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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Administrative Law Court
Hon. Ralph King Anderson III

Appeal Case No. 2025-000288

Walter Buchanan, Appellant

v.

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

APPELLANT REPLY TO INITIAL BRIEF OF SILFAB SOLAR, INC.

Appellant here files its reply to Initial Brief of the Respondent Silfab Solar Inc., and would respectfully show the following.

Respectfully submitted,

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REPLY TO SILFAB STATEMENT OF ISSUES ON APPEAL

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II. S.C. Code Ann. §48-6-30(A), (D)(2) would provide the ALC jurisdiction where renewal, licenses, or other actions of the department which give rise to a contested case if the major changes involve substantial rights or issues issues of public health, safety, welfare and environment pursuant to guaranteed constitutional rights to due process.

III. The Administrative Law Court abused its discretion imputing consent by appellant to procedural dismissal where the department(s) had twice received requests for review, denied due process, and the ALC received contested hearing request August 29, 2024.

STANDARD OF REVIEW

Appellants agree with the standard of review identified by Silfab pursuant to S.C. Code Ann. § 1-23-380(5)(a)-(f) generally, taking exception to substantial evidence allegations alleged to support the trial court ruling where Silfab alleges reasonable minds could reach the same conclusion. Noteworthy is this facility is not operational. Turning to the lower court subject matter, [T]he ALC court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decisions if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or (f) arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Appellant respectfully asserts all above elements exist in the review before the court of appeals. "Appellate review of an order by the ALC must be confined to the record." S.*C. Dep't of Revenue v. Club Rio*, 392 S.C. 636, 640, 709 S.E.2d 690, 692 (Ct. App. 2011).

[T]his appellate court can reverse the ALC if the findings are affected by error of law, are not supported by substantial evidence, or are characterized by abuse of discretion or clearly unwarranted exercise of discretion. *Original Blue Ribbon*, 380 S.C. at 604, 670 S.E.2d at 676 (citing *Olson v. S.C. Dep't of Health and Env't Control*, 379 S.C. 57, 63, 663 S.E.2d 497, 501 (Ct. App. 2008). "An abuse of discretion occurs where the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support." *Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990).

STATEMENT OF THE FACTS

The appeal before this court arises from permit irregularities involving due process denial of substantial vested right of appellant and the public to due process where Silfab (post-permit) engaged in construction of design changes to stack height, diameter, chemical storage amounts, and planned exit velocities from its modified stacks. None of this reaches the public consciousness, and all of this is never conveyed at public forum by the department. A public forum that is but half transcribed, omitting recordation of Silfab original chemical storage and design parameters. The appellant's two requests for agency final reviews are denied. A June 30, 2024 letter then issues from the department (SCDES) to the corporation by ePermitting system. The letter approved secondary air models provided by Silfab despite design changes from draft permit or the permit granted March 1, 2024 by the agency. As appellant and other members of the public become aware of design and chemical changes never presented at public forum, appellant on March 13, 2024 (twelve days after permit grant) filed with the SCDHEC board challenging the permit and expressing concerns regarding the permit and answers SCDHEC never provided at public forum October 30, 2025. Petitioner's request was authorized by S.C. Code Ann. 44-1-60(E)(2). On April 17, 2024 the department board notified the petitioners that the agency would not be conducting a

final review conference. At issue is whether this action triggered a final decision where post-permit design changes by Silfab were consented to by the newly created SCDES after SCDHEC is abolished July 1, 2024.

While under DHEC the corporation notified the agency it would need to modify is proposed stack height to ensure compliance with county requirements. Both respondents are silent upon what county requirements or regulations specifically Silfab was changing stacks to comply with, but it is undisputed that stack height, stack diameter, and proposed exit velocity of treated chemicals different than parameters presented at public forum by SCDHEC were impending. Silfab is provided with what respondent cites as a "standard document prepared by department staff summarizing a facility's modeling analysis and results". (Silfab resp. Br. at 12).

ARGUMENT

I. This appeal arises from June 30, 2024 quasi judicial agency decision to allow perpetuation of a pre-existing permit altered by Silfab design changes in stack construction and new air modeling that occur under materially different parameters from the March 1, 2024 permit where appellant and public were kept in the blind and denied meaningful due process.

