

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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

Walter Buchanan, Appellant

v.

South Carolina Department of Environmental Services and
Silfab Solar, Respondents

AMENDED RECORD ON APPEAL

INDEX

ORDERS

Order of Assignment (October 16, 2024)	3
Order of Dismissal (December 23, 2024)	4
Order Denying Motion for Reconsideration (January 17, 2025)	12

PLEADINGS

Notice of Administrative Law Court Appeal (August 29, 2024)	16
Request for Contested Case Hearing, including exhibits (August 29, 2024) (unsigned)	17
Request for Contested Case Hearing (October 2, 2024) (signed)	27
Pre-Hearing Statement by Petitioner Walter Buchanan (November 26, 2024)	31
Respondent SILFAB Solar's Prehearing Statement (November 26, 2024)	39
Respondent South Carolina Department of Environmental Services' Prehearing Statement (November 27, 2024)	46
Respondents Joint Notice and Motion to Dismiss, including exhibits (November 27, 2024)	55
Petitioner Motion to Reconsider Alter or Amend Judgment Dated December 23, 2024 (January 2, 2025)	94
Petitioner Memorandum in Support of Petitioner Motion for Reconsideration SCR 59(e), including exhibits (January 2, 2025)	95
Department Response in Opposition to Petitioner's Motion for Reconsideration (January 10, 2025)	115
SILFAB Solar, Inc.'s Response to Petitioner Motion to Reconsider Alter or Amend	

Judgment Dated December 23, 2024 SCRCP 59(e) (January 10, 2025)121
Notice of Appeal (February 5, 2025)131

OTHER MATERIALS

Memorandum from Administrative Law Court (September 10, 2024)134

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Walter Buchanan,)	Docket No. 24-ALJ-07-0367-CC
)	
Petitioner(s),)	
v.)	NOTICE OF ASSIGNMENT
)	(Contested Case)
South Carolina Department of Environmental Services and Silfab Solar, Inc.,)	
)	
Respondent(s).)	

Judge Assigned: Honorable Ralph King Anderson, III

Date Assigned: 10/16/2024

In accordance with S.C. Code Ann. § 1-23-570 (2005), the above Administrative Law Judge has been assigned to preside in this matter. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550. Pursuant to SCALC Rule 4A, all future filings must be filed directly with the above assigned Judge and shall include the docket number.

Additionally, the agency involved in this case must submit an Agency Information Sheet within ten (10) business days from the date of assignment. *See* SCALC Rule 12.

Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scalc.net.

A copy of any document or any other item filed with the Court shall be sent to all other parties at the time of filing. If a mailing address changes, or if an address is incorrect, the Court must be notified immediately of the correct address.

Ralph King Anderson, III
Chief Administrative Law Judge

Electronically
Filed
10/16/2024
SC Admin. Law Court

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Walter Buchanan,

Petitioner,

v.

South Carolina Department of
Environmental Services and Silfab Solar,

Respondents.

Docket No. 24-ALJ-07-0367-CC

ORDER OF DISMISSAL

This matter is before the South Carolina administrative Law Court (Court) pursuant to a Joint Motion to Dismiss (Motion) filed by the South Carolina Department of Environmental Services (Department) and Silfab Solar (Silfab) (collectively, Respondents) on November 27, 2024. As of the date of this Order, Petitioner has not filed a response to the Motion. Pursuant to Rule 19 of the Rules of Procedure of the South Carolina Administrative Law Court (SCALC Rules), “[f]ailure of a party to timely file a response may be deemed a consent by that party to the relief sought in the motion or petition.” As a result, the Court finds that Petitioner’s failure to respond is deemed consent to the relief sought by Respondents. Accordingly, as explained further below, Respondents’ Motion to Dismiss is granted.

BACKGROUND

On March 1, 2024, the Department’s predecessor,¹ the South Carolina Department of Health and Environmental Control (DHEC), issued an air quality permit to Silfab for the construction of solar cell and panel production facility in Fort Mill, South Carolina. Specifically, the permit authorizes construction of solar cell and module manufacturing equipment and processes, associated chemical storage tanks, and an emergency generator, and also establishes applicable emission limits, source testing, monitoring, recordkeeping, and reporting requirements. Under the issued permit, facility equipment and operations includes, emissions of hydrochloric

¹ On July 1, 2024, the South Carolina Department of Health and Environmental Control (SCDHEC) was abolished and the administrative authority to regulate permits pursuant to the National Pollutant Discharge Elimination System Permit Program (NPDES) was transferred to the newly-created South Carolina Department of Environment Services (SCDES). See Act No. 60, 2023 S.C. Acts, 302-27 (implementing government agency restructuring); S.C. Code Ann. § 1-30-140 (Westlaw Edge through 2024 Act No. 210).

JLEB

1/23/2024

SC Admin. Law Court

acid (HCl) and hydrogen fluoride (HF). Pursuant to Regulation 61-62.5 of the South Carolina Code of Regulations (2012), Standard No. 8, *Toxic Air Pollutants* (Standard 8), the facility used air dispersion modeling to demonstrate compliance with applicable ambient standards for HCl and HF under Standard 8.

Then, on March 13, 2024, several community members filed a request for a DHEC Board review of the permit's issuance pursuant to subsection 44-1-60(E)(2) of the South Carolina Code (2008). On April 17, 2024, the Board declined a final review, and thus the issued permit became the final agency decision.

On June 4, 2024, Silfab informed DHEC that it needed to modify its proposed stack heights to ensure compliance with county requirements regarding building/equipment height. Stack height is a parameter used to determine compliance with state and federal ambient air quality standards. Condition I.1 of the permit provides in relevant part that “[a]ny changes in the parameters used in [the facility’s air dispersion modeling] demonstration may require a review by the facility to determine continuing compliance with [the state and federal ambient air quality] standards.” This language implements Section II.C of Standard 8, which states that “[c]hanges in ... parameters will require a review by the facility to determine if they have an adverse impact on the compliance demonstration.” Accordingly, DHEC informed the facility that it needed to submit an updated air dispersion modeling analysis to verify that the changed stack height and any additional changed modeling parameters would maintain compliance with applicable air quality standards.

On July 3, 2024, Silfab submitted updated modeling forms, including the updated modeling parameters. The updated modeling parameters included updates to stack height, stack diameter, and exit velocity, and accounted for two buildings being constructed nearby. The Department² documented its review of the updated modeling in an “Air Compliance Analysis Summary Sheet” (Summary Sheet) dated July 22, 2024. Then, on July 30, 2024, the Department sent a letter to Silfab acknowledging its receipt of Silfab’s plans to install four boilers exempt from construction permitting requirements—a matter unrelated to the facility’s updated modeling analysis. The letter also reiterated what was stated in the Summary Sheet, specifically that the Department reviewed the facility’s updated modeling analysis, and that Silfab had demonstrated continued compliance

² At this time, the Department was no longer DHEC.

with the applicable standards. Importantly, the letter notes that, because the updated parameters were submitted in accordance with Section I.1 of the facility's permit, a construction permit revision was not required and was not being issued.

On August 14, 2024, Petitioner, on his behalf and on the behalf of others, filed a Petition for Review (Petition) to the Department seeking review of the Department's July 30 letter. Two days later, the Department's general counsel notified Petitioner, through his counsel, that DHEC was abolished, and that the review process previously available before the DHEC Board under section 44-1-60 was no longer applicable.

Petitioner then filed a request for contested case hearing form with this Court as well as an Agency Information Sheet and Notice of Appearance on September 9, 2024.^{3, 4} However, the form did not specifically identify the intended Petitioner(s) and identified only the submitting attorney, Mr. J. Cameron Halford, by name. In addition to those documents, Petitioner submitted the Department's March 1, 2024 decision issuing the permit to Silab, its August 14 Petition to the Department and the Department's August 16 letter to its Petition. Yet, in its actual request, Petitioner claims to be seeking review of only an unnamed July 30, 2024 "decision" because it resulted in a "violation of substantive due process and error of law denying proper notice and opportunity to be heard, thus denying contested case status," pursuant to the South Carolina Constitution. Moreover, the contested case form did not include an original signature and the filing of the Agency Information Sheet was improper as the agency, the Department in this case, is responsible for its filing. As a result, on September 10, 2024, the ALC Clerk of Court (Clerk) sent a memorandum to Petitioner explaining the signature deficiency, the Agency Information Sheet was also returned. Then, on October 5, 2024, Petitioner corrected the deficiency.⁵ The case was then assigned on October 16, 2024.

³ Curiously, the "Agency Information Sheet and Notice of Appearance" erroneously filed on behalf of the Petitioner on August 29, 2024, identified Andy Lyle, Dave Phelps, Garry Griffith, and Carolina Land as putative "appellants." However, Petitioner's cover letter indicates Walter Buchanan as the only Petitioner.

⁴ The documents were dated August 29, 2024; however, the Court did not receive them until September 9, 2024. See SCALC Rule 4.

⁵ Although Respondents believe it was filed on September 9, 2024, it was filed on October 5, 2024. When the Clerk sent the memorandum, the Clerk also returned the original request for contested case hearing form that had already been stamped as filed on September 9. Petitioner then resubmitted this form by placing a wet signature on top of the original form. To avoid confusion, the Clerk file stamped the cover letter that Petitioner included with the resubmission, thus indicating the filing was perfected on October 5, 2024.

DISCUSSION

Respondents argue the case should be dismissed because it not a contested case and thus, the Court lacks subject matter jurisdiction. More specifically, Respondents assert the Department's July 30th letter was not a dispositive decision and therefore does not impact any private rights or duties implicating a need for a hearing. As a secondary matter, Respondents argue the case should be dismissed because Petitioner's request does not meet the requirements for procedural jurisdiction.

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. 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 & Env't'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). Subsection 48-6-30(A) of the South Carolina Code (Supp. 2024) specifically gives this Court jurisdiction over contested cases generated by Department decisions

involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, certificates, or other actions of the department which may give rise to a contested case, except a decision to establish a baseline or setback line, must be made using the procedures set forth in this section.

