpb  
*Elevation:* 340 to 750 feet  
*Mean annual precipitation:* 41 to 54 inches  
*Mean annual air temperature:* 47 to 73 degrees F  
*Frost-free period:* 173 to 216 days  
*Farmland classification:* Not prime farmland

### **Map Unit Composition**

*Wilkes and similar soils:* 100 percent  
*Estimates are based on observations, descriptions, and transects of the mapunit.*

### **Description of Wilkes**

#### **Setting**

*Landform:* Interfluves  
*Landform position (two-dimensional):* Backslope  
*Landform position (three-dimensional):* Side slope  
*Down-slope shape:* Convex  
*Across-slope shape:* Convex  
*Parent material:* Loamy residuum weathered from hornblende, diorite, or gabbro

#### **Typical profile**

*Ap - 0 to 7 inches:* sandy loam  
*Bt - 7 to 12 inches:* sandy clay loam  
*Cr - 12 to 24 inches:* weathered bedrock  
*R - 24 to 79 inches:* unweathered bedrock

#### **Properties and qualities**

*Slope:* 6 to 15 percent  
*Depth to restrictive feature:* 10 to 20 inches to paralithic bedrock; 20 to 40 inches to lithic bedrock  
*Drainage class:* Well drained  
*Runoff class:* Very high  
*Capacity of the most limiting layer to transmit water (Ksat):* Very low to moderately low (0.00 to 0.01 in/hr)  
*Depth to water table:* More than 80 inches  
*Frequency of flooding:* None  
*Frequency of ponding:* None  
*Available water supply, 0 to 60 inches:* Very low (about 1.8 inches)

#### **Interpretive groups**

*Land capability classification (irrigated):* None specified  
*Land capability classification (nonirrigated):* 6e  
*Hydrologic Soil Group:* D  
*Ecological site:* F136XY730SC - Basic upland forest, depth restriction, dry  
*Hydric soil rating:* No

# **EXHIBIT 6**



Agri-Waste Technology, Inc.  
501 N Salem Street, Suite 203, Apex, NC 27502  
agrwaste.com | 919.859.0669

### Proposed Manure Storage & Burial Site w Soil Borings

Jim Young  
Laurens Co., SC

Tax ID: 511-00-00-009



Soil evaluation was completed on 11/9/2023 by Chris McGee of AWT. Chris is a licensed Soil Scientist.

Details shown here summarizes Chris's determination for stacking shed, compost and burial location for NRCS/SCDHEC approval.

#### Soil Boring Evaluation:

Area 1 suitable for stacking shed and compost = 140,742 sq.ft.

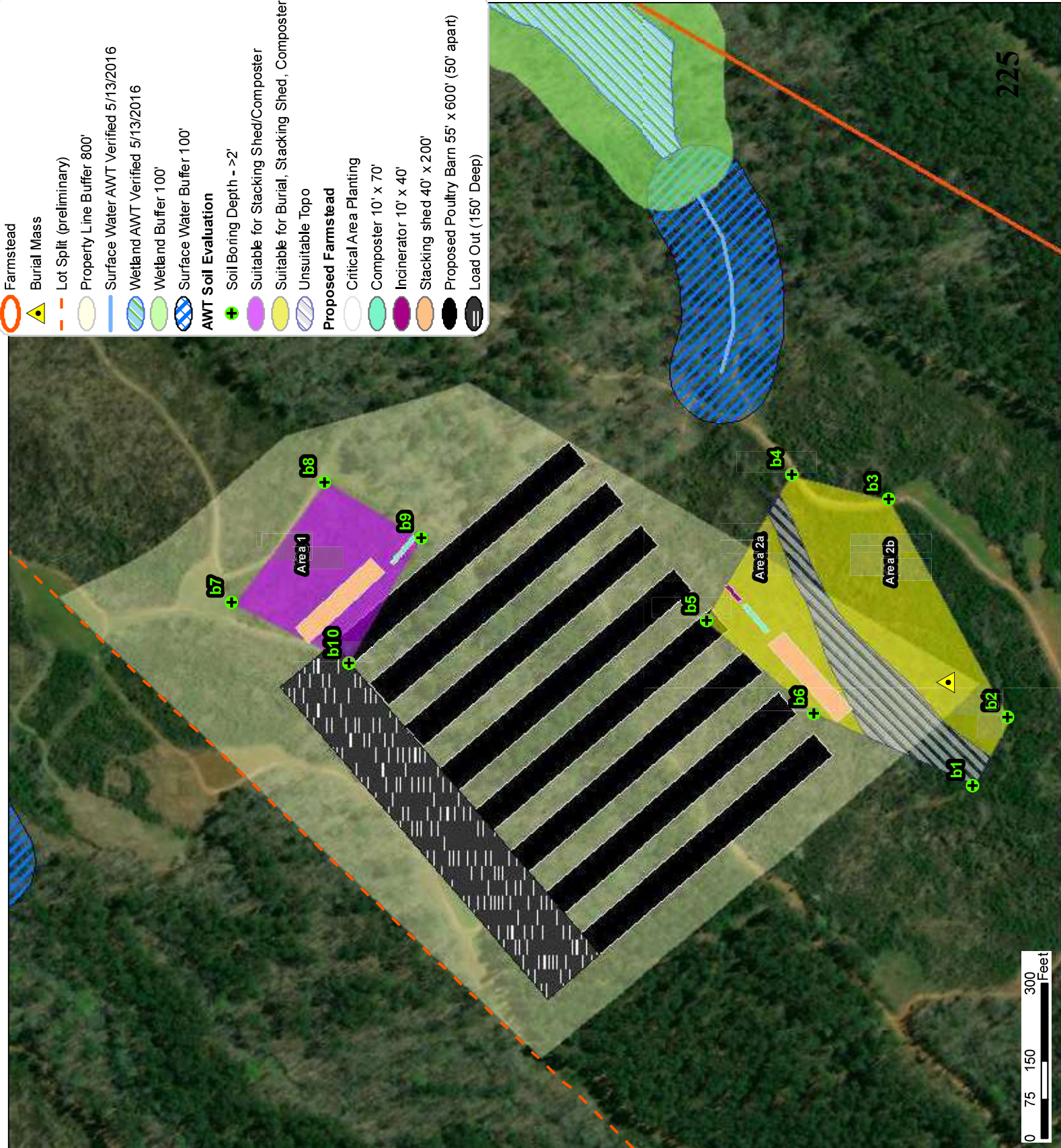
Area 2a suitable for burial, compost and stacking shed = 48,195 sq.ft.