Noteworthy is that but one (1) public forum occurred advising the public. Respondents concede the public forum of October 23, 2023 existed of both (a) public hearing segment and (b) a public meeting segment. Changes occurring after the March 1, 2024 permit grant are never conveyed to the public consciousness. Appellant and others requested a review of the department in April, 2024 which is denied. Silfab then constructs design changes as to stack height, diameter, and proposed exit velocity, all constructed prior to the June 30, 2024 letter at issue before this court as action (or ministerial routine letter) allowing perpetuation of design changes and permitting the now-changed permit to continue.

a. The July 30, 2024 letter was not merely ministerial or routine where the department continued an existing permit despite major changes to stack height and diameter for a chemical manufacturing process and VOC emissions which inherently involve air and water discharge, or both, factors shielded from the public consciousness by agency violations of notice and due process.

Respondent Silfab concedes that the July 30, 2024 SCDES (*acknowledged not received until July 3, 2024 by the agency*); e.g., the letter merely memorialized Silfab's updated air modeling occurring after March 1, 2024 grant of air quality permit no. CP-50000090v.1.0. The issue is this permit is evolving by construction design change(s) after (a) public forum and (b) the corporation has secured grant of the permit through the department. The very department (DHEC) who conducted a botched public forum and was unable to provide answers to citizens later notified appellant and others April 17, 2024 under RFR 1 that the department would conduct no final review, and with this refusal of review the permit allegedly became a final agency decision. (Silfab Br.at 15) The newly-created SCDES denies appellant's second review request after design and construction changes occurred. It bears notation that either department decision (April, 2024 or July 2024) would be final decision of information presented prior to Silfab design changes later sent to SCDES, as SCDHEC is abolished under restructuring.

Enter the date June 3, 2024. Silfab confirms design changes in construction have or are occurring. Moreover, enter date July 30, 2024 which appellate asserts was perpetuation, renewal, modification – or at minimum acquiescence - which continued the pre-existing permit altered by stack height change, diameter change, and exit velocity changes the public is never notified of. This would bind appellant and the public generally and with finality, where no notice, awareness, or right to meaningful review.

Silfab informed the agency after permit but before the June 30 letter it needed to modify (sic) its proposed stack height different from stack height approved under the March 1, 2024 permit.

Yet, the citizenry remained hoodwinked to any such design changes, including exit velocity exhaust change from changed stack designs. There is absence of timely notice from the agency to the people, yet not to the corporation. It was as simple as sending an email. Yet, the ePermitting is provided direct and solely to the corporation, evidencing unfairness if not unequal treatment under the law as to the citizens, placing them at disadvantage.

The reason for changes was purportedly to comply with "county requirements". (Silfab br. at 11). Appellant therefore respectfully disagrees that the letter of June 30, 2023 was not an action or decision subject to review, but rather a decision of renewal or decision to permit perpetuation by consent of the department-granted permit falling within the purview of the department and moreover the ALCs jurisdiction. The letter is an action extending pre-existing permit under stack design alterations and different chemical concentrations storage and exhaust; whether stored on site in newly constructed buildings, or whether exiting into the environment by air exhaust towers and/or forthcoming water discharges under purview of the Clean Water Act and NPDES regulation.

The construction updates are performed by Silfab. Two changes to stack height are proposed after permit, not just one. Noteworthy is the letter included stack height change, diameter change, exit *velocity* "parameters" which would likewise be a change in forced exit of treated air exhaust near neighboring homes and schools. The changes, stack height or exit velocities, never timely reach the public consciousness unbeknownst to appellant or the public, making the October 23, 2023 public forum information obsolete or inaccurate as presented by the department SCDHEC. There is no further notice nor meaningful right to be heard despite requests.

Thereafter, SCDES takes over July 1, 2024 after government restructuring. S.C. Code Ann. §1-30-40, enacted by 2023 Act No. 60. Neither agency intends to timely advise the public truthfully or accurately, and colluded with the Canadian corporation. As cited by Silfab and the trial judge's

order, all functions, powers and duties of DHEC's environmental divisions, offices, and programs were transferred to, incorporated in, and shall henceforth be administered as part of SCDES. This should not except the investigative or police power of the department. This should not except complying with due process, where a SCDES letter enabled continuing viability of a permit issued months before on March 1, 2024 on much different parameters. The construction of a heavy industrial chemical manufacturing use permit that underwent major and material post permit changes and is evolving.