S.C. Code Ann. § 48-6-30(A) (emphasis added).⁶ 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,

⁶ Moreover, subsection (D)(2) provides:

[w]ithin thirty calendar days after the mailing of a decision pursuant to item (1), an applicant, permittee, licensee, certificate holder, or affected person desiring to contest the department decision may request a

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).

Here, Petitioner's request challenges the Department's July 30th letter which acknowledged Silfab's review and update of its modeling data. Notably, the letter did not issue or modify Silfab's permit. Rather, it merely memorialized that Silfab's April 17, 2024 permit remained in compliance with applicable standards. In addition, the regulations which implement the licensing and review of Silfab's permit do not provide for a contested case hearing for review of updated modeling parameters. In fact, to the contrary, Standard 8 within the regulations and Condition I.1 of the permit itself expressly address modeling parameter changes by requiring the facility to conduct a review to verify continued compliance.

Because Silfab's submission of the updated air dispersion modeling analysis did not trigger a legal duty for the Department to review or issue a final decision regarding the facility review, the Department's July 30th letter cannot be described as a "contested case" as defined under the Administrative Procedures Act (APA). *Amisub of SC, Inc. v. S.C. Dep't of Envtl. Control*, 403 S.C. 572, 596, 743 S.E.2d 786 (2013) (holding letter from DHEC did not give rise to final agency decision subject to a contested case proceeding because DHEC owed no legal duty to issue staff decision). As a result, this Court does not have jurisdiction to review Petitioner's challenge to the July 30 letter. *See* § 1-23-600(D).

Still, Petitioner claims a right to a contested case based on Article 1, Section 3 and Section 14 of the South Carolina Constitution⁷ in his request for review before this Court. 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

contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act. Notwithstanding Section 1-23-600(H)(1), the entirety of Section 1-23-600(H) shall apply to timely requests for a contested hearing of decisions from the Department of Environmental Services. The court shall give consideration to the provisions of Section 1-23-330 regarding the department's specialized knowledge.

S.C. Code Ann. § 48-6-30(D)(2) (Supp. 2024) (emphasis added).

⁷ Article 1, Section 14 of the South Carolina Constitution provides for the right of a trial by jury, however, this Court does not hear jury trials.

denied the equal protection of the laws. However, other than the statutory provisions granting affected persons the right to challenge the issuance of a permit pursuant to section 48-6-30, Petitioner failed to explain to this Court 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); *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).

Here, Silfab’s permit was issued months prior to the Department’s July 30 letter and the terms of that permit expressly provide for the modeling parameter to be updated. Consistent with the terms of the permit, Silfab submitted updated modeling forms to the Department on July 3, 2024. Notably, the April 17, 2024 permit was not modified by the facility’s updated modeling nor by the Department’s July 30th letter of acknowledgement of continued compliance. The fact that the Department reviewed Silfab’s updated modeling and verified its continued compliance does not create a legal protected right and thus, Petitioner has failed to show a deprivation of its legal rights or privileges.⁸

Finally, as stated at the outset of this Order, Petitioner’s failure to file a response to the Motion to Dismiss is deemed consent to the relief requested by Respondents pursuant to the Court’s Rules of Procedure. *See* SCALC Rule 19(A).⁹

⁸ Quizzically, Petitioner did not contest the issuance of the permit that contained Condition L1; thus, Petitioner waived its right to challenge that provision when it did not timely contest the permit, including Condition L1, before this Court.

⁹ As a secondary argument, Respondents argue that even if the letter at issue was a contested case, Petitioner has failed to meet the requirements for procedural jurisdiction. The Court agrees. Rule 23(B) of the Rules of Procedure for the South Carolina Administrative Law Court (SCALC Rules) provides that “the Court may dismiss a contested case ... for failure to comply with any of the rules of procedure for contested cases, including the failure to comply with any of the time limits provided in these rules or by order of the Court.” Here, subsection 48-6-30(D)(2) of the South Carolina Code provides “thirty calendar days after the mailing of a decision” of the Department for an affected person to request a contested case hearing before this Court. The letter at issue was sent electronically on July 30, 2024. Petitioner did not specifically request, in writing, to be notified of the letter prior to it being sent. Accordingly,

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

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

December 23, 2024
Columbia, South Carolina

Petitioner had until August 29, 2024, thirty days after electronic mailing of the letter, to file its request. However, Petitioner did not perfect its request for a contested case until October 5, 2024, thus making it untimely.

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 23, 2024
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Walter Buchanan,)	Docket No. 24-ALJ-07-0367-CC
)	
Petitioner,)	
)	
v.)	ORDER DENYING MOTION FOR RECONSIDERATION
)	
South Carolina Department of Environmental Services and Silfab Solar,)	
)	
Respondents.)	

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Motion for Reconsideration (Motion) filed by Walter Buchanan (Petitioner) on January 2, 2025. This Court previously issued an Order of Dismissal on December 23, 2024, granting a Joint Motion to Dismiss filed by the South Carolina Department of Environmental Services¹ (DES or Department) and Silfab Solar (Silfab). Importantly, Petitioner failed to respond to the Department's Motion to Dismiss. *See* SCALC Rule 19 (“[f]ailure of a party to timely file a response may be deemed a consent by that party to the relief sought in the motion or petition.”).

Now, in its Motion, Petitioner requests the Court reconsider its legal analysis under the guise of the discovery of new evidence. On January 10, 2025, Silfab filed its Response to the Motion.

For the reasons stated below, Petitioner's Motion is denied.

DISCUSSION

As grounds for his Motion for Reconsideration, Petitioner cites to Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRCP). Rule 59(e), SCRCP, provides for the timeframe to file a motion to alter or amend the judgment in Circuit Court, which is inapplicable to this case. *See* SCALC Rule 68 (“the South Carolina Rules of Civil Procedure and the South Carolina Appellate Court Rules, in contested cases and appeals respectively, may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules.”).

¹ 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).

FILED
01/17/2025
SC Admin. Law Court

The applicable rules in this case are the Rules of Procedure for the Administrative Law Court (SCALC Rules). SCALC Rule 29(D) governs a motion for reconsideration in this case and provides, in relevant part: “[a]ny party may move for reconsideration of a final decision of an administrative law judge in a contested case to alter or amend the final decision, subject to the grounds for relief set forth in Rule 59, SCRCF.” “In cases permitting an agency to reconsider its decision, courts have emphasized that an agency’s power to reconsider or rehear a case is not an arbitrary one, and such power should be exercised only when there is justification and good cause; i.e., newly discovered evidence, fraud, surprise, mistake, inadvertence or change in conditions: *Bennett v. City of Clemson*, 293 S.C. 64, 66-67, 358 S.E.2d 707, 708-09 (1987) (citing 2 Am.Jur.2d, *Administrative Law*, § 522 et seq. (1962 & Supp. 1986)).

Nevertheless, in considering Petitioner’s arguments, it is also important to recognize that “[a] party cannot use Rule 59(e) [SCRCF,] to present to the court an issue the party could have raised prior to judgment but did not.” *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990); see e.g., *Poch v. Bayshore Concrete Prods./S.C., Inc.*, 386 S.C. 13, 31, 686 S.E.2d 689, 699 (Ct. App. 2009), *aff’d as modified*, 405 S.C. 359, 747 S.E.2d 757 (2013) (“A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not.”) “Issues which could have been presented to the court for consideration previously, but which were not, are not the proper subject of Rule 59(e) relief; the issues are waived.” *Hickman*, 301 S.C. at 456, 392 S.E.2d at 482 (quoting *Smith v. Stoner*, 594 F. Supp. 1091, 1118 (N.D. Ind. 1984)).

Here, Petitioner asks that this Court reconsider its Order of Dismissal because it obtained new evidence via Freedom of Information Act (FOIA) requests that was “not within Petitioner[’s] possession at the time Petitioner filed for contested case hearing with this Court.” However, Petitioner did not provide any information on when he received this “new evidence” or why it could not have been obtained by due diligence before the Court issued its Order of Dismissal. In fact, Petitioner did not even provide a reason for his failure to timely respond to the Motion to Dismiss, other than stating he “acknowledges [he] did not pursuant to Rule 19 of the SCALC Rules timely file a response but respectfully disagrees that this omission is deemed consent to the relief sought by Petitioners.” Yet, the Court’s Rules of Procedure specifically provide that “[f]ailure of a party to timely file a response may be deemed a consent by that party to the relief sought in the


motion or petition." Enforcement of court rules is ordinary practice and thus, I find Petitioner's argument unavailing.

Accordingly, Petitioner's Motion is denied.

ORDER

IT IS THEREFORE ORDERED that Petitioner's Motion for Reconsideration is **DENIED.**

AND IT IS SO ORDERED.



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).



Stephanie Perez
Judicial Law Clerk

January 17, 2025
Columbia, South Carolina

HALFORD LAW FIRM

J. Cameron Halford - Attorney at Law - LLC

Post Office Box 172

Barnwell, South Carolina 29812

803-517-4320

803-524-8659

August 29, 2024

South Carolina Administrative Law Court

Office of the Clerk

Edgar A. Brown Building, Suite 224

Columbia, South Carolina 29201

**Re: Notice of Appeal
Updated Modeling Analysis and Exemption for
Four Natural Gas-Fired Boilers Permit # EX-500000v1.0
Agency Air No. 2440-0293 Silfab Solar, Inc.**

Dear Clerk's Offices:

Please find attached and enclosed the original and one copy of the Notice of Appeal being filed in the above captioned SCDES matter with the Administrative Law Court. Our certificate of service to counsel in the below proceedings is attached, along with our check for the filing fee. If you will kindly return a clocked copy to me in the envelope after filing. Thank you for your assistance.