Area 2b suitable for burial, compost and stacking shed = 92,547 sq.ft.

#### Additional Note:

Mr. Young and Heath Coggins plan to split this property. For now, the lot split shown here is preliminary.

Drawn By: Julie Davidson  
Reviewed By: Adam Gaines  
Date: 1/18/2024



# **EXHIBIT 7**



Agri-Waste Technology, Inc.  
501 N Salem Street, Suite 203, Apex, NC 27502  
agriwaste.com | 919.859.0669

### Preliminary Farmstead Flood Hazard

Jim Young  
Laurens Co., SC

Tax ID: 511-00-00-009



Mr. Young and Heath Coggins  
plan to split their property.  
For now, the lot split shown  
here is preliminary.

Drawn By: Julie Davidson  
Reviewed By: Adam Gaines  
Date: 1/31/2024

- Farmstead
- Burial Mass
- Access Road
- Lot Split (preliminary)
- Vegetated Buffer 25'
- Proposed Farmstead**
- Critical Area Planting
- Composter 10' x 70'
- Incinerator 10' x 40'
- Stacking shed 40' x 200'
- Proposed Poultry Barn 55' x 600'
- Load Out (150' Deep)
- FEMA Flood Hazard**
- A-100 yr floodplain



# **EXHIBIT 8**

Two planned 40' x 200' (minimum) stacking shed will hold litter following crusting before collection by a broker. Cleanouts will be collected directly by a manure broker out of the house. Each shed will have capacity for 550 tons of litter. The stacking shed will have enough storage for a full years' worth of crustings and provide emergency storage from cleanouts in case a broker is not able to come the same day. The stacking shed will have concrete put down to make cleaning the stacking shed easier and to prevent damaging the ground and causing erosion.

Web soil survey lists the soil type as mostly Enon sandy loam (EnC) with 6-10% slopes and a seasonal high-water table of >80". During an onsite investigation, soil borings were taken in several locations. AWT was able to get 10 borings to >24" without encountering a shallow seasonal high-water table. Picture below show the measurement and the soil at the construction site. These boring were taken in the build site parameters.

# **EXHIBIT 9**

7. Monitor temperatures at different points in the pile frequently. If temperatures exceed 190°F, or if the material is smoldering, prepare to remove material from the building. This includes notifying the local fire department to be on hand. A smoldering pile could burst into flames if exposed to air. A garden hose could be inadequate to extinguish the fire.
8. Do not store equipment in the litter storage structure.
9. At least twice per year, when the facility is empty, inspect wooden parts, hardware, or other replaceable parts that are damaged or show excessive wear or decay.
10. All disturbed areas around the facilities should be vegetated or covered with gravel to prevent erosion.
11. Warning signs, fences, guardrails, and other safety features will be installed and maintained to prevent unauthorized entry to any structure.

### **Animal Mortality Facility (316)**

An on-farm facility for the treatment or disposal of livestock and poultry carcasses.

This practice may be applied as part of a conservation management system to support one or more of the following purposes:

- Decrease non-point source pollution of surface and groundwater resources
- Reduce the impact of odors that result from improperly handled animal mortality
- Decrease the likelihood of the spread of disease or other pathogens that result from the interaction of animal mortality and predators
- To provide contingencies for normal and catastrophic mortality events

### **Roofs and Covers (367)**

A rigid, semirigid, or flexible manufactured membrane, composite material, or roof structure placed over a waste management facility, agrichemical handling facility, or an on-farm secondary containment facility.

- For enclosed waste facilities, exercise caution and care during cover removal or access. If opening of the cover is required for facility management, include provisions to prevent exposure of workers to hazardous gases.
- If personnel are or may be required to enter an enclosed waste facility, include safety provisions recommended by the National Institute for Occupational Safety and Health (NIOSH) for working in confined spaces including, but not limited to, using a positive-pressure self-contained breathing apparatus, safety line, and standby personnel.

### **Emergency Animal Mortality Management (368)**

A means or method for the management of animal carcasses from catastrophic mortality events.

- This practice is used to accomplish one or more of the following purposes:
- Reduce impacts to surface water and ground water including downstream drinking water sources
- Reduce the impact of odors.
- Decrease the spread of pathogens

Plan, design, and construct this practice to comply with all Federal, State, Tribal, and local regulations. The landowner must obtain all necessary permissions from regulatory agencies or document that no permits are required. The landowner and contractor are responsible for locating all buried utilities in the project area, including drainage tile and other structural measures.

Address biosecurity concerns in all aspects of planning, installation, operation, and maintenance of a catastrophic animal mortality operation. Provide warning signs, fences, refrigeration unit locks, and other devices, as appropriate, to ensure the safety of humans and livestock. Include provisions in the design for closing or removing temporary components of the emergency mortality management operation, where required.