Assuming arguendo that the newly created SCDES verified the Silfab updated air modeling parameters, noteworthy is the updated parameters are not provided by Silfab to the department until June 3, 2025. The reason the challenged letter of July 30, 2024 gives rise to a contested case is that it is agency action under new agency procedures, failing to observe or take into account vested due process rights to notice, and meaningful opportunity to be heard. Moreover, equal protection of the laws is implicated where the ePermit email of the letter to Silfab only and is not provided to appellant or citizens same date, creating a information and time gap in which to respond, where the corporation and department deliberately evade citizen involvement that could verify or challenge, given elimination of citizen review boards by July 1, 2024 restructuring.

Procedural due process insist upon fair play. *Hipp v. S.C. Dep't of Motor Vehicles*, 381 S.C. 323, 325, 673 S.E.2d 416, 417 (2009). "Due process is violated when a party is denied fundamental fairness." The public is forced to trust but cannot verify where parameters are changed and the department refuses to provide further notice or opportunity for meaningful right to be heard where the agency engaged in action (not merely a ministerial routine act) allowing perpetuation of the existing permit with major design changes. This would fully and finally bind the public by agency decision, different from that of the March 1, 2024 grant of permit or April 17 DHEC denial of

hearing. It would bind on June 30, 2024 and affect substantial vested constitution rights then and there. Even if government restructuring occurred July 1, 2024 pursuant to S.C. Code Ann. 1-30-140 enacted under 2023 Act No. 60, SCDES assumes a process begun under SCDHEC. As to due process principals concerning notice and a meaningful hearing, our supreme court has held that the contours of Articles I, §22 trace those of our general state due process clause Article I, §3 and federal due process. See, *S.C. Ambulatory Surgery Ctr. Ass'n v. S.C. Workers Comp. Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008).

If either department SCDHEC or SCDES abandoned procedures involving notice and opportunity for hearing under guise of changing regulations, then the agencies colluded with Silfab by summarily abandoning the hearing procedures without informing appellant or others of what procedure or alternate procedure the department would utilize from public forum conclusion through June 30, 2024 letter. Appellant's and other affected persons' due process rights guaranteed by Article I Section 22 were violated. See, *Stono River Envt'l Prot. Ass'n v. S.C. Dep't of Health & Envtl. Control,* 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991) (holding an agency violated procedural due process guaranteed by Article I §22 when it "summarily abandoned the [hearing] procedure," and "did not inform parties of issues to be considered.." as review is denied April 17, 2024. The evolving construction and the changing regulatory framework deprived appellant procedural due process, after two (2) requests for hearings before the department(s).

S.C. Constitution Article I section 22 provides, in part, that "[n]o person shall be finally bound by a quasi judicial decision of an administrative agency affecting private rights (health, safety, welfare, and due process) except on due notice and opportunity to be heard". This section is "an additional guarantee of important due process rights." *Garris v. Governing Bd. of S.C. Reinsurance Facility,* 333 S.C. 432, 444, 511 S.E.2d 48, 54 (1998). Silfab is incorrect that the department's

"routine modeling letter" did not issue or modify where stack height and diameter design changes have occurred and exit velocities changed beyond data presented at public forum, with the public being hoodwinked and not made aware. The construction design changes are by Silfab admittedly, not SCDES. Provided, air modeling compliance updating post construction design changes to stacks reviewed by the department are provided strictly by the facility, and not submitted to the department until June 3. Not even the standard summary sheet is provided to the public by the agency, just the corporation. This agency decision alone violates equal protection of the law disadvantaging the public. Departmental changes in procedures or rules of any type once formerly regulated by DHEC at no time eliminated a duty to investigate or regulate, not merely delegate. While it is important South Carolina be business-friendly, the agency's purpose first and foremost is protecting public health and the environment in which people live. It is important this court note this is a substantial right of the people, and Silfab's arguments otherwise necessitate this court looking to legislative intent as well as if the agency change or abandonment of procedures begun under SCDHEC violated due process. The court of appeals may decide these questions of law with no deference to the trial judge findings if they are pure question of law. *Jeter v. S.C. Dep't of Transp.*, 369 S.C. 433, 633 S.E.2d 143, 146 (2006) (holding interpretation of statute is a question of law.) See also, *Charleston Cty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995) (holding determining legislative intent is a matter of law). Nothing about 2023 Act No. 60 and S.C. Code Ann. §1-30-140 restructuring changed Sections 3, 22 or 23 of the S.C. Const. Art. I.