With regards, I remain

Respectfully


J. Cameron Halford

JCH:jal

cc: Ryan T. Trail / Attorney for Silfab Solar, Inc.

cc: Sara V. Martinez / Attorney, South Carolina Department of Environmental Services

**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: HALFORD	First: JOSEPH	Middle: CAMERON	Docket No. (To Be Completed by ALC)
Mailing Address: Post Office Box 172		City: Barnwell	State and Zip: SC 29812
Home Number: 803-517-4320	Work Number: 803-524-8659	Cell Number: 803-517-4320	E-Mail Address: cam@halfordlaw.net

*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		Date of Attorney: J. Cameron Halford (SC Bar Id. 17184)	
Are you represented by an Attorney? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		City, State and Zip: Barnwell, South Carolina 29812	
Attorney Mailing Address: Post Office Box 172, Barnwell, SC		Attorney E-Mail Address: cam@halfordlaw.net	
Attorney Work Number and Cell Number: Landline: 803-524-8659 / Cell: 803-517-4320			

CASE INFORMATION

Name of Agency that Issued the Decision: (Example - Dept. of Revenue, Dept. of Insurance, DHEC) South Carolina Department of Environment Services (formerly SCDHEC at permit submission)	
In order to have your case processed, you must attach <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No the agency decision. Is it attached? If no, please explain:	

Date the decision was issued: July 30, 2024 Date the decision was received:

Please provide a brief statement regarding why the hearing is being requested and the relief sought:
Appellants appeal the decision under violation of substantive due process and error of law denying proper notice and opportunity to be heard, thus denying contested case status. Appellants seek the ALC reverse and remand. The constitutional basis under which Appellants appeal to the ALC are S.C. Constitution Article I section 3 and 14.

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.

8/29/2024

X Your Signature or Signature of Attorney

Date

PROOF OF SERVICE (MUST BE COMPLETED)

Your Name: J. Cameron Halford	Date: 8/29/2024	City: Barnwell	State: SC
I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing on all other parties 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):			
SCDES (Sarah V. Martinez)	2600 Bull Street	Columbia, S.C. 29201	
Name and/or Agency Name	Address	City, State and Zip	
Silfab Solar, Inc. (Ryan W. Trail)	1230 Main Street, Suite 330	Columbia, S.C. 29201	
Name and/or Agency Name	Address	City, State and Zip	
<i>X</i> Your Signature or Signature of Attorney		8/29/2024	
		Date	

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

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

IN RE:

SILFAB SOLAR, INC.)
YORK COUNTY, SOUTH CAROLINA)

Andy Lytle, Dave Phelps, Garry Griffith, and)
Caroline Land,)

APPELLANTS,)

AGENCY INFORMATION SHEET
AND NOTICE OF APPEARANCE

Vs.)

Contested Case

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

Docket No. -ALI- .

RESPONDENTS.)

Counsel for Appellants here provides Notice of Appearance pursuant to ALC Rule 8(B),

and provides the following information sheet with Appellants' Notice of Appeal :

1. Identifying information on the matter in controversy (Name and/or Title of agency proceeding, statutory provisions giving rise to the controversy, file number, and any other identifying information)

a. Permit Number : EX-50000152.v1.0

South Carolina Department of Environmental Services (formerly SCDHEC)
Updated Modeling Analysis and Exemption for Four Natural-Gas fired
boilers at Silfab Solar, Inc.

Agency Air Number: 2440-0293 Silfab Solar, Inc.

SCDES/SCDHEC File No. 24-RFR-51, Silfab Solar

Location Address: 7149 Logistics Lane, Fort Mill, S.C. 29715

Appellants appeal the July 30, 2024 decision of the SCDES, and SCDES denial of Final Review dated August 16, 2024, attached. Appellants cite denial of procedural due process by SCDES pursuant to S.C. Constitution Article I, Section 3 and Section 14 and errors of law in approval with no notice or opportunity to be heard provided to Appellants who aver the decision is grotesque abuse of discretion, arbitrary, capriciously made and made under abuse of discretion where substantive evidence shows the Silfab production methods involve exhaust of Hydrofluoric Acid (HF), exhaust to emit via modified exhaust tower stacks under v1.0 of the permit.

2. Has the agency staff issued a final written decision regarding its action or inaction in this matter? Yes No (If yes, please attach a copy). Attached.

=

3. Name, address and telephone number of all known parties and their attorneys if represented:

a. Ryan W. Trail, Esq.

Williams Muller Law Firm
1230 Main Street, Suite 330
Columbia, South Carolina 29201
803-567-4605
Attorney for Silfab Solar, Inc.

b. Sara V. Martinez, Esq.

South Carolina Department of Environmental Services
2600 Bull Street,
Columbia, South Carolina 29201
Attorney / SCDES
(803) 898-0288

4. Name, address, and telephone number of any persons who have exercised their legal right to object to issuance of the permit or license:

a.) Andrew R. Lytle

517 Cruzaven Court, Fort Mill, S.C. 297158
803-493-0526
e-mail: alytle@unionglassandmetal.com

b.) Dave Phelps

820 Huber Lane, Fort Mill, S.C. 29714
803-322-9881
e-mail: dave@phelps.com

c.) Gary Griffith and Carolina Land

529 Craxhaven Court, Fort Mill, S.C. 29715
206-972-1851
e-mail: caroline.land@g2-solutions.com

All further Correspondence or pleading to any named Appellant may be submitted to Appellant Counsel at the address indicated below.



S.C. Department of Health and
Environmental Control

Bureau of Air Quality
Synthetic Minor Construction Permit

Silfab Solar
7149 Logistics Lane
Fort Mill, South Carolina 29715
York County

In accordance with the provisions of the Pollution Control Act, Sections 48-1-50(5), 48-1-100(A), and 48-1-110(a), the 1976 Code of Laws of South Carolina, as amended, and South Carolina Regulation 61-62, Air Pollution Control Regulations and Standards, the Bureau of Air Quality authorizes the construction of this facility and the equipment specified herein in accordance with the plans, specifications, and other information submitted in the construction permit application received on June 05, 2023, as amended. All official correspondence, plans, permit applications, and written statements are an integral part of the permit. Any false information or misrepresentation in the application for a construction permit may be grounds for permit revocation.

The construction and subsequent operation of this facility is subject to and conditioned upon the terms, limitations, standards, and schedules contained herein or as specified by this permit and its accompanying attachments.

Permit Number: CP-50000090 v1.0

Agency Air Number: 2440-0293

Issue Date: March 1, 2024

A handwritten signature in black ink, appearing to read "Steve McCaslin", is written over a horizontal line.

Steve McCaslin, P. E., Director
Air Permitting Division
Bureau of Air Quality

EXHIBIT A



SC DEPARTMENT of
**ENVIRONMENTAL
SERVICES**

COPY

Office of General Counsel
2500 Bull Street
Columbia, SC 29201

August 16, 2024

Via Electronic Mail cam@halfordlaw.net and U.S. Mail

Halford Law Firm, LLC
J. Cameron Halford - Attorney at Law - LLC
Post Office Box 172
Barnwell, SC 29812

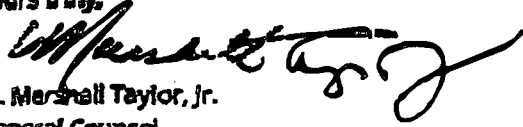
RE: Updated Modeling Analysis and Exemption for Four Natural Gas-fired Boilers at Silfab Solar
Permit Number EX-50000152 v1.0
Agency Air Number: 2440-0293 Silfab Solar, Inc.

Dear Mr. Halford:

We are in receipt of your letter dated August 14, 2024, requesting Final Hearing and Review in the above-referenced matter "pursuant to S.C. Code Ann. 44-1-60 et seq." Effective July 1, 2024, the South Carolina Department of Health and Environmental Control ("DHEC") was abolished, and the South Carolina Department of Public Health and the Department of Environmental Services (DES) were created. As a result, the review process previously required in S.C. Code 44-1-60 is no longer applicable to DES decisions.

If received, DES will return the \$100 filing fee check referenced in your submittal. Please note, nothing in this letter should be interpreted as an admission or waiver of any claim or defense by DES related to this matter.

Yours truly,


W. Marshall Taylor, Jr.
General Counsel

Cc: Denise Crawford
Sara Martinez, Chief Counsel for Environmental Affairs



COPY

STATE OF SOUTH CAROLINA
South Carolina Department of Environmental Services
2600 Bull Street
Columbia, South Carolina 29201

IN RE:
SILFAB SOLAR, INC.

) **APPEAL OF SCDES DECISION**
) **REQUEST FOR FINAL REVIEW**
S.C Code Ann. §44-1-60

Permit No. CP-S0000090 v.1.0
Issue Date: March 1, 2024
Permitter: Silfab Solar, Inc.
Location : 7149 Logistics Lane, Fort Mill, S.C. 29715
Party Requesting Final Review: Walter Buchanan, personally and on behalf of persons
Similarly situated and/or affected
Decision Date: July 30, 2024

PETITION FOR FINAL REVIEW

Walter Buchanan, personally and on behalf of parties similarly situated in Fort Mill, York County, parties affected by the SCDES decision, here Appeals and Petitions for Final Review of permit CP-S0000090 v1.0 issued by the South Carolina Department of Environmental Services ("SCDES") on the following grounds:

1. Grounds upon which the SCDES decision is challenged and specific changes sought under challenge: Changes in air emission devices or structure designs including emission stacks or smoke stacks which fail to take into consideration zoning of the property, which is located in a light industrial district per York County Ordinances.
2. A statement of any significant issues or factors the Board should consider in deciding whether to conduct a final review conference:

- a. **Air Quality emissions and waste water discharge within proximity to retirement skilled nursing facilities, public schools, theme parks (Six Flags over Carowinds®), and high density family neighborhoods.**
- b. **Hydrogen Fluoride gas, even at low levels, is a substance toxic enough to irritate skin, eyes, nose, and respiratory tract. According to the CDC, even minor exposure to HF can be fatal in some cases, or can cause chronic lung disease.**

3. A copy of the Department's decision for which review is requested. Attached.

Appellant / Petitioner is an adjacent landowner affected by the decision of the SCDES. Petitioners respectfully assert entitlement to Final Review before SCDES on the basis that Silfab Solar design changes to physical emission structures deserves consideration and review, as the production of solar panels inherently involves gas emission of Hydrofluoric Acid water and air emission byproducts (designated HF by the Center for Disease Control), known to be toxic. Petitioner respectfully asserts that Silfab Solar, Inc. modifications to stack design structure has not been properly evaluated in light of change from 70' foot to 50' height stacks, and Final Review should be granted by the Department.