# **EXHIBIT 10**

**Table 1-1. Key pollutants from livestock operations and animal manure.**

| Pollutant                                     | Description of Pollutant                                                                                                                                                   | Pathways to the Environment                                                                                                                               | Potential Impacts                                                                                                                                                                             |
|-----------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Nitrogen                                      | Organic forms (e.g., urea) and inorganic forms (e.g., ammonium and nitrate) in manure may be assimilated by plants and algae.                                              | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> <li>• Atmospheric deposition as ammonia</li> </ul> | <ul style="list-style-type: none"> <li>• Eutrophication and harmful algal blooms (HABs)</li> <li>• Ammonia toxicity to aquatic life</li> <li>• Nitrate linked to methemoglobinemia</li> </ul> |
| Phosphorus                                    | As manure ages, phosphorus mineralizes to inorganic phosphate compounds that may be assimilated by plants.                                                                 | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water (water soluble forms)</li> </ul>                        | <ul style="list-style-type: none"> <li>• Eutrophication and HABs</li> </ul>                                                                                                                   |
| Potassium                                     | Most potassium in manure is in an inorganic form available for plant assimilation; it can also be stored in soil for future plant uptake.                                  | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> </ul>                                              | <ul style="list-style-type: none"> <li>• Increased salinity in surface water and ground water</li> </ul>                                                                                      |
| Organic Compounds                             | Carbon-based compounds decomposed by micro-organisms. Creates biochemical oxygen demand because decomposition consumes dissolved oxygen in the water.                      | <ul style="list-style-type: none"> <li>• Overland discharge</li> </ul>                                                                                    | <ul style="list-style-type: none"> <li>• Eutrophication and HABs</li> <li>• Dissolved oxygen depletion, and potentially anoxia</li> <li>• Decreased aquatic biodiversity</li> </ul>           |
| Solids                                        | Includes manure, feed, bedding, hair, feathers, and dead livestock.                                                                                                        | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Atmospheric deposition</li> </ul>                                                  | <ul style="list-style-type: none"> <li>• Turbidity</li> <li>• Siltation</li> </ul>                                                                                                            |
| Salts                                         | Includes cations (sodium, potassium, calcium, magnesium) and anions (chloride, sulfate, bicarbonate, carbonate, nitrate).                                                  | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> </ul>                                              | <ul style="list-style-type: none"> <li>• Reduction in aquatic life</li> <li>• Increased soil salinity</li> <li>• Increased drinking water treatment costs</li> </ul>                          |
| Trace Elements                                | Includes feed additives (arsenic, copper, selenium, zinc, cadmium), trace metals (molybdenum, nickel, lead, iron, manganese, aluminum), and pesticide ingredients (boron). | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> </ul>                                              | <ul style="list-style-type: none"> <li>• Aquatic toxicity at elevated concentrations</li> </ul>                                                                                               |
| Volatile Compounds Including Greenhouse Gases | Includes carbon dioxide, methane, nitrous oxide, hydrogen sulfide, and ammonia gases generated during manure decomposition.                                                | <ul style="list-style-type: none"> <li>• Inhalation</li> <li>• Atmospheric deposition of ammonia</li> </ul>                                               | <ul style="list-style-type: none"> <li>• Eutrophication</li> <li>• Human health effects</li> <li>• Climate change</li> </ul>                                                                  |
| Pathogens                                     | Includes a range of disease-causing organisms, including bacteria, viruses, protozoa, fungi, prions and helminths.                                                         | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Potential growth in receiving waters</li> </ul>                                    | <ul style="list-style-type: none"> <li>• Animal, human health effects</li> </ul>                                                                                                              |
| Antimicrobials                                | Includes antibiotics and vaccines used for therapeutic and growth promotion purposes.                                                                                      | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> <li>• Atmospheric deposition</li> </ul>            | <ul style="list-style-type: none"> <li>• Facilitates the growth of antimicrobial-resistance</li> <li>• Unknown human health and aquatic life effects</li> </ul>                               |
| Hormones                                      | Includes natural and synthetic hormones used to promote animal growth and control reproductive cycles.                                                                     | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> </ul>                                              | <ul style="list-style-type: none"> <li>• Endocrine disruption in fish</li> <li>• Unknown human health effects</li> </ul>                                                                      |
| Other Pollutants                              | Includes pesticides, soaps, and disinfectants.                                                                                                                             | <ul style="list-style-type: none"> <li>• Overland discharge</li> <li>• Leachate into ground water</li> </ul>                                              | <ul style="list-style-type: none"> <li>• Unknown human health and ecological effects</li> <li>• Potential endocrine disruption in aquatic organisms</li> </ul>                                |

*Adapted from USEPA (2002a) Exhibit 2-2.*



**SOUTH CAROLINA  
ENVIRONMENTAL  
LAW PROJECT**

*Lawyers for the Wild Side*

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /  
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September 4, 2024

**VIA HAND-DELIVERY AND ELECTRONIC MAIL**

The Honorable Ralph King Anderson, III  
Chief Administrative Law Judge  
South Carolina Administrative Law Court  
Edgar A. Brown Building  
1205 Pendleton Street, Suite 224  
Columbia, SC 29201

**RE: *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 Judge Anderson:

Please find enclosed for filing Petitioner South Carolinians for Responsible Agricultural Practices' Pre-Hearing Statement in the above-referenced matter. I am serving a copy of this letter and the enclosed to counsel for the Respondents as well.

Thank you for your assistance in this matter. If you have any questions or concerns regarding this submission, please do not hesitate to contact me at (843) 527-0078 or via email at [emily@scelp.org](mailto:emily@scelp.org).

Respectfully,

Emily S. Poole, Esq.

Enclosures

cc: Stephen P. Hightower, Esq.  
Sara V. Martinez, Esq.  
Michael S. Traynham, Esq.

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

|                                                                                                             |   |                                 |
|-------------------------------------------------------------------------------------------------------------|---|---------------------------------|
| South Carolinians for Responsible<br>Agricultural Practices,                                                | ) | Docket No. 24-ALJ-07-0267-CC    |
|                                                                                                             | ) |                                 |
|                                                                                                             | ) |                                 |
| Petitioner,                                                                                                 | ) | <b>PETITIONER</b>               |
|                                                                                                             | ) | <b>SOUTH CAROLINIANS FOR</b>    |
| v.                                                                                                          | ) | <b>RESPONSIBLE AGRICULTURAL</b> |
|                                                                                                             | ) | <b>PRACTICES' PREHEARING</b>    |
|                                                                                                             | ) | <b>STATEMENT</b>                |
| South Carolina Department of Environmental<br>Services and Heath Coggins (d/b/a Heath<br>Coggins Broilers), | ) |                                 |
|                                                                                                             | ) |                                 |
|                                                                                                             | ) |                                 |
| Respondents.                                                                                                | ) |                                 |
|                                                                                                             | ) |                                 |