Even with government restructuring, if liberty in the form of being free from oppressive restrictions imposed by agency decision on one's way of life to live free of toxin exhaust (or even the right to know of exhaust of volatile organic compounds and exit velocity) is imperiled, certain

elements of due process *must* be present including (a) adequate notice; (b) adequate opportunity for a hearing; (c) the right to introduce evidence, which appellants were clearly denied here; and (4) the right to confront and cross-examine witnesses. *In re Vora*, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003). As our supreme court has held, '[t]he fundamental requirements of due process include notice, and opportunity to be heard in a meaningful way, and judicial review" *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) Even if the court were to find but one (1) change in stack height and diameter, at the point Silfab changed stack *diameter coupled with* adjusted air dispersion modeling the public should have had notice and right to hearing. The agency in charge upon receiving Silfab changed should have provided notice and comment before the agency's new regulations become law imposed on the people. Notice and comment should precede agency rule-making in order to remove any temptation of the administrative branch to surreptitiously amass unknown data or amass under-the-radar regulations. At minimum, it should have been subject to agency verification not through summary sheets, rather physical inspection. This is particularly the case if these factors differed from public forum data, which of course is omitted from transcription. The data would be subject to a review, if not contested hearing where stack exhaust velocities change. The changed diameter design provides the corporation its solution to pollution; the solution to pollution is *dilution*. Silfab's position that design changes did not affect private substantial rights or contested hearing is dubious and pales under the scrutiny when reviewed in contrast with the framework of due process guarantees of the South Carolina Constitution Article I, §3 and §22, both made mandatory by §23.

Of course, one must have *adequate* timely notice in the first place, which is missing here - as the department disseminates no further information after October 30, 2023 public forum and refuses any review requests. The public forum was not fully or accurately transcribed. The public

is being forced to trust, but denied any ability to verify where the department could not fully answer citizen questions at the feigned and botched public forum where it never bothers to return with answers to citizenry questions. Instead, it grants a permit. This should not stand under facts presented by this case. The petitioner and citizenry are denied due process as to changing chemical processes and plant physical design characteristics which will impact Silfab exhaust and exit velocities by agency decision of perpetuation of the original permit, with changed parameters shielded from the public eye. And, this occurs after department feigned public forum riddled with irregularities, not the least of which is failure to transcribe Silfab data and information the public can timely process or fundamentally respond to. As the U.S. Supreme Court stated in *Santosky v. Kramer*, 455 U.S. 745, 757 (1982) "It is hard to imagine how the opportunity to be heard can be meaningful if one does not know what to say." The department's lack of order or regulation of Silfab results in information conveyed by power point presentation yet not preserved by transcript as to the original parameters in the draft permit presented at public forum.

a. Notice and Right to be Heard in meaningful way are present vested substantial constitutional rights denied appellants by Respondents' collusion.

Respondent Silfab acknowledge that but one (1) party received mailing of the 7/30/2024 letter at issue – Silfab and *Silfab only*. The letter was published to department website, admittedly. Provided, however, nobody would have affirmative notice of the posting and no mailing hence dealing with petitioners would be a burdensome affair given the change in law and procedure July 1, 2024. After all, DHEC had notice of "community members" who had filed RFR 1 (Silfab br. at 6at 20). It is here that both respondents so desperately rely to the claims of no abuse of discretion by the trial court, whether under Rule 19(A) or Rule 23(B) of the ALC rules or date(s) of petition filing, signed or not unsigned by wet signature. The risk of substantial private vested interest and

constitutional due process in the full permitting process present intolerable risk of deprivation of private and substantial right, not the least of which is liberty and the right to be aware of chemical storage or exhaust discharges next to homes and schools. All this is thwarted by new post July 1, 2024 agency procedures and restructuring but the court should note that all pre-July 3, 2024 activity was begun under predecessor SCDHEC. The newly created SCDES responds to appellant counsel by August 16, 2024 letter advising the S.C. Department of Health and Environmental Control ("DHEC") had been "abolished" (sic) and the review process previously available before the department was no longer applicable. SCDES cited to petitioner the procedural rules change after government restructuring July 1, 2024. (SCDES Res Br. at 2). One of the changes is

II. S.C. Code Ann. §48-6-30(A), (D)(2) would provide the ALC jurisdiction where renewal, licenses, or other actions of the department which give rise to a contested case if the major changes involve substantial rights or issues issues of public health, safety, welfare and environment pursuant to guaranteed constitutional rights to due process.