Respectfully Submitted,

HALFORD LAW FIRM, LLC
J. Cameron Halford - Attorney at Law - LLC
95 Allen Street
Post Office Box 172
Barnwell, South Carolina 29812
803-524-8659
e-mail: cam@halfordlaw.com

August 14, 2024



S.C. Department of Health and
Environmental Control

Bureau of Air Quality
Synthetic Minor Construction Permit

Silfab Solar
7149 Logistics Lane
Fort Mill, South Carolina 29715
York County

In accordance with the provisions of the Pollution Control Act, Sections 48-1-50(5), 48-1-100(A), and 48-1-110(a), the 1976 Code of Laws of South Carolina, as amended, and South Carolina Regulation 61-62, Air Pollution Control Regulations and Standards, the Bureau of Air Quality authorizes the construction of this facility and the equipment specified herein in accordance with the plans, specifications, and other information submitted in the construction permit application received on June 05, 2023, as amended. All official correspondence, plans, permit applications, and written statements are an integral part of the permit. Any false information or misrepresentation in the application for a construction permit may be grounds for permit revocation.

The construction and subsequent operation of this facility is subject to and conditioned upon the terms, limitations, standards, and schedules contained herein or as specified by this permit and its accompanying attachments.

Permit Number: CP-50000090 v1.0
Agency Air Number: 2440-0293

Issue Date: March 1, 2024

Steve McCaslin, P. E., Director
Air Permitting Division
Bureau of Air Quality


Pursuant to ALC Rule 8(B), notice is hereby given that the undersigned is authorized and will be representing the above Appellants in this matter and request copies of all further correspondences in this case to the below address. Further, by my signature below, I certify that a copy of this information sheet has been served upon all parties and/or protestants by first class mail on the date shown below.

Ryan W. Trail, Esq.
Williams Mullen Law Firm
1230 Main St., Suite 330
Columbia, South Carolina 29201
Attorneys for Silfab Solar, Inc.

South Carolina Department of Environmental Services
Office of General Counsel
Sarah V. Martinez, Esq.
Dawn Miller, Esq.
2600 Bull Street,
Columbia, South Carolina 29201

Respectfully submitted

J. CAMERON HALFORD, LLC


Name: J. Cameron Halford

S.C. Bar Id. # 17184

Address: Post Office Box 172

Barnwell, South Carolina 29812

(803) 524-8659

e-mail: cam@halfordlaw.net

ATTORNEY FOR APPELLANTS

August 29, 2024

HALFORD LAW FIRM

J. CAMERON HALFORD - ATTORNEY AT LAW - LLC
95 ALLEN STREET - P.O. BOX 172
BARNWELL, SOUTH CAROLINA 29812

TELEPHONE: 803-524-8659
Email: cam@halfordlaw.net
joanni@halfordlaw.net

October 2, 2024

Susan C. Dickerson, Esquire
SC Administrative Law Clerk
1205 Pendleton Street
Suite 224
Columbia, SC 29201

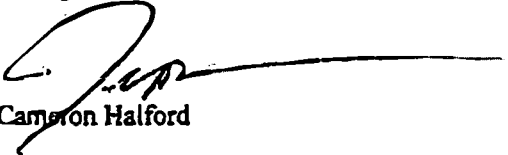
RE: Walter Buchanan vs SC DES & Silfab Solar, Inc.

Dear Ms. Dickerson:

I have attached the signed Request for Contested Case Hearing Form bearing my signature as requested by Mrs. Dickerson at SCDES. Please return a clocked copy to me in the envelope provided.

Please advise if you need anything further. Thank you for the assistance.

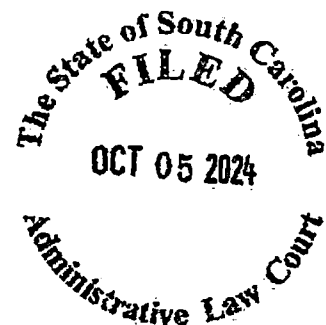
Sincerely,



J. Cameron Halford

JCM/jal
Enclosures

Cc: Sarah V. Martinez
SC DES
2600 Bull Street
Columbia, SC 29201



**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: **HALFORD** First: **JOSEPH** Middle: **CAMERON** Docet No. (To Be Completed by ALC)
 Mailing Address: Post Office Box 172 City: **Barnwell** State and Zip: **SC 29812**
 Home Number: **803-517-4320** Work Number: **803-524-8659** Cell Number: **803-517-4320** E-Mail Address: **cam@halfordlaw.net**

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

REPRESENTATION

Are you representing yourself? Yes No
 Are you represented by an Attorney? Yes No
 Attorney Mailing Address: **Post Office Box 172, Barnwell, SC** Name of Attorney: **J. Cameron Halford (SC Bar Id. 17184)**
 Attorney Work Number and Cell Number: **Landline: 803-524-8659 / Cell: 803-517-4320** City, State and Zip: **Barnwell, South Carolina 29812**
 Attorney E-Mail Address: **cam@halfordlaw.net**

CASE INFORMATION

Name of Agency that Issued the Decision: (Example - Dept. of Revenue, Dept. of Insurance, DHEC)
South Carolina Department of Environment Services (formerly SCDHEC at permit submission)

In order to have your case processed, you must attach the agency decision. Is it attached? Yes No If no, please explain:

Date the decision was issued: **July 30, 2024** Date the decision was received:
 Please provide a brief statement regarding why the hearing is being requested and the relief sought:
Appellants appeal the decision under violation of substantive due process and error of law denying proper notice and opportunity to be heard, thus denying contested case status. Appellants seek the ALC reverse and remand. The constitutional basis under which Appellants appeal to the ALC are S.C. Constitution Article I section 3 and 14.

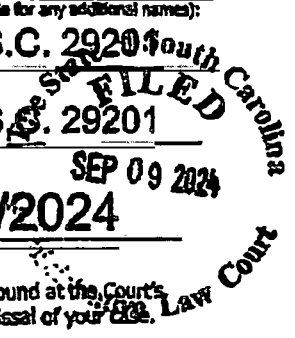
Payment (applicable filing fees pursuant to ALC Rule 71) is being submitted today to the Administrative Law Court via Check Money Order Cash via U.S. Postal Service Hand-delivery

J. Cameron Halford **8/29/2024**
 X Your Signature or Signature of Attorney Date

PROOF OF SERVICE (MUST BE COMPLETED)

Your Name: **J. Cameron Halford** Date: **8/28/2024** City: **Barnwell** State: **SC**
 I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing on all other parties 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):
SCDES (Sarah V. Martinez) 2600 Bull Street Columbia, S.C. 29204
 Name and/or Agency Name Address City, State and Zip
Sifab Solar, Inc. (Ryan W. Trail) 1230 Main Street, Suite 330 Columbia, S.C. 29201
 Name and/or Agency Name Address City, State and Zip
J. Cameron Halford **8/29/2024**
 X Your Signature or Signature of Attorney Date

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



 Outlook

Re: Walter Buchanan v. SC DES & Siffab Solar, Inc.

From J Cameron Halford <Cam@halfordlaw.net>
Date Wed 10/2/2024 1:57 PM
To Susan C. Dickerson <sdickerson@scal.net>
Cc Andy Lytle <alytle@unionglassandmetal.com>

 1 attachment (98 KB)

Halford Signature Return Scan_Copy.pdf;

Dear Mrs. Dickerson -

Thank you, I am attaching a scan of my signature and I will return with the postal mail when we receive and ship back.

Kind regards,
Cameron Halford

From: Susan C. Dickerson <sdickerson@scal.net>
Sent: Wednesday, October 2, 2024 11:23 AM
To: J Cameron Halford <Cam@halfordlaw.net>
Subject: RE: Walter Buchanan v. SC DES & Siffab Solar, Inc.

Mr. Halford, currently we do not have electronic capability. If you would mail in of the Request for Contested Case Hearing Form with your original signature in the two required spaces we will be able to get this case assigned to a Judge. Please find attached a copy of the Form that I returned with the Memorandum.

*Susan C. Dickerson, Assistant Clerk
SC Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201*

*Phone No.: 803-734-1673
Website: www.scale.net*

From: J Cameron Halford <Cam@halfordlaw.net>
Sent: Wednesday, October 2, 2024 11:06 AM
To: Susan C. Dickerson <sdickerson@scal.net>
Subject: Re: Walter Buchanan v. SC DES & Siffab Solar, Inc.

We have not to date received anything like this. I will look for it in the mails. Did you forward back US Mail to PO Box 172 in Barnwell, SC 29812. ? Do you guys (I know SCDHEC dissolved) have electronic filing capability yet, I can get it done today if so.

we have actually been on the look out for a response from the ALC.

cameron halford

From: Susan C. Dickerson <sdickerson@scal.net>
Sent: Wednesday, October 2, 2024 10:59 AM
To: J Cameron Halford <Cam@halfordlaw.net>; Martinez, Sara <martinsv@dhec.sc.gov>
Cc: Jana E. Shealy <jshealy@scal.net>
Subject: Walter Buchanon v. SC DES & Sifab Solar, Inc.

Mr. Halford, I have attached a Memorandum dated September 10, 2024, in regards to the above matter. Since there has been no response, I wanted to reach out and make sure that you received it.

*Susan C. Dickerson, Assistant Clerk
SC Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201*

*Phone No.: 803-734-1673
Website: www.scale.net*

.. CONFIDENTIALITY NOTICE:This email (including any attachments) contains information from the South Carolina Administrative Law Court that may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, you are not authorized to read, copy, retain or distribute this message. If you have received this email in error, please notify the sender immediately by "reply to sender only" email and destroy all electronic and hard copies of the communication, including attachments. Please contact HelpDeskIT@scal.net if you are unsure the email is legitimate.

.. CONFIDENTIALITY NOTICE:This email (including any attachments) contains information from the South Carolina Administrative Law Court that may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, you are not authorized to read, copy, retain or distribute this message. If you have received this email in error, please notify the sender immediately by "reply to sender only" email and destroy all electronic and hard copies of the communication, including attachments. Please contact HelpDeskIT@scal.net if you are unsure the email is legitimate.