---

The Petitioner, South Carolinians for Responsible Agricultural Practices (“SCRAP”), hereby submits its Prehearing Statement in compliance with the August 15, 2024 Order of this Court, hereby incorporates by reference its Request for Contested Case Hearing, filed July 19, 2024, and states as follows:

**1. The nature of this proceeding:**

This proceeding is a contested case appeal of Respondent South Carolina Department of Environmental Services’ (“DES”), formerly known as the South Carolina Department of Health and Environmental Control, issuance of a permit for the construction and operation of an agricultural animal facility and manure and animal by-products treatment and storage system (“the permit”), Permit Number AG-20599 and Facility Permit Number ND0090174, to Respondent Heath Coggins, doing business as Heath Coggins Broilers (“Coggins”). Coggins proposes to build a large concentrated animal feeding operation (“CAFO” or “the operation”) containing eight poultry barns 55’ by 600’ in size that will hold 264,000 broilers with a normal production live weight of 1,306,800 pounds and will result in an annual litter production of 1,610 tons. This facility

would be located in Mountville, SC along the Little River, its wetlands, and its tributaries on TMS # 511-00-00-009. The proposed operation will have a significant, adverse impact upon water quality, air quality, public health, and Petitioner's members' peaceful use and enjoyment of their property.

**2. Statutory provision(s) conferring subject matter jurisdiction to the Court and other applicable statutes and regulations:**

The statutory provisions conferring subject matter jurisdiction and other applicable statutes and regulations are as follows: (1) the South Carolina Administrative Procedures Act, S.C. Code Ann. §§ 1-23-310, *et seq.*; (2) South Carolina Regulation 61-9, Water Pollution Control Permits; (3) South Carolina Regulation 61-43, Standards for the Permitting of Agricultural Animal Facilities; (4) South Carolina Regulation 61-68, Water Classifications and Standards; (5) South Carolina Regulation 61-110, Total Maximum Daily Loads for Pollutants in Water; (6) the South Carolina Pollution Control Act, S.C. Code Ann. §§ 48-1-10, *et seq.*; (7) S.C. Code Ann. § 46-45-80; (8) S.C. Code Ann. § 48-6-30; (9) S.C. Code Ann. § 48-6-40; (10) S.C. Code Ann. § 44-1-140; and (11) the Clean Water Act, 33 U.S.C. §§ 1251, *et seq.*

**3. The issues presented for determination set forth with particularity, including any claims or defenses expected to be raised:**

The issues to be raised in this case include the following:

A. Whether DES staff's decision to issue the permit for the construction and operation of an agricultural animal facility and manure and animal by-products treatment and storage system, Permit Number AG-20599 and Facility Permit Number ND0090174, to Respondent Heath Coggins, doing business as Heath Coggins Broilers, to construct and operate a large concentrated animal feeding operation (CAFO) in Laurens County, SC violates the applicable statutes, regulations, rules, and policies contained in South Carolina Regulation 61-9, Water Pollution

Control Permits; South Carolina Regulation 61-43, Standards for the Permitting of Agricultural Animal Facilities; South Carolina Regulation 61-68, Water Classifications and Standards; the South Carolina Administrative Procedures Act, S.C. Code Ann. §§ 1-23-310, *et seq.*; the South Carolina Pollution Control Act, S.C. Code Ann. §§ 48-1-10, *et seq.*; S.C. Code Ann. § 48-6-30; S.C. Code Ann. § 48-6-40; and the Clean Water Act, 33 U.S.C. §§ 1251, *et seq.*

Specifically, the issues to be determined include the following:

- i. Whether DES erred in permitting this operation by failing to properly consider its own guidelines in violation of Regulations 61-9 and 61-68, and thus also violated Regulation 61-43, which requires compliance with these additional regulations;
- ii. Whether DES erred in permitting this operation by failing to act on this permit application “to prevent, as far as reasonably possibly considering relevant standards under state and federal laws, an increase in pollution of the waters and air of the State,” in violation of S.C. Code Ann. Regs. 61-43.200.70(E) and the South Carolina Pollution Control Act;
- iii. Whether DES erred in permitting this operation by failing to properly consider, determine, evaluate, and apply the findings and policies contained in S.C. Code Ann. § 48-1-20, S.C. Code Ann. Regs. 61-68, and S.C. Code Ann. Regs. 61-43.200;
- iv. Whether DES erred in permitting this operation without properly evaluating the proposed operation for compliance with the declared mandates of the South Carolina Court of Appeals in *Blackmon v. S.C. Dept. of Health & Env'tl. Control*, 441 S.C. 342, 893 S.E.2d 578 (2022), regarding NPDES permit requirements;
- v. Whether DES erred in permitting this operation without properly evaluating the proposed operation for compliance with the declared mandates of the South Carolina Court of Appeals in *Blackmon v. S.C. Dept. of Health & Env'tl. Control*, 441 S.C. 342, 893 S.E.2d 578 (2022), regarding the need for a case-specific evaluation for more stringent requirements or setbacks, especially in the context of a downstream impaired waterbody;
- vi. Whether DES erred in permitting this operation by failing to properly apply South Carolina law as described in Petitioner’s Request for Contested Case and attached exhibits;
- vii. Whether DES erred by failing to take into consideration all material comments received in response to the public notice in determining whether to issue, deny, or condition such permit, license, certification or other approval in violation of S.C. Code Ann. § 48-6-30(C);