These changes in department procedure via restructuring, however, do not equate to elimination of equal protection, actual notice, the right to be heard in meaningful manner, or have a contested hearing where paramount issues of health safety and liberty exist and may be imperiled. Appellant asserts these take priority over procedural rules or scrivener errors. This is why the court of appeals should look beyond ALC Rule 19(a), Rule 23(b) and Rule 220(c) SCACR. The record shows circumvention by Silfab after permit approval is granted after providing via either department (DHEC or DES) sufficiently detailed information that never reached the public consciousness. It was not until notice (with no advanced mailing to the community members copying them on the letter issued to Silfab) that they would even been prompted to notice the website-posted letter. The deadline is already upon petitioner days before the due date for filing, due to the newly changed fifteen (15) days in which a person much challenge, which appellant

filing admittedly was hastily submitted and not signed by wet signature. Appellant asserts the court should view this harmless error where some courts permit digital signing, yet others do not. This would particularly be the case where the legislature has enacted changes, but the agency has failed to promulgate regulation in scenarios like this – evolution of design construction under pre-existing permit grant. This comes down to whether there exists substantial prejudice arising at or after the department's public forum.

Appellant respectfully asserts the June 30, 2024 letter did give right to a contested case on air modeling which is why respondents, both, desperately sought to avoid public awareness given the construction that has now manifested itself as heavy industrial use at 7149 Logistics Lane in Fort Mill. It is clear appellant had no ability nor opportunity to refute Silfab presentations at public forum or at the April, 2024 request for final review. This denied a meaningful right to be heard where unequal "notice" by the agency to both parties. This diluted fairness and impartiality appellant or others may have had. From public forum (October 23, 2023) forward, appellant's rights to notice and meaningful opportunity to be heard are outright diminished throughout the permitting process. There is no timely notice, and any rules – even rules changing as to exit velocities in exhaust – must be made after "notice and comment" which would be critically absent here.

Appellant asserts the ALC had jurisdiction over cases generated by department decisions involving renewal, modification, or continuation of a March 1, 2024 permit with major design modifications. The Silfab construction had major changes, and so the letter at issue would modify if not consent and acquiesce to major design changes as well as other actions which give rise to a contested case, inclusive of licensing regarding chemical storage. S.C. Code Ann. §48-6-30(A). Silfab yet has no occupancy permit nor operations permit with York County. But,

its construction changes adds buildings nearby and chemical volumes to be retained on its site next to homes and schools. It bears reiterating that the department could not answer the citizens at public forum regarding chemical concentrations, and it never did after public forum.

Buchanan is a neighboring home owner adjacent to the plant, like many others. Appellant respectfully asserts violation of present existing substantive and procedural due process rights, including the right to know accurate information as to release of volatile organic compound (VOC) and toxic air pollutant (TAP) exhausts from stack heights that changed, to diameter changes, to sludge discharge from water treatment facilities now constructed by Silfab on its site. The water treatment assets did not exist prior to Silfab permit and after permit construction and evidences heavy industrial use. Appellant therefore asserts the ALC was incorrect and abused its discretion in determining at law this could not be a contested case. Here there is both construction evolution after original permit grant, and also permit continuation from March 1, 2024 granting of permit, where *only the facility* is required to conduct verification for continued air compliance. As stated in appellant initial brief, the newly-created department is delegating, not regulating, and certainly not exercising inherent investigative or its police power. This is due to collusion. Appellant now addresses the NPDES cited by fn. 4 at page 6 (Silfab's Br. at 4).

III. Remaining arguments regarding water discharge and the NPDES are preserved for appeal and are relevant and applicable where Silfab design changes and construction of water treatment infrastructure.