- b. S.C. Constitution, Article I Section (3).**
Privileges and immunities; due process; equal protection of laws; The 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. (1970 (56) 2684; 1971 (57) 315).
- c. S.C. Constitution, Articles I Section (22).**
Provision before administrative agencies; judicial review. No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall be deprived of liberty or property unless by a made of procedure prescribed by the general assembly, and he shall have in all such instances the right to judicial review.
- d. S.C. Code Ann. §44-1-60.** S.C. Code Ann. §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.
- e. S.C. Code Ann. §1-23-380(A).**
Judicial review upon exhaustion of administrative remedies.
A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy. Except as otherwise provided by law, an appeal is to the court of appeals.
A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy. Except as otherwise provided by law, an appeal is to the court of appeals.

f. S.C. Code Ann. §1-23-600(H)(2).

"[I]f the requesting party asserts in the request that the issues are not substantially similar to those considered in a previously licensed matter, then the license (CD-5000090) must be stayed until further order of the Administrative Law Court. Petitioner asserts the change in stack height from 70' to 50' makes the need for updated air dispersion analysis for stack increase mandatory, and the issue of dispersion involving treated chemicals like Hydrofluoric Acid not to be substantially similar to the initial application and air modeling analysis submitted by applicant Silfab. Exhibit-A.

g. Clean Air Act, Section 112(r) : (general duty clause).

Under the Clean Air Act Section 112(r)(1), the General Duty Clause states: "The owners and operators of a stationary sources producing, processing, handling, or storing of such substances [ie., a chemical in 40 CFR part 68 or any other extremely hazardous substance] *have a general duty to identify hazards which may result from (such) releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur*". Petitioners allege Silfab has failed to demonstrate proper location, stack height, and zoning for a process involving treatment and processing of hydrofluoric acid and Silane, specifically, under any RMP taking into account two (2) surrounding schools, hundreds of residential homes, and general traffic surrounding the planned Silfab site of operations.

3. The issues presented for determination set forth with particularity, including any claims or defenses expected to be raised:

Permit # CP-500090.v.1 petitioners allege proposed structural modifications and non-transparency as to toxic chemical usage / pollutant quantity discharge height should act to reverse or stay the original permit CP-500090, which involved raising exhaust tower height to 70' feet from 19.7' feet exhaust height cited by SM&E engineering, engineering firm for Silfab.

Petitioners allege that the state agency had discretion but failed to properly consider "*location*"² of the site upon which exhaust will occur arising from use of applicant inaccuracies and un-defined quantities arising from chemical etching process involving Silane and Hydrofluoric Acid. Petitioners allege the agency decision failed

² Petitioners concede that DHEC need not have considered zoning of the district specifically, but that DHEC erred under its Standard No. (8) Toxic Air pollutants Item (B) which states " *This determination will take into consideration, but will not be limited to, the nature and amount of the pollutants [here Hydrofluoric Acid (HF), Silane, Hydrogen Fluoride, and Toluene] location (sic), proximity to residences and commercial establishments.*" While schools are not expressly listed, Petitioners would cite school buildings and playgrounds fall squarely within commercial establishments of priority to be considered irrespective of whether Silfab seeks 19.7' foot - 70' foot - or now-proposed 50' foot stack height for exhaust towers.

to properly take into account the proposed reduced height of potential toxic omissions in the location of two (2) school facilities and hundreds of residential homes, or require applicant demonstrate compliance consulting with the Environmental Protection Agency (EPA) as to emergency protocols in the event of accidental toxic release and evacuation RMP protocols, which are yet un-defined other than "shelter in place". Clean Air Act, section 112(r).

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:

Petitioner seeks reversal of permit CP-50090 and CP-50090.v.1. Alternatively petitioner seeks Remand by this court to SCDES for contested hearing after discovery as to Silfab increase of acid scrubber stack height from 19.7' to 70' feet subsequent to the initial permit application Silfab provided DHEC. The law which supports request by petitioners would have grounds as cited by paragraph 2(a) through 2(d) above.

5. A brief summary of the facts to be presented at the hearing:

SCHEC received from Silfab Solar, Inc. an air permit application to construct emission source(s) (stacks) associated with respondent's proposed solar cell and solar panel production facility in Fort Mill, South Carolina. After technical review DHEC provided public notice of the proposed facility's permit application, a draft air permit, and a statement of basis (*summarizing the project, its proposed emissions, and regulatory and permit applicability*) including a 30 day period for public comment. DHEC then extended the public comment period to November 3, 2023. A public hearing was scheduled for October 20, 2023. More than 100 community members attended the hearing, and DHEC received more than (400) written or oral comments.

What DHEC did not provide the public was disclosure of Silfab justifications or modeling analysis whereby Silfab unilaterally increased the proposed stack height for exhaust tower acid scrubbers from 19.7' feet to 70' feet, subsequent to the information DHEC in fact disseminated to the public. This is addressed by DHEC "Note: The facility increased the proposed stack height for the acid scrubber stack from 19.7' feet to 70' feet subsequent to (*sic) the analysis summarized above. Exhibit- . The agency cited modeling guidance does not require an updated air dispersion analysis for stack height increase(s) due to the fact that better (*sic) dispersion is expected with higher release heights. Id. If so, petitioners allege the proposed stack decrease from 70' feet to lowered 50' feet must be supported by proper modeling guidance provided to the public and DES, which has not been forthcoming.

The South Carolina Department of Environmental Services (SCDES) improperly denied appellants review or contested hearing, withholding or omitting release of engineering studies and data that the appellants had to obtain via FOIA requests. The state agency failed to require or publicly release data and modeling analysis of post-application increase in Silfab's proposed stack height for acid scrubber stacks. Whether heightening or lowering the stacks that will inevitably involve discharge of some quantity of treated water and hydrofluoric acid, petitioner respectfully asserts before this court ~~this was~~ a major (not minor) modification under which air modeling analysis should be required by the applicant.

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion:

While petitioner(s) acknowledge that county zoning is not considered by the agency, "*location*" nonetheless is cited and under abuse of discretion and error of law was omitted and not reviewed evidencing that the Silfab Operation site is within proximity to two (2) schools in Fort Mill (Flit Hill elementary and Flint Hill middle school) and hundreds of residential homes within a densely populated area of Fort Mill. At no time did applicant Silfab cite to SCDHEC / SCDES that the site upon which it will operate is zoned Light Industrial, not heavy industrial. On information and belief the operation of Silfab at the site will involve heavy industrial methods and processes within/upon a property not zoned for heavy industrial or chemical processes. Silfab has on information and belief failed to obtain EPA review pursuant to the Clean Air Act, section 112(r) where the agency decision states affirmatively "*Silfab will be subject to this regulation for its storage and use of Silane and hydrochloric acid.*"

Petitioners cite that the agency expressly omits storage and use of Hydrofluoric Acid (HF) in this statement. [Exhibit-1], p. 2, ¶6, lines 1-2.] Petitioners cite that DHEC has failed to require of Silfab updated air dispersion modeling pursuant to applicant Silfab raising stack height from 19.7' feet to 70' feet, and now seeking to lower stack planned to be height of 50' feet

- a. Petitioner: Denial of Due Process.

Petitioners cite denial of substantive and due process right twice by DHEC. Exhibit-1. Despite two (2) petitions for Final Review, DHEC identified the permit process as final. Petitioners cite failure of DHEC and Silfab to provide for public review and comment the raising (and now lowering) of exhaust stack height.

- b. Petitioner: Permit #CP-00090 is a final determination subject to appeal to the ALC, vesting this court with jurisdiction. Permit CP-00090.v.1. is a major (*not minor*) modification of original permit issued by SCDHEC issued without accurate data where DHEC 2573 (March, 2022) shows page (5) item (5) "NO" as to other facilities collocated for air compliance and applicant submitted no air

dispersion modeling analysis to verify shorter stack exhaust implications to DHEC by June 20, 2023 involving toxic pollutants Hydrochloric Acid (HCl), Hydrogen Fluoride (HF), and Toluene. Petitioner asserts the modification requests by Silfab constitute issues not substantially similar as involving (a) change of discharge height from 19.7 feet, un-explained; (b) storage and use of toxic chemicals; and (c) failure of applicant to abide by DHEC ruling mandating petitioner provide Rule 112(r) RMP in consulting with the Environmental Protection Agency (EPA).

"In May, 2024, Silfab notified DHEC that it needed to *modify the proposed stack height to meet county requirements* (sic). On June 4, 2024 DHEC met with Silfab and directed (sic) the facility to submit an air dispersion modeling analysis to verify a shorter stack would meet all state and federal air quality standards. As of June 20, this analysis has not been submitted or publicly disseminated. But, see ¶(5), supra. [Exhibit - []]

- c. Respondent Silfab Solar, Inc. – Anticipated Standing argument against Petitioner
It is anticipated applicant will argue the original permit should stand and appellants did not timely challenge said original permit (CP-5000090), which sought exhaust release in excess of 19.7 feet height in the form of 70' exhaust towers. On information and belief, Silfab Solar Inc. has modified its stack height from 19.7' feet to 70'. Recently disclosed reports evidence now- modified plan height of exhausts to be 50' feet high.
- d. Respondent Silfabo Solar, Inc. and SCDES : On information and belief, the agency and applicant will defend that permit CP-00090 is a final determination not subject to review, stay or reversal and that version 1.0 (CP-00090.v.1) is a merely a *minor modification* of the original permit. Petitioners assert the agency decision is devoid of due process and erroneous as a matter of law, warranting reversal or remand for failure to provide information subsequent to application whereby Silfab sought to raise stack height. DHEC failures to disseminate justifications for change in stack height from 19.7 feet to 70' require, or should have required, an updated air modeling guidance and air dispersion analysis, since Silfab now seeks stack height less than 70' feet down to 50' feet.

7. A list of proposed witnesses and exhibits.

Appellants submit as proposed exhibits the following: Proposed witnesses for petitioner, if permitted, would be (1) Walter Buchanan; (2) Andrew R. Lytle; (3) Dave Phelps, and (4) Gary Griffin, and persons identified by Silfab Solar, Inc. and/or SCDES.