- viii. Whether DES erred in permitting this operation without proper consideration or application of S.C. Code Ann. Regs. 61-43.200.140(A), which prohibits any “discharge of pollutants from the operation into surface Waters of the State (including ephemeral and intermittent streams),” as well as any “discharge of pollutants into groundwater, which could cause groundwater quality not to comply with the groundwater standards established in R.61-68”;
- ix. Whether DES erred in permitting this operation without proper consideration or application of S.C. Code Ann. Regs. 61-43.200.140(E), which prohibits any release of manure from the premises of an animal feeding operation to Waters of the State, including ephemeral and intermittent streams;
- x. Whether DES erred in permitting this operation by improperly approving the Comprehensive Nutrient Management Plan as submitted, which failed to address water quality concerns and soil quality concerns with the proposed site and operation, violating S.C. Code Ann. Regs. 61-43.200.50 and S.C. Code Ann., Regs. 61-43.200.140;
- xi. Whether DES erred in permitting this operation without properly evaluating and applying S.C. Code Ann. Regs. 61-43.200.70(F)(1) and imposing special conditions to the permit given the latitude and longitude of the operation, which is extremely close to surface water and wetlands, nearly located within the 100-year floodplain, consists of unstable soil and topography, and is surrounded by 57 other industrial poultry barns located nearby;
- xii. Whether DES erred in permitting this operation without properly evaluating and applying S.C. Code Ann. Regs. 61-43.200.70(F)(2) and imposing special conditions to the permit in consideration of down-wind receptors;
- xiii. Whether DES erred in permitting this operation without properly evaluating and applying S.C. Code Ann. Regs. 61-43.200.70(F)(3) and imposing special conditions to the permit considering the Nutrient Management Plan and the design of the operation outlined therein;
- xiv. Whether DES erred in issuing a permit for this operation without including a permit term regarding the evergreen buffer requirement, including the maintenance of existing evergreen buffers and the planting of new evergreen buffers; S.C. Code Ann. § 46-45-80;
- xv. Whether DES erred in permitting this operation by failing to properly evaluate the operation’s location upstream of an impaired waterbody—the Little River—with a TMDL in place for fecal coliform and impose additional and more stringent requirements accordingly; S.C. Code Ann. Regs. 61-43.200.140(C)(2) and S.C. Code Ann. Regs. 61-43.400.70(B)(2);

- xvi. Whether DES erred in permitting this operation by failing to properly evaluate the operation and its facilities' impact on groundwater recharge affecting a nearby aquifer and impose additional and more stringent requirements accordingly; S.C. Code Ann. Regs. 61-43.200.140(C)(4) and S.C. Code Ann. Regs. 61-43.400.70(B)(4);
- xvii. Whether DES erred in permitting this operation by improperly concluding that the operation includes adequate measures for dead animal disposal as outlined in S.C. Code Ann. Regs. 61-43.200.130 and S.C. Code Ann. Regs. 61-9.122.42(e);
- xviii. Whether DES erred in permitting this operation by improperly concluding that the operation includes adequate measures for controlling odors as outlined in S.C. Code Ann. Regs. 61-43.200.150;
- xix. Whether DES erred in permitting this operation by improperly concluding that the operation includes adequate measures for controlling vectors as outlined in S.C. Code Ann. Regs. 61-43.200.160;
- xx. Whether DES erred in permitting this operation with incomplete annual reporting requirements that fail to comply with the requirements of S.C. Code Ann. Regs. 61-43.200.180 and S.C. Code Ann. Regs. 61-9.122.42(e);
- xxi. Whether DES erred in permitting this operation without oversight, monitoring, and reporting requirements that ensure the operation complies with NPDES requirements found in S.C. Code Ann. Regs. 61-9.122.21, 61-9.122.23, and 61-9.122.42(e);
- xxii. Whether DES erred in permitting this operation without an NPDES permit in violation of S.C. Code Ann. Regs. 61-9.122.21, 61-9.122.23, and 61-9.122.42(e);
- xxiii. Whether DES erred in finding that issuing a no-discharge permit for this operation meets the Department's obligations under NPDES permitting requirements, S.C. Code Ann. Regs. 61-9.122.21, 61-9.122.23, 61-9.122.42(e), and the S.C. Pollution Control Act, S.C. Code Ann. §§ 48-1-10, *et seq.*;
- xxiv. Whether DES erred in permitting this operation without imposing safeguards, conditions, and other requirements designed to ensure that the CAFO does not lead to an increase in point source and non-point source pollution of Waters of the State, which would violate S.C. Code Ann. Regs. 61-43.200.140(A), (E), S.C. Code Ann. Regs. 61-9.122.21; S.C. Code Ann. Regs. 61-9.122.23; and S.C. Code Ann. Regs. 61-9.122.42(e);
- xxv. Whether DES erred in permitting this operation without properly considering and evaluating whether the applicant's Nutrient Management Plan addresses and complies with the mandatory requirements listed in S.C. Code Ann. Regs. 61-9.122.42(e)(1)(i)–(ix);

- xxvi. Whether DES erred in permitting this operation without properly considering whether appropriate and practical steps including stormwater management will be taken to minimize adverse impacts on water quality and the surrounding ecosystem; S.C. Code Ann. Regs. 61-43.200.140(A), (E) and S.C. Code Ann. Regs. 61-68;
- xxvii. Whether DES erred in permitting this operation without addressing the stormwater discharges that will occur from this operation and issuing NPDES stormwater permits for construction and operation of the facility, in violation of S.C. Code Ann. Regs. 61-9.122.21, S.C. Code Ann. Regs. 61-9.122.23, S.C. Code Ann. Regs. 61-43.200.20(B), S.C. Code Ann. Regs. 61-43.200.140(A), (E), and the S.C. Pollution Control Act, S.C. Code Ann. §§ 48-1-10, *et seq.*;
- xxviii. Whether DES erred in permitting this operation without any information in the Comprehensive Nutrient Management Plan regarding the manure utilization areas that will receive manure from this operation, which is required information under S.C. Code Ann. Regs. 61-43.200.100(A);
- xxix. Whether DES erred in permitting this operation without developing constituent loading rates for the manure utilization areas that will receive manure from this operation, which protect the environment from the impacts of this operation, as required by S.C. Code Ann. Regs. 61-43.200.100(A)(1)–(18);
- xxx. Whether DES erred in finding that this operation may contract disposal of manure at a later date and still meet its obligations under the manure utilization area regulations, S.C. Code Ann. Regs. 61-43.200.100, and the S.C. Pollution Control Act, S.C. Code Ann. §§ 48-1-10, *et seq.*;
- xxxi. Whether DES erred in permitting this operation without proper consideration of the operation’s impact on health and welfare of the citizens of the State from pollutants generated at this site and other industrial poultry facilities nearby; S.C. Code Ann. Regs. 61-43.200.10(A)(1);
- xxxii. Whether DES erred in permitting this operation without properly considering the extent and significance of impact of the operation upon the Little River, its tributaries, and its wetlands, which are classified under S.C. Code Ann. Regs. 61-68(G) as “freshwaters suitable for primary and secondary contact recreation and as a source for drinking water supply after conventional treatment,” as well as “[s]uitable for fishing and the survival and propagation of a balanced indigenous aquatic community of fauna and flora”;
- xxxiii. Whether DES erred in permitting this operation without imposing protections to ensure that the water quality of the Little River, its tributaries, and its wetlands is maintained and protected, as required by S.C. Code Ann. Regs. 61-68(D)(1).