Noteworthy is the water treatment infrastructure did not exist at the site. The site formerly was a distribution warehouse, only. Addition of on site water treatment infrastructure evidences an evolving heavy industrial use. The district remains zoned light industrial situated near neighborhoods and schools. This appeal inherently involves air permitting. Provided, it

is not logical to try and eliminate importance of the NPDES given the plant will use over a million gallons of water - *daily* - in its proposed chemical manufacturing process.

Even the trial judge's order references the National Pollution Discharge Elimination System ("NPDES"), (Order at ___ fn __) evidencing the issue is raised and preserved below and now falls under SCDES authority. Silfab will deal with treatment of chemicals in every form at its site – liquid, gas, and solid.

The liquid includes water discharge that has been treated by chemical process and discharged either via stacks or water and sludge through Rock Hill's sewer infrastructure to the Catawba River waterways. The byproduct VOCs and TAPs disperse into the environment by the above described methods. They do not not remain on site. Thus, the footnote at page 6 of SCDES brief alleged such matters mistaken or inapplicable and thus are not entirely correct or accurate and should be noted by this court, as it fell within the purview of the trial judge's order and authority of SCDES as DHEC is abolished by statute. Why should the ALC mention this if no subject matter jurisdiction existed in the first instance, followed by imputed consent to dismissal levied against appellant incorrectly under abuse of discretion. The trial court was weighing the evidence relative to the permit and yet unproven discharge methods, the letter at issue fails to denote the facility has no operations permit, thus the court errs weighing best case vs. worst case environmental impact and conservative vs less conservative parameters presented by changed design of stack height and diameter, where no supporting record evidence or facts, as the plant is not operational.

Silfab argues the ALC determined the July 30, 2024 letter did not give rise to right to a contested case, as it neither *issued* (*sic) nor *modified* Silfab's existing March 1, 2024 permit. The assertion is also respectfully incorrect because Silfab modified stack height after the permit

grant. It changed not only stack height, but stack diameter. Silfab sees this as purely procedural documentation to SCDES e.g., where SCDES is presented with ministerial action only. Provided, none of the information is timely conveyed to the affected public. Conversely, Appellant asserts that any substantive changes – particularly stack height – which implicate protection of health and safety of citizens (a present vested right) impacted by emissions modeling required notice and meaningful opportunity to respond, which is denied. The changes represent a major and material renewal of permit, warranting public awareness, proper notice, and the right of the public to participate, even should that necessarily include a contested case hearing. Petitioner's filing with the ALC was for a contested case, specifically, and it reached the trial court's dismissal as such where there was never a hearing.

Lastly, respondent does not state precisely *what department* Silfab's stack height changes were presented to exactly, seeking to omit fact that two (not just one) change were submitted to the "department" by Silfab. One simply went to DHEC. The other to SCDES, who takes over after July 1, 2024. It may be that just one (1) found its way to SCDES specifically before the July 30, 2024 renewal letter. That said, addressing fn.4 and fn 5 (SCDES Br. at 6), if all functions, powers, and duties of DHEC's environmental divisions, offices and programs were transferred to, incorporated in, and now administrated as part of SCDES duties then SCDES evades fact of a stack height change to 70' ft. sought by Silfab, before the final change to 50'ft. Under either scenario, air modeling data is left to the corporation by delegation, not regulation, and the design altercations do not reach the newly created SCDES conveniently until July 3, 2024. If the department wished not to have contested hearing, this does not equate to the citizenry not being entitled to notice, meaningful opportunity to be heard, or right to contested hearing where protection of health, welfare, safety and their environment are paramount, and

this is the case where a non-conforming chemical manufacturing use now neighbors the property of appellant and others, including adjacent schools. This court should look to when (March 1, 2024) the permit became effective in determining whether a changed non-conforming use appears later evolves the existing permit or renewal of permit and if SCDES in fact had the police power to regulate, notice neighboring landowners, or conduct investigations or inquiries of its own. If so, substantial factors like stack pollution exhaust under changing exit velocities is not just a "parameter" if it has substantial relation to the public health, welfare, morals, the public safety and the public right to meaningful notice and meaningful right to be heard that must be observed, but which were not. This plant will operate adjacent to homes and schools in a densely populated area Silfab had actual and constructive knowledge of before selecting its site at 7149 Logistics Lane.