A list of proposed exhibits is as follows:

Exhibit-1

61-62.5 Standard No. 8 Toxic Air Pollutants, Regulation History as published in State Register.

Exhibit-1: Silfab Diagram, working principal of Thermal Oxidizer boiler

Exhibit-1: Silfab Diagram 4,400 gallon tanks / storage of chemicals.

Exhibit-1: ProChem Inc. industrial Water Technologies & Sustainable Solutions depiction project No. 22713 internal storage tanks dated 3/8/2024 by J. Abram (engineer stamp Steven R. Hammer 3/8/2024).

- a. Un-Controlled Release(s). Environmental study now released by S&ME engineering evidences re-calculated emission release calculations grossly exceeding initial permit data by Silfab to SCDHEC. The calculations now released 11/14/204 evidence Acidic Exhaust (EXA exhaust) and flow rate average of 532 mg/m³ of Hydrofluoric Acid, with a total of un-controlled acidic exhaust admission from exhaust towers of 1.7354 lbs. per hour from exhaust tower/stacks now cited (initially) at a release height of 19.7' feet. Without explanation, Silfab then notified the agency that it wishes to raise stack height to 70' feet.
 - b. Permit # CP-500090.v.1. Version 1 of the permit identifies for the first time use of gas-fired boilers, which petitioners cite constitutes a major (not minor) modification of permit CP-50090. Exhibit-1 See, also Exhibit-1.
 - c. Permit # CP-500090. The permit approved by SCDHEC was not transparent and failed to permit notice to petitioners of the planned gas-fired boiler and on-site storage of numerous tanks holding flammable and toxic chemicals, like Silane and Hydrofluoric Acid, to be stored on site. Exhibit-1.
 - d. Thermo Oxider and Boiler : Depicted Exhibit - #1.
 - e. Chemical Storage data: Silane and/or Hydrofluoric Acid. Exhibit-#1
 - f. Chemical Storage data: Silane and/or Hydrofluoric Acid – Exhibit-#1
8. A statement regarding the necessity of discovery, if any.

Limited. Petitioner cites the need for discovery pertaining to notice and opportunity to be heard concerning proposed change to exhaust tower systems, including all submissions by applicant to the state agency, between initial permit CP-500090 and final "minor modification" permit CP-500090.v.1 including any and all documents submitted by respondent(s) to EPA, if any. Petitioner seeks discovery of any and all

air dispersion analysis modeling required by DHEC of Silfab Solar, Inc. involving stack height over 19.7' feet. Petitioner seeks any disclosure of RMP or Chemical Accident Release Prevention Provisions, pursuant to S.C. Regulation § 61-62.68 (pursuant to Section 112(r) of the Clean Air Act) pertaining to (a) hazard assessment; (b) accidental release prevention protocols or programs; and (c) emergency response which to date has on information and belief not been provided to the agency, and certainly not petitioners. Petitioners cite the need for One (1) deposition pertaining to SM&E engineer as to stack height and air dispersion height increase and/or decreases as proposed by Silfab to DHEC post application.

9. The estimated length of the hearing: **One (1.0) Hour to (1.5) hour.**
10. Any dates in the next one hundred twenty (120) days when you will not be available for a hearing: **Plaintiff counsel requests protection for :**
 - a. **December 31 – January 5, 2025. (CLE)**
 - b. **July 2 – 7, 2025 (Family Vacation)**
11. An email address where you can be reached. **cam@halfordlaw.net with copy to joanni@halfordlaw.net.**

Respectfully submitted,

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November 26, 2027

and S.C. Code Ann Regs. 61-62, Air Pollution Control Regulations and Standards. Petitioner's request should be dismissed pursuant to S.C. Code Ann. § 1-23-505 and S.C. Rules of Civil Procedure, Rule 12(b).

3. The issues presented for determination, including any claims or defenses expected to be raised;

Petitioner's stated issue for determination is summarized as follows:

Is it appropriate for the DES Letter to acknowledge "continued compliance" with air permitting requirements following Silfab's notification to SCDES of updated air dispersion modeling analysis in accordance with Permit requirements?

Silfab raises the defenses that 1) the DES Letter is not a department decision giving rise to a contested case, and 2) Petitioner's request was not timely filed. Therefore, Petitioner's Request is not within the jurisdiction of this Court.

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 following actions are requested by Silfab:

- a. This Court issue an Order dismissing Petitioner's Request, acknowledging that the DES Letter does not rise to the level of a contested case within the jurisdiction of the Court and Petitioner's request was not timely filed.
- b. Such other relief be granted against Petitioner as this Court deems just and proper.

The law supporting the requests is set forth in the South Carolina Administrative Procedures Act and implementing case law. In sum, the DES Letter is not a department decision giving rise to a contested case hearing and therefore this Court lacks jurisdiction to hear the matter. The South Carolina Administrative Procedures Act (APA) defines "contested case" before the

ALC as “a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, 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 [ALC] after an opportunity for hearing.” S.C. Code Ann. § 1-23-505(3). The definition is not satisfied here because 1) the DES Letter is not a “ratemaking, price fixing, [or] licensing” decision, but rather an acknowledgement of continued compliance with Permit requirements; 2) no legal rights, duties, or privileges are impacted by the DES Letter; and 3) “because neither the Department nor the Court is required by law or the South Carolina Constitution to determine the rights involved in this case.” *Coastal Conservation League v. South Carolina Department of Health and Environmental Control*, 2022 WL 3373821 (S.C.ALC (August 10, 2022)).

Because the Permit anticipates updating of modeling analysis and does not require permit modification for such an update, no “licensing” decision was made, no “legal rights, duties, or privileges” were impacted by the DES Letter, and neither DES nor the Court are required to make a determination with regards to Silfab’s rights related to the updated modeling. Therefore, the DES Letter does not rise to the level of a Contested Case and this Court does not have jurisdiction to review Petitioner’s request.

Even if the DES Letter were considered a contested case, Petitioner’s request was not timely. SCDES’ enabling statute specifically provides “thirty calendar days after the mailing of a decision” of the Department pursuant to S.C. Code Section 48-6-30(D)(1) for an affected person to request a contested case hearing before this Court. S.C. Code Ann. § 48-6-30(D)(2). Because the DES Letter was issued July 30, 2024, Petitioner’s request must have been received by the Court by August 29, 2024. Petitioner’s request was received by the Court September 9, 2024. Therefore, Petitioner failed to file a timely and completed request for contested case hearing in accordance

with S.C. Code § 48-6-30.

5. A brief summary of the facts to be presented at the hearing;

- a. On March 1, 2024, SCDES issued Silfab an Air Construction Permit, Permit No. CP-50000090 v1.0 (the "Permit").
- b. ~~The Permit authorizes construction and subsequent operation of air emission sources at Silfab's~~ new solar cell and panel production facility at 7149 Logistics Lane in Fort Mill, South Carolina (the "Facility").
- c. Section I.1 of the Permit requires updated air dispersion modeling be submitted to DES under certain circumstances:

The owner or operator shall maintain this facility at or below the emission rates used in the most recent air dispersion modeling (or other method) demonstration submitted to and approved by the Department, not to exceed the pollutant limitations of this permit. Should the facility wish to increase the emission rates used in the demonstration, not to exceed the pollutant limitations in the body of this permit, it may do so by submitting a new demonstration for approval.

- d. On July 3, 2024, Silfab provided SCDES an updated air dispersion modeling analysis pursuant to the Permit Sec. I.1, which demonstrated continued compliance with modeling standards and Permit conditions.
- e. On July 30, 2024, SCDES issued the DES Letter, which acknowledged receipt of Silfab's July 3rd notification and noted Silfab's "continued compliance" with the Permit.

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion;

Respondent Silfab intends to submit a Joint Motion to Dismiss with SCDES, for lack of procedural and subject matter jurisdiction and failure to state a claim upon which relief may be

granted under South Carolina Rules of Civil Procedure and the Rules of Procedure for the Administrative Law Court. Respondent requests the Court hear additional motions, if the facts or law warrant.

7. A list of proposed witnesses and exhibits;

Greg Basden, Director of Operations, Silfab Solar, Inc.

Steve McCaslin, Director, Air Permitting Division, South Carolina Department of Environmental Services

Such other witnesses as may be identified in the future.

8. A statement regarding the necessity for discovery, if any;

As respondent believes this matter is outside the jurisdiction of the Court and should be dismissed on the pleadings, no discovery is necessary. However, if the Court holds otherwise, written interrogatories, requests for production of documents, requests to admit and depositions are appropriate and necessary for this appeal.

9. The estimated length of the hearing;

As respondent believes this matter is outside the jurisdiction of the Court and should be dismissed on the pleadings, no hearing is necessary. However, if the Court holds otherwise, 3-4 days is sufficient.

10. Any dates in the next one hundred eighty (180) days when you will not be available for a hearing;

December 24-26, 2024

March 3-7, 2024

11. An email address where you can be reached.

Ethan R. Ware: EWare@williamsmullen.com

Ryan W. Trail: Rtrail@williamsmullen.com

Sara H. Tyer: Styer@williamsmullen.com

Respectfully submitted,



WILLIAMS MULLEN
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(803) 567-4600

Attorneys for Respondent Silfab Solar, Inc.

November 26, 2024
Columbia, South
Carolina

The Department respectfully submits that the Petitioner's contested case hearing request should be dismissed in its entirety because (i) the contested case hearing request is incomplete and untimely, barring procedural jurisdiction; and (ii) the July 30, 2024, letter the Petitioner seeks to challenge is not a decision subject to the Court's contested case jurisdiction. Should this case proceed to the merits, the Department submits that no procedural protections were denied, and the contents of the challenged letter are supported and meet all applicable legal requirements.