Petitioner reserves its right to identify additional issues as additional information becomes known or available.

**4. The action requested of the Court and a detailed statement of the law which supports the requested action, including statutory and/or case citations:**

The Permit issued to Heath Coggins, doing business as Heath Coggins Broilers, fails to comply with state laws, regulations, and policies. Therefore, Petitioner requests that this Court reverse the DES staff decision to issue the permit for the construction and operation of an agricultural animal facility and manure and animal by-products treatment and storage system at issue in this contested case proceeding. The legal and factual bases supporting this requested action are respectively outlined in items #3 above and #5 below and in Petitioner's Request for Contested Case Hearing and attached exhibits.

**5. A brief summary of the facts to be presented at the hearing:**

Petitioner SCRAP intends to present evidence about the composition of its organization and the injuries this permit decision perpetrates on its members and the environment. South Carolinians for Responsible Agricultural Practices is non-profit organization comprised of concerned residents that advocate for poultry farming practices and permitting to be compatible with the use and enjoyment of non-poultry farming property owners, and in a manner that does not impair air and water quality, emit noxious odors, or otherwise cause the quality of life in the Mountville area to deteriorate.

SCRAP's members—all of whom are affected persons within the definition of S.C. Code Ann. § 48-6-40(E)—breathe the air; drink the water; enjoy viewing plant and wildlife; and recreate, use, and appreciate the natural resources in and around the proposed operation, including the Little River. The affected persons that comprise SCRAP have interests that are protected under the applicable statutes, regulations, rules, and policies contained in South Carolina Regulation 61-9,

Water Pollution Control Permits; South Carolina Regulation 61-43, Standards for the Permitting of Agricultural Animal Facilities; South Carolina Regulation 61-68, Water Classifications and Standards; the South Carolina Administrative Procedures Act, S.C. Code Ann. §§ 1-23-310, *et seq.*; the South Carolina Pollution Control Act, S.C. Code Ann. §§ 48-1-10, *et seq.*

Since 2016, this organization has sought better permitting, oversight, and enforcement from DES as it pertains to the dozens upon dozens of poultry barns in their area. Petitioner will present evidence documenting members' advocacy efforts over time, including their previous litigation over this same parcel and involving this same Respondent, Heath Coggins. Further, Petitioner will present evidence that the end-result in the previous litigation, documented in an opinion from the South Carolina Court of Appeals, has not been respected by the Respondents in this case but must be complied with for this permit to be proper under the law.

Petitioner will present evidence about how the permit application for the construction and operation of an agricultural animal facility and manure and animal by-products treatment and storage system was evaluated by Respondent DES and the shortcomings and errors of that evaluation. Petitioner will also present evidence as to how Respondent DES' decision to issue the permit violated the aforementioned laws and policies as noted in section #3 above.

Petitioner will present evidence that DES' failure to evaluate this operation properly and to apply the relevant policies, statutes, and regulations, will injure Petitioner's members and proximately harm them if this operation is allowed to go forward as permitted and certified because the natural resources they utilize and value will be altered, degraded, and eliminated. Petitioner's members' aesthetic, environmental, and recreational interests will be harmed irrevocably.

Petitioner will present evidence concerning Respondent Coggins' proposal to build eight poultry barns 55' by 600' in size that will hold 264,000 broilers with a normal production live

weight of 1,306,800 pounds and will result in an annual litter production of 1,610 tons. Petitioner will further show that the parcel that Respondent Coggins has selected for this operation is one that the Little River runs directly through (TMS # 511-00-00-009) and how this proposed operation poses a great risk to this waterbody, its tributaries, and wetlands and the surrounding floodplain. Petitioner will present evidence that this threat is only magnified by the Little River's designation as an impaired waterbody with a TMDL for exceedances of the fecal coliform standard.

Petitioner will present evidence that water quality, air quality, and the quality of life in the Mountville community will be detrimentally impacted if this permit stands and the CAFO moves forward. Petitioner will offer evidence depicting the unique, natural features of the proposed site for this operation and how the slope of the land, makeup of the soil, and grading activities anticipated will further degrade the Mountville community and its natural resources, and thus harm Petitioner's members' use and enjoyment of the Mountville community. Petitioner will also present evidence that shows this new CAFO is not the only industrial poultry operation that threatens the Mountville community, its natural resources, and its environment by showing the number and location of nearby CAFOs and their impact on the environment. Petitioner will present evidence that Respondent DES' review of this permit application does not take these features and realities into account and how the permit decision is contrary to applicable law.

The laws and policies at issue here are meant to protect the natural environment from pollution—"(1) the presence in the environment of any substance, including, but not limited to, sewage, industrial waste, other waste, air contaminant, or any combination thereof in such quantity and of such characteristics and duration as may cause, or tend to cause the environment of the State to be contaminated, unclean, noxious, odorous, impure or degraded, or which is, or tends to be injurious to human health or welfare; or which damages property, plant, animal or marine life or

use of property; or (2) the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water.” S.C. Code Ann. § 48-1-10(7). The regulations regarding animal facility operations and their impact upon water quality, air quality, and the health and welfare of citizens are designed to prevent pollution generated by such facilities. Those rules, restrictions, and guidelines, Petitioner’s evidence will show, forbid the issuance of the permit for the construction and operation of an agricultural animal facility and manure and animal by-products treatment and storage system here.