1. Abuse of discretion by the ALC judge where substantial procedural compliance by appellant.

Addressing footnotes of SCDES Br. p. 4 at fn 1 and 2, Buchanan asserts that a late submission, alone, should not invalidate jurisdiction and this was likewise a matter of trial court discretion also. This is particularly the case where the ALC is presented with a case that impacts the public's interest in environmental compliance as to heavy industrial chemical manufacturing use evolving under pre-existing permit. It is doing so situated upon a Light Industrial district near homes and schools. As cited by respondents, a petition (acknowledged not signed by counsel) reached the ALC on August 14, 2024 filed on behalf of Walter Buchanan. The clerk timestamped but returned it. The time stamp appears on the re-submitted copy filed October 5, 2025. Appellant does not dispute return of the documents by mail and does not dispute that on September 9, 2024 the court received corrected documents, with wet signature on October 5, 2025, the situation capably

addressed in joint respondents' motions to dismiss. The imputed consent to dismissal by appellant through the trial judge ruling occurs after October 16, 2024 notice of assignment.

Appellant counsel takes no issue with failure to file a reply to joint motions to dismiss, having expected some form of hearing; but not *imputed dismissal* where the filing for Buchanan had requested contested hearing citing constitutional due process involving safety or welfare – presently existing rights. Buchanan asserts any rights to notice and opportunity for contested hearing of permit renewal June 30, 2025 agency continuation of March 1, 2024 permit modifying actual construction parameters would take priority over procedural rules, respectfully.

2. Constitutional Rights pursuant to Article I, Section 3 as to due process.

Appellant asserts that if there exists constitutional rights to life, liberty, and property then they were repeatedly violated by this specific permitting process and continued to Silfab benefit after government restructuring July 1, 2024. It is continued under SCDES July 30, 2024 letter under purported regulation by a state regulatory department with police power it simply did not employ due to collusion; It is collusion which results in both respondents characterizing the same as ministerial or routine correspondence. Neither respondent mentions the decision binds the appellant and the public who have been denied timely notice, meaningful opportunity to be heard, and no ability to present rebuttal evidence or cross examine witnesses at any time. Just denials of requests for review where citizens review is sought to be eliminated by the evolving fourth branch of government – arbitrary administrative agency rule making where major design changes by Silfab. Continuation of a pre-existing permit incorporating design changes would be an action or decision made by the June 30, 2024 letter approving and memorializing major differences from permit grant and compounding insufficient information not accurately conveyed to citizens

October 30, 2023 DHEC public forum. Oddly, information presented to the public was not transcribed fully under whatever excuse or justification Respondent SCDES cites.

Silfab acknowledges (as does the department) the public forum to have involved both (a) a *public meeting* and (b) a *public hearing*. Oddly, details as to Silfab draft permit and environmental data most relevant to the public went entirely un-transcribed.[1] SCDES simply continues to fumble under guise of new procedures, after DHEC's fumbles on October 30, 2023 public forum, and denying review to the public April 17, 2024 (RFR #1, App Silfab Br. at 6 para (2)). Again, the public is hoodwinked to post permit design changes and believe this agency decision to deny any further notices or meaningful opportunity to be heard direct denial of protected (if not mandated) constitutional right. It is easy to evade due process requirements under government restructuring with citizens kept in the blind and denied equal, direct communication from the department. Collusion is evidenced by failure to Epermit or email all parties, just the corporation alone.

Contrary to Silfab assertions, appellant had constitutional right to review and demand contested case after the letter, as one's right to due process, health, safety and welfare are presently vested existing rights contrary to the trial judge's ruling. The trial court commits legal error by weighing those rights, after first citing no subject matter jurisdiction existed. Petitioner is a "statutory affected person". It is not the letter which is binding appellant as affected person; It is under-the-radar construction design modifications under existing permit involving evolving chemical process use with changed stack height directly affecting rights most crucial to protect involving health, safety, welfare and the environment. The right to be aware, in fact. Not just property rights. Rather,

[1] The motion by Appellant before the Court of Appeals to obtaining full digital data of audio and video evidence of public forum was declined July 30, 2025.

presently vested rights to due process of law, health, safety and welfare in the environment where people live.