2. Statutory provision(s) conferring subject matter jurisdiction on the Court and other applicable statutes and regulations;

The Department respectfully submits that the pleadings in this case do not support a finding of subject matter jurisdiction. By statute, Administrative Law Court ("ALC") jurisdiction extends to SCDES decisions "involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, certificates, or other actions of the department which may give rise to a contested case...." S.C. Code Ann. §§ 48-6-30(A), (D)(2). A "contested case" is limited to proceedings "in which the legal rights, duties, or privileges of a party are required by law or by Article I, Section 22 [of the] Constitution of the State of South Carolina ... to be determined by an agency or the [ALC] after an opportunity for hearing." S.C. Code Ann. § 1-23-505(3). The Department submits that the July 30, 2024 letter which the Petitioner seeks to challenge is not a decision involving the issuance or denial of a permit or any other action that may give rise to a contested case. The letter takes no dispositive action, but rather acknowledges review of a facility's submission of updates to its modeling data, an activity expressly anticipated and comprehensively addressed by the facility's preexisting permit and underlying regulations. The Petitioner's contested case hearing request therefore lacks subject matter jurisdiction.

In the event this Court were to deem the challenged July 30, 2024 letter a final decision ostensibly subject to contested case review, the Department submits that the Petitioner's action is

time-barred, leaving this Court without procedural jurisdiction. The Department's enabling statute provides "thirty calendar days after the mailing of a decision" for a permittee or affected person to request a contested case hearing before the ALC. S.C. Code Ann. § 48-6-30(D)(2). In this case, the challenged letter was sent electronically to the permittee through the Department's ePermitting system on July 30, 2024, and the Petitioner had not specifically requested in writing to be notified of the letter prior to it being sent, per S.C. Code Section 48-6-30(D)(1). Accordingly, were the letter considered to be a reviewable decision, the mandatory time period for filing a complete contested case hearing request would have expired on August 29, 2024, thirty days after electronic mailing to the permittee. In this case, the contested case hearing request was not signed until October 2, 2024, and was retroactively stamped as filed on September 9, 2024 (and the request remains otherwise incomplete). Because the Petitioner has not met the statutory 30-day deadline, this Court lacks procedural jurisdiction to hear the matter.

Should this case proceed to the merits, other law material to the case includes, but is not limited to: S.C. Regulation 61-62.5, Standard No. 8, *Toxic Air Pollutants* ("Standard 8"), Section II.C; and Condition I.1 of the Synthetic Minor Construction Permit issued by the S.C. Department of Health and Environmental Control to Silfab Solar on March 1, 2024.

3. The issues to be presented for determination set forth with particularity, including any claims or defenses expected to be raised;

The initial for determination is whether this Court has jurisdiction in this matter. As referenced in item (2) above, the Department respectfully submits that the pleadings in this case do not support a finding of subject matter jurisdiction and further that this court lacks procedural jurisdiction to hear this matter.

Should this matter proceed to the merits, the Petitioner would have the burden of proof. The Department will demonstrate that its July 30, 2024, letter was consistent with applicable legal requirements and procedures and was supported by the evidence.

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 Department respectfully requests that the Court issue an Order dismissing the Petitioner's request for contested case hearing for lack of subject matter jurisdiction (SCRPC Rule 12(b)(1)) or, in the alternative, failure to state a claim (SCRPC Rule 12(b)(6)). The grounds for dismissal are summarized in item (2) above. Specific legal principles and supporting statutory and case law citations include, but are not limited to, the following:

- Subject matter jurisdiction is limited to decisions of the Department which give rise to a "contested case." S.C. Code Ann. §§ 1-23-505(3), 48-6-30(A), and 48-6-30(D)(2); *Amisub of SC, Inc. v. S.C. Dep't of Envtl. Control*, 403 S.C. 572, 596, 743 S.E.2d 786 (2013); *Charleston Radiologists, P.A. v. S.C. Dep't of Health and Envtl. Control*, No. 00-ALJ-07-0328-CC, 2001 WL 263390, at *2 (Feb. 22, 2001) (Anderson, J.); *Coastal Conservation League v. S.C. Dep't of Health and Envtl. Control*, No. 22-ALJ-07-0082-CC, 2022 WL 3373821, at *9 (S.C. Admin. L. Ct. Aug. 10, 2022) (Reibold, J.); *Providence Hosp. v. S.C. Dep't of Health and Envtl. Control*, No. 02-ALJ-07-0154-CC, 2002 WL 1486976, at *3 (S.C. Admin. L. Ct. June 25, 2002) (Anderson, J.); *Walldorf v. S.C. Dep't of Health and Envtl. Control*, Nos. 11-ALJ-07-0002-CC through 11-ALJ-07-0004-CC, 2011 WL 2413301 (S.C. Admin. L. Ct. Mar. 28, 2011) (Anderson, J.).
- Contested case hearing requests not timely filed in accordance with applicable law and court rules are without procedural jurisdiction. S.C. Code Ann. § 48-6-30(D); SCALC Rules 11(C), 11(D) and 23(B); *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011); *Carolina Bar Grp., LLC D/B/A TLC Sports Bar v. S.C. Dep't of Revenue*, No. 21-ALJ-17-0404-CC, 2022 WL 467835, at *2, n.2 (S.C. Admin. L. Ct. Feb. 8, 2022) (Anderson, J.).

Should this matter proceed to the merits, the Department respectfully requests that the Court find the Department's July 30, 2024, letter is consistent with applicable legal requirements and procedures and is supported by the evidence.

The Department reserves the right to raise additional arguments and cite other applicable law in any future pleadings or appearances in this matter.

5. A brief summary of the facts to be presented at the hearing;

Should this matter proceed to a contested case hearing, the Department intends to offer testimony pertaining to its correspondence with Silfab Solar, as relevant to the Department's July 30, 2024 letter. The Department reserves the right to offer additional evidence as needed.

By way of summary, the evidence will show that on March 1, 2024, the Department's predecessor, the S.C. Department of Health and Environmental Control ("DHEC") issued Silfab Solar an air quality construction permit for equipment and processes in connection with a proposed solar cell and module manufacturing facility. As required by applicable air quality regulations (specifically, Standard 8), the facility used air dispersion modeling to demonstrate compliance with applicable ambient air quality standards under for hydrochloric acid ("HCl") and hydrogen fluoride ("HF") during the permitting process. The permit became final as written, as contested case review was not sought before the ALC.

On June 4, 2024, Silfab Solar informed DHEC that it would need to modify its proposed stack heights to ensure compliance with county requirements governing building/equipment height. Condition I.1 of the permit provides in relevant part that "[a]ny changes in the parameters used in [the facility's air dispersion modeling] demonstration may require a review by the facility to determine continuing compliance with [the state and federal ambient air quality] standards." This language implements Section II.C of Standard 8, which states that "[c]hanges in ... parameters will require a review by the facility to determine if they have an adverse impact on the compliance demonstration." Accordingly, DHEC staff informed the facility that it would need to submit an

updated air dispersion modeling analysis to verify that the changed stack height and any additional changed modeling parameters would maintain compliance with the applicable standards.

On July 3, 2024, Silfab Solar submitted updated modeling forms to the Department, including the updated modeling parameters. The updated modeling parameters included updates to stack height, stack diameter, and exit velocity, and accounted for two buildings being constructed nearby. Although the actual stack height would be decreasing from 70 feet to 50 feet from the ground, the stacks were originally modeled and showed compliance at only 19.7 feet (*i.e.*, a more conservative, worse-case parameter than the both the originally planned and updated actual stack height, meaning that modeling with reflecting the new 50-foot stack height parameter could not adversely affect the compliance demonstration as a practical matter).

The Department documented its review of the updated modeling in an "Air Compliance Analysis Summary Sheet" dated July 22, 2024, which summarized the facility's modeling analysis and results. The modeling analysis showed lower pollutant concentrations than those generated during the initial modeling and continued to show compliance with air quality standards.

On July 30, 2024, the Department sent Silfab Solar the letter contested by the Petitioner. The letter first acknowledges receipt of Silfab Solar's notification of plans to install four boilers exempt from construction permitting requirements. Following the exempt boiler discussion, the letter reiterates that the Department had reviewed the facility's updated modeling analysis and that that the analysis demonstrated continued compliance with the applicable standards. The letter then notes that because the updated parameters were submitted in accordance with Section 1.1 of the facility's permit, a construction permit revision was not required and was not being issued.

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion;

Concurrent with this prehearing statement, the Respondents are filing a joint motion to dismiss for lack of subject matter jurisdiction and procedural jurisdiction pursuant to SCRCR Rule 12(b)(1) and (6). Should this matter proceed, the Department may also file a motion for summary judgment on the merits of the case pursuant to SCRCR Rule 56. The Department reserves the right to raise additional arguments or dispositive or limiting motions in accordance with applicable court rules.

7. A list of proposed witnesses and exhibits;

At this time, the Department anticipates it may call one or more of the following Department employees as witness:

- Denise Hall –Air Permitting Section Manager
- Greg Quina – Air Modeling Section Manager

The above-named Department employee witness may be contacted through undersigned counsel. The Department reserves the right to modify and supplement this list and designate witnesses as experts, upon notice to the parties and to the Court.

At this time, the Department would anticipate introducing the following exhibits:

- Documents contained in the Department's administrative file;
- Documents obtained in discovery if conducted; and
- Exhibits proffered and/or admitted by the other parties.

8. A statement regarding the necessity for discovery, if any;

The Department respectfully requests that any specific scheduling of discovery be postponed pending resolution of motion to dismiss proceedings in this case. Should discovery be necessary, the Department anticipates that standard discovery is sufficient in this matter but respectfully reserves the right to submit a request to the Court for additional discovery should the need arise.

9. The estimated length of the hearing; and

Should the case proceed to a hearing on the merits, the Department expects that it will take no more than one day to present its case in chief.

10. Any dates in the next one hundred twenty (120) days when you will not be available for a hearing; and

The Department respectfully requests that scheduling of a trial in this matter be postponed until resolution of motion to dismiss proceedings and, if necessary, summary judgment proceedings.

Counsel and witnesses for the Department will be unavailable on the following dates:

- December 3, 2024
- December 16-18, 2024
- December 23-27, 2024
- December 30, 2024-January 3, 2025
- January 3, 2025
- January 17, 2025
- February 3, 2025

11. An email address where you can be reached.

The Department's counsel may be reached at the following email addresses:

- Sara Martinez: sara.martinez@des.sc.gov
- Dawn Miller: dawn.miller@des.sc.gov

In addition, the Department requests that our paralegal, Sandra R. Wessinger be copied on all matters regarding this case at sandra.wessinger@des.sc.gov.

Respectfully submitted,



Dawn K. Miller, SC Bar #: 80133
Sara Martinez, SC Bar #74822
SCDHEC – Office of General Counsel
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storage tanks, and an emergency generator, and also establishes applicable emission limits, source testing, monitoring, recordkeeping, and reporting requirements (Permit No. CP-50000090 v.1.0) (the “permit”). Affidavit of Denise Hall (Nov. 26, 2024) (“Hall Aff.”), at ¶ 3 & Exhibit A (Permit). Under the issued permit, facility equipment and operations would include emissions of hydrochloric acid (“HCl”) and hydrogen fluoride (“HF”). *Id.* Pursuant to S.C. Regulation 61-62.5, Standard No. 8, *Toxic Air Pollutants* (“Standard 8”), the facility used air dispersion modeling to demonstrate compliance with applicable ambient standards for HCl and HF under Standard 8. *Id.*, ¶ 2.

On March 13, 2024, pursuant to S.C. Code Section 44-1-60(E)(2), several community members filed a request for DHEC Board review of the permit’s issuance, expressing a variety of questions and concerns regarding permit issuance. *Id.*, ¶ 4. On April 17, 2024, the DHEC Board notified the requestors that it would not be conducting a final review conference in the matter, and the issued permit became the final agency decision. *Id.* No further review of the permit was timely sought before this Court. *Id.*

On June 4, 2024, Silfab Solar informed DHEC that it would need to modify its proposed stack heights to ensure compliance with county requirements governing building/equipment height. *Id.*, ¶ 5. Condition 1.1 of the permit provides in relevant part that “[a]ny changes in the parameters used in [the facility’s air dispersion modeling] demonstration may require a review by the facility to determine continuing compliance with [the state and federal ambient air quality] standards.” *Id.*, Exhibit A. This language implements Section II.C of Standard 8, which states that “[c]hanges in ... parameters will require a review by the facility to determine if they have an adverse impact on the compliance demonstration.” Stack height is a parameter used to determine compliance with state and federal ambient air quality standards. Accordingly, DHEC staff

informed the facility that it would need to submit an updated air dispersion modeling analysis to verify that the changed stack height and any additional changed modeling parameters would maintain compliance with applicable air quality standards. Hall Aff., ¶ 5.

On July 3, 2024, Silfab Solar submitted updated modeling forms, including the updated modeling parameters. *Id.*, ¶ 6. The updated modeling parameters included updates to stack height, stack diameter, and exit velocity, and accounted for two buildings being constructed nearby. *Id.* The Department documented its review of the updated modeling in an “Air Compliance Analysis Summary Sheet” dated July 22, 2024. *Id.*, ¶ 7 & Exhibit B (Air Compliance Analysis Summary Sheet). This is a standard document prepared by Department staff summarizing a facility’s modeling analysis and results. *Id.* The maximum expected pollutant concentrations yielded from the modeling analysis were lower than those generated during the initial modeling (given the extra-conservative parameters originally modeled) and continued to show compliance with applicable air quality standards.¹ *Id.*, Exhibit B.

On July 30, 2024, the Department sent Silfab Solar the letter contested by the Petitioner. *Id.*, ¶ 8 & Exhibit C (July 30, 2024, letter). The majority of the letter acknowledges receipt of Silfab Solar’s notification of plans to install four boilers exempt from construction permitting requirements—a matter unrelated to the facility’s updated modeling analysis.² *Id.* Following the exempt boiler discussion, the letter reiterates what was already stated in the Air Compliance

¹ The originally planned stack height was 70 feet. Hall Aff., ¶ 6. The updated modeling factored a newly planned 50ft stack height. *Id.* This did not adversely affect the original modeling because the original modeling used a more conservative, worse-case parameter of only 19.7 feet. *Id.*

² Because the Request for Contested Case Hearing and accompanying exhibits do not allege any dispute in connection with the exempt boilers, that matter is considered by the Department to be outside the scope of this case. To the extent there were any claimed disputes regarding the exempt boilers, that matter would be subject to dismissal for the same reasons that the Petitioner’s claims regarding the modeling portion of the letter are subject to dismissal, as the Department’s acknowledgment regarding Silfab Solar’s exempt boiler notification likewise presents no reviewable decision or “contested case.”

Analysis Summary Sheet that the Department reviewed the facility's updated modeling analysis and the analysis demonstrated continued compliance with the applicable standards. *See id.*, Exhibit C. The letter then notes that, because the updated parameters were submitted in accordance with Section L1 of the facility's permit, a construction permit revision was not required and was not being issued. *Id.*

B. Procedural History

On August 14, 2024, Walter Buchanon, on his own behalf and on the claimed behalf of others in Fort Mill, York County, submitted a "Petition for Final Review" to the Department, seeking review of matters in association with Silfab Solar's permit and the July 30, 2024 letter (specifically asserting concern about changes to the facility's emission stacks). *See* Petitioner's Contested Case Hearing Request (August 14, 2024 petition attached as exhibit). On August 16, 2024, the Department's General Counsel wrote Mr. Buchanon's attorney, notifying him that DHEC had been abolished, and that the review process previously available before the DHEC Board under S.C. Code Section 44-1-60 is no longer applicable. *See* Petitioner's Contested Case Hearing Request (August 16, 2024, letter attached as exhibit).

A "Request for Contested Case Hearing Form" and "Agency Information Sheet and Notice of Appearance" dated August 29, 2024, were prepared by the Petitioner, *see* Petitioner's Contested Case Hearing Request, and the submission and filing fee are documented as having been received by the Court on September 9, 2024, *see* September 10, 2024 ALC Memorandum Re: Compliance with ALC Rules 11 and 71. The Request for Contested Case Hearing Form did not specifically identify the intended Petitioner(s) and identified only the submitting attorney, Mr. J. Cameron Halford, by name.³ In the Contested Case Hearing Form, the Petitioner also does not specifically

³ Because the case caption, per the Notice of Assignment filed on October 16, 2024, identifies the Petitioner as Mr. Walter Buchanon, references to the "Petitioner" herein refer to the same. However, Respondents

attach the Department's July 30, 2024 letter but claims to be appealing an unnamed July 30, 2024 "decision" as a "violation of substantive due process and error of law denying proper notice and opportunity to be heard, thus denying contested case status," pursuant to article I, sections 3 and 14 of the S.C. Constitution. The signature block for submission of the filing was dated August 29, 2024, but omitted a signature. The "Agency Information Sheet and Notice of Appearance" originally submitted specifically referenced the Department's July 30, 2024 letter and claimed a denial of procedural due process and errors of law based on the "exhaust of [HF], exhaust to emit via modified exhaust tower stacks under v.1.0 of the permit." Petitioner also included as attachments the first page of the March 1, 2024 permit, the August 14, 2024 "Petition for Final Review" submitted to the Department, and the August 16, 2024 Department letter stating that DHEC Board review is no longer available.

On September 10, 2024, the Court issued to the Petitioner a memorandum regarding compliance with ALC Rules 11 and 71, returned the Request for Contested Case Hearing Form for an original signature, and returned the "Agency Information Sheet" as inapplicable (and to be submitted by the Department once the case is assigned). The memorandum asked for the appropriate information to be returned within 10 days, or the case would be returned unprocessed. On October 2, 2024, the Court emailed Petitioner's attorney a copy of the memorandum, stating that no response had been received previously. Petitioner's attorney replied on that same date and resent the "Request for Contested Case Hearing Form" with the necessary signature for filing. The form is stamped as having been filed by the Court on September 9, 2024.

DISCUSSION

remain uncertain as to who the intended Petitioner(s) are. The "Agency Information Sheet and Notice of Appearance" erroneously filed on behalf of the Petitioner on August 29, 2024, identified Andy Lytle, Dave Phelps, Garry Griffith, and Carolina Land as putative "appellants."

As explained herein, the Petitioner's request for a contested case hearing must be dismissed for lack of procedural jurisdiction and subject matter jurisdiction. First, the Department's July 30, 2024 letter—which renders no dispositive decision—does not impact any private rights or duties subject to any requirement for a hearing. Therefore, it does not present a “contested case” within this Court's subject matter jurisdiction. As a secondary matter, Petitioner's contested case request failed to meet threshold requirements for procedural jurisdiction. Accordingly, Petitioner's Request for Contested Case Hearing should be dismissed.

I. SUBJECT MATTER JURISDICTION EXTENDS TO CONTESTED CASES AND NOT THE DEPARTMENT'S ROUTINE JULY 30, 2024 CORRESPONDENCE.

This Court's subject matter jurisdiction is constrained by the S.C. Administrative Procedures Act (“APA”), which grants the ALC jurisdiction for review of “contested cases” involving executive branch departments in which “an administrative law judge[] is authorized or permitted by law or regulation to hear and decide these cases.” S.C. Code Ann. § 1-23-600(A). SCDES's enabling statute specifically assigns the ALC jurisdiction over contested cases generated by SCDES decisions, including “decisions ... involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, certificates, or other actions of the department which may give rise to a contested case....” S.C. Code Ann. §§ 48-6-30(A), (D)(2). A “contested case” is defined by the APA as “a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law or by Article I, Section 22 [of the] Constitution of the State of South Carolina ... to be determined by an agency or the [ALC] after an opportunity for hearing.” S.C. Code Ann. § 1-23-505(3) (emphasis added). Accordingly, for this Court to have jurisdiction, the Petitioner's claims must rise to the level of a “contested case” either based upon (i) some statutory or regulatory requirement for a contested case hearing, or (ii) based on the application of Article I, Section 22 of the Constitution, and in

either event, the Petitioner's legal rights or privileges must be affected. As discussed below, the Petitioner does not meet these criteria for classification as a "contested case."

A. Air quality laws do not require the opportunity for a hearing for routine modeling correspondence already authorized by an existing permit.

Neither statute nor regulations require the opportunity for a contested case hearing regarding Department review of updated modeling data. As a result, there is no jurisdiction over the Department's letter in this Court.

First, the Department's letter does