**6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion:**

Petitioner reserves its right to file any motion in accordance with the Rules of Procedure for the Administrative Law Court and the South Carolina Rules of Evidence in the event a motion or motions become necessary. Petitioner may file a motion for summary judgment following the conclusion of discovery.

**7. A list of proposed witnesses and exhibits:**

Witnesses:

- a. Employees of Respondent South Carolina Department of Environmental Services, including but not limited to: Lisa Appel, Kelly Whitlock, and Joe Koon.
- b. Respondent Heath Coggins (doing business as Heath Coggins Broilers).
- c. Members of Petitioner Organization, South Carolinians for Responsible Agricultural Practices, including but not limited to: Charles Blackmon, Mary Basel, Margaret Sparrow, Jean Revis, Ross Stewart, Randy Piontek, Richard Heald, Christina Heald, and other that will be identified.
- d. Any witnesses identified by Respondents.
- e. Any expert witnesses identified by Respondents.
- f. Experts identified by Petitioner.
- g. Additional witnesses identified as preparations for trial continue.

Exhibits:

- a. Certain documents in the DES file for this matter including but not limited to the permit for construction and operation of an agricultural animal facility and manure and animal by-products treatment and storage system.
- b. Certain documents in the DES administrative record upon which the permit decision was made.

- c. Certain documents produced by Petitioner in response to discovery requests.
- d. Certain documents produced by Respondents in response to discovery requests.
- e. Maps, photographs, videos, diagrams, and drawings depicting the subject property and surrounding area.
- f. Studies and reports related to the proposed project.
- g. Other documents generated through discovery, research, and investigation.
- h. Any exhibit listed by any other party.

**8. A statement regarding the necessity for discovery, if any:**

Discovery will be necessary, including standard interrogatories, requests for production of documents, requests for admission, and depositions beyond the limits set forth in SCALC, Rule 21(A) and beyond the time period set forth in Rule 21(A) as well.

**9. The estimated length of the hearing:**

Petitioner anticipates four (4) to five (5) days for the hearing.

**10. Any dates in the next one hundred twenty (120) days when you will not be available for a hearing:**

Petitioner will be unavailable for a hearing during the following time periods: September 13, 2024; October 14-18, 2024; November 25-29, 2024; December 23-31, 2024.

**11. An email address where you can be reached:**

Attorneys for the Petitioner may be reached at [emily@scelp.org](mailto:emily@scelp.org) and [lauren@scelp.org](mailto:lauren@scelp.org).

Respectfully submitted,

**SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT**



Emily S. Poole (S.C. Bar No. 106193)  
Lauren Megill Milton (S.C. Bar No. 100389)  
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*Attorneys for Petitioner South Carolinians for Responsible  
Agricultural Practices*

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

|                                                                                                             |   |                               |
|-------------------------------------------------------------------------------------------------------------|---|-------------------------------|
| South Carolinians for Responsible<br>Agricultural Practices,                                                | ) | Docket No. 24-ALJ-07-0267-CC  |
|                                                                                                             | ) |                               |
|                                                                                                             | ) |                               |
| Petitioner,                                                                                                 | ) |                               |
|                                                                                                             | ) |                               |
| v.                                                                                                          | ) | <b>CERTIFICATE OF SERVICE</b> |
|                                                                                                             | ) |                               |
| South Carolina Department of Environmental<br>Services and Heath Coggins (d/b/a Heath<br>Coggins Broilers), | ) |                               |
|                                                                                                             | ) |                               |
| Respondents.                                                                                                | ) |                               |
|                                                                                                             | ) |                               |

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I hereby certify that on this date I served Petitioner's Prehearing Statement in the above-referenced matter on Respondent South Carolina Department of Environmental Services and Respondent Heath Coggins (d/b/a Heath Coggins Broilers) by depositing same in the U.S. Mail with sufficient postage and addressed as follows:

Stephen Hightower  
Sara V. Martinez  
SCDES Office of General Counsel  
2600 Bull Street  
Columbia, SC 29201

Michael Traynham  
Maynard Nexsen PC  
1230 Main Street, Suite 700  
Columbia, SC 29201

  
\_\_\_\_\_  
Java Wragg

September 4, 2024  
Georgetown, SC



**SOUTH CAROLINA  
ENVIRONMENTAL  
LAW PROJECT**

*Lawyers for the Wild Side*

PO Box 1380, Pawleys Island, SC 29585 / (843) 527-0078 /

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September 4, 2024

**VIA HAND-DELIVERY AND ELECTRONIC MAIL**

The Honorable Ralph King Anderson, III  
Chief Administrative Law Judge  
South Carolina Administrative Law Court  
Edgar A. Brown Building  
1205 Pendleton Street, Suite 224  
Columbia, SC 29201

**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**

Dear Judge Anderson:

Please find enclosed for filing Petitioner South Carolinians for Responsible Agricultural Practices' Pre-Hearing Statement in the above-referenced matter. I am serving a copy of this letter and the enclosed to counsel for the Respondents as well.

Thank you for your assistance in this matter. If you have any questions or concerns regarding this submission, please do not hesitate to contact me at (843) 527-0078 or via email at [emily@scelp.org](mailto:emily@scelp.org).

Respectfully,

Emily S. Poole, Esq.

Enclosures

cc: Stephen P. Hightower, Esq.  
Sara V. Martinez, Esq.  
Michael S. Traynham, Esq.