This is why should appellant not have received from department notice of parameter changes by Silfab, after the permit was granted. Appellant squarely can claim constitutional right to contested hearing and ALC review. "The decision of the [ALC] should not be overturned unless it is unsupported by substantial evidence or controlled by error of law." *Original Blue Ribbon*, 380 S.C. at 604, 670 S.E.2d at 676. The Court of Appeals can reverse the ALC if the ruling is characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id. (citing *Olson v. S.C. Dept of Health & Environmental Control*, 379 S.C. 57,63, 663 S.E.2d 497, 501 (Ct. App. 2008). Abuse of discretion occurred here where the trial court improperly weighed the evidence and failed to recognize vested constitutional rights using procedural dismissal to eliminate possibility of a contested hearing involving appellant review requests pertaining to material risks the petitioner and community were hoodwinked and shielded from notice of by both respondents.

"An abuse of discretion occurs where the ruling of the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support". *Tri County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990). The trial court cites no subject matter jurisdiction but goes on to weigh facts (best case vs. worst case exhaust scenarios and conservative v. more conservative parameters under stack heights), made by Silfab after permit grant - where no permit revision or where no new permit requirement, yet decision by SCDES by letter of July 30, 2024 perpetuating the permit as originally granted. Given changing stack height and changing diameter and exit velocity changes alone, this court should decline to decide there is substantial evidence from which reasonable minds could reach the conclusion the ALC reached, this is especially the case where the plant is not operational, and has

no operational permit, and the information does not timely reach the public consciousness. Likewise, the court of appeals should not do so because the reasonable minds would have needed proper notice notice at minimum, if not a meaningful opportunity to be heard on changes impacting their environment.

CONCLUSION

Silfab's Initial Brief is kind to point out what an agency's role entails, but restricts its definition to air permitting solely. (Silfab Br. P. 22 AT fn 14 line 11). The agency in fact has police power regarding permits and its first priority is not delegating, but regulating under its inherent powers to police and investigate, thoroughly. As Silfab correctly cites the agency's mission (even under changes in law) is to protect public health and the environment based on the permit application submitted. *See*, e.g., S.C. Code Ann. Regs. 61-62(A). In the case at Bar it is Silfab who after it is granted a permit made major design changes to stack height and diameter, not to mention exit velocity of VOCs. The public is hoodwinked entirely by unequal notice and unequal protection of the law by and through the agency, whether by SCDES or its predecessor SCDHEC. If after July 1, 2025 there are no promulgations by the agency properly advising appellant and the public, constitutional due process has been denied.

While the department may not be involved in underlying zoning or site decisions, the agency is the regulatory department permitting Silfab continuation of permit with altered designs after deferring to county requirements. If major and material changes occur after permit (and this did occur) the public has been entirely forced to work in the blind by collusion of the agency and Silfab. The court should not permit this to stand. The court should not permit the error of law where unlawful procedure by the agency, riddled with irregularities, and not fully or truthfully transcribed at public forum or provided in sufficient detail to the public in a way the public can fundamentally

respond. The disputed letter is an action; a modification of permit, if not decision to perpetually continue the original permit granted but incorporating Silfab-updated design and updating air modeling, which the public likewise had no notice or meaningful ability to refute due to lack of timely notice and denial of due process fairness. Appellant respectfully asserts to this court respondent definitions of the "routine" July 30, 2024 letter incorporating the design changes made in physical facility by Silfab were in collusion, as no information conveyed by initial briefs evidences agency inspection of the new stack designs to which it is applying Silfab updated air modeling parameters. Agreement to permit continuation of the existing permit evidences conduct in excess of the agency's statutory authority by delegation and not proper regulation. The ALC decision ignores violation of constitutional or statutory provisions, particularly S.C. Const. Art. I, §22 made mandatory by S.C. Const. Art. I, §23. Following Silfab's logic, petitioner and an entire community would otherwise be fully and finally bound by a quasi-judicial agency decision affecting present existing private constitutional rights to notice, meaningful opportunity to be heard, and vested rights involving relevant to health, safety, welfare and the environment.

Respectfully submitted July 31, 2025.

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July 31, 2025

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STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No.: 2025-000288

Walter Buchanon Appellant,

v.

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

Certificate of Service

I, Cameron Halford, attorney for the Appellant Walter Buchanan hereby certify that I have on this 31th day of July 2025, served the foregoing Appellant Reply Brief to Silfab Solar Inc. Initial Brief upon all parties via e-mail sent by the undersigned to the primary AIS e-mail address for counsel of record, as follows:

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