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

|                                                                                                    |   |                                 |
|----------------------------------------------------------------------------------------------------|---|---------------------------------|
| South Carolinians for Responsible<br>Agricultural Practices,                                       | ) | Docket No. 24-ALJ-07-0266-CC    |
|                                                                                                    | ) |                                 |
|                                                                                                    | ) |                                 |
| Petitioner,                                                                                        | ) | <b>PETITIONER</b>               |
|                                                                                                    | ) | <b>SOUTH CAROLINIANS FOR</b>    |
| v.                                                                                                 | ) | <b>RESPONSIBLE AGRICULTURAL</b> |
|                                                                                                    | ) | <b>PRACTICES' PREHEARING</b>    |
|                                                                                                    | ) | <b>STATEMENT</b>                |
| South Carolina Department of Environmental<br>Services and Jim Young (d/b/a J. Young<br>Broilers), | ) |                                 |
|                                                                                                    | ) |                                 |
|                                                                                                    | ) |                                 |
| Respondents.                                                                                       | ) |                                 |
|                                                                                                    | ) |                                 |

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The Petitioner, South Carolinians for Responsible Agricultural Practices (“SCRAP”), hereby submits its Prehearing Statement in compliance with the August 15, 2024 Order of this Court, hereby incorporates by reference its Request for Contested Case Hearing, filed July 19, 2024, and states as follows:

**1. The nature of this proceeding:**

This proceeding is a contested case appeal of Respondent South Carolina Department of Environmental Services’ (“DES”), formerly known as the South Carolina Department of Health and Environmental Control, issuance of a permit for the construction and operation of an agricultural animal facility and manure and animal by-products treatment and storage system (“the permit”), Permit Number AG-20600 and Facility Permit Number ND0090175, to Respondent Jim Young, doing business as J. Young Broilers (“Young”). Young proposes to build a large concentrated animal feeding operation (“CAFO” or “the operation”) containing eight poultry barns 55’ by 600’ in size that will hold 264,000 broilers with a normal production live weight of 1,306,800 pounds and will result in an annual litter production of 1,610 tons. This facility would

be located in Mountville, SC along the Little River, its wetlands, and its tributaries on TMS # 511-00-00-009. The proposed operation will have a significant, adverse impact upon water quality, air quality, public health, and Petitioner's members' peaceful use and enjoyment of their property.

**2. Statutory provision(s) conferring subject matter jurisdiction to the Court and other applicable statutes and regulations:**

The statutory provisions conferring subject matter jurisdiction and other applicable statutes and regulations are as follows: (1) the South Carolina Administrative Procedures Act, S.C. Code Ann. §§ 1-23-310, *et seq.*; (2) South Carolina Regulation 61-9, Water Pollution Control Permits; (3) South Carolina Regulation 61-43, Standards for the Permitting of Agricultural Animal Facilities; (4) South Carolina Regulation 61-68, Water Classifications and Standards; (5) South Carolina Regulation 61-110, Total Maximum Daily Loads for Pollutants in Water; (6) the South Carolina Pollution Control Act, S.C. Code Ann. §§ 48-1-10, *et seq.*; (7) S.C. Code Ann. § 46-45-80; (8) S.C. Code Ann. § 48-6-30; (9) S.C. Code Ann. § 48-6-40; (10) S.C. Code Ann. § 44-1-140; and (11) the Clean Water Act, 33 U.S.C. §§ 1251, *et seq.*

**3. The issues presented for determination set forth with particularity, including any claims or defenses expected to be raised:**

The issues to be raised in this case include the following:

A. Whether DES staff's decision to issue the permit for the construction and operation of an agricultural animal facility and manure and animal by-products treatment and storage system, Permit Number AG-20600 and Facility Permit Number ND0090175, to Respondent Jim Young, doing business as J. Young Broilers, to construct and operate a large concentrated animal feeding operation (CAFO) in Laurens County, SC violates the applicable statutes, regulations, rules, and policies contained in South Carolina Regulation 61-9, Water Pollution Control Permits; South Carolina Regulation 61-43, Standards for the Permitting of Agricultural Animal Facilities; South

Carolina Regulation 61-68, Water Classifications and Standards; the South Carolina Administrative Procedures Act, S.C. Code Ann. §§ 1-23-310, *et seq.*; the South Carolina Pollution Control Act, S.C. Code Ann. §§ 48-1-10, *et seq.*; S.C. Code Ann. § 48-6-30; S.C. Code Ann. § 48-6-40; and the Clean Water Act, 33 U.S.C. §§ 1251, *et seq.*

Specifically, the issues to be determined include the following:

- i. Whether DES erred in permitting this operation by failing to properly consider its own guidelines in violation of Regulations 61-9 and 61-68, and thus also violated Regulation 61-43, which requires compliance with these additional regulations;
- ii. Whether DES erred in permitting this operation by failing to act on this permit application “to prevent, as far as reasonably possibly considering relevant standards under state and federal laws, an increase in pollution of the waters and air of the State,” in violation of S.C. Code Ann. Regs. 61-43.200.70(E) and the South Carolina Pollution Control Act;
- iii. Whether DES erred in permitting this operation by failing to properly consider, determine, evaluate, and apply the findings and policies contained in S.C. Code Ann. § 48-1-20, S.C. Code Ann. Regs. 61-68, and S.C. Code Ann. Regs. 61-43.200;
- iv. Whether DES erred in permitting this operation without properly evaluating the proposed operation for compliance with the declared mandates of the South Carolina Court of Appeals in *Blackmon v. S.C. Dept. of Health & Env'tl. Control*, 441 S.C. 342, 893 S.E.2d 578 (2022), regarding NPDES permit requirements;
- v. Whether DES erred in permitting this operation without properly evaluating the proposed operation for compliance with the declared mandates of the South Carolina Court of Appeals in *Blackmon v. S.C. Dept. of Health & Env'tl. Control*, 441 S.C. 342, 893 S.E.2d 578 (2022), regarding the need for a case-specific evaluation for more stringent requirements or setbacks, especially in the context of a downstream impaired waterbody;
- vi. Whether DES erred in permitting this operation by failing to properly apply South Carolina law as described in Petitioner’s Request for Contested Case and attached exhibits;
- vii. Whether DES erred by failing to take into consideration all material comments received in response to the public notice in determining whether to issue, deny, or condition such permit, license, certification or other approval in violation of S.C. Code Ann. § 48-6-30(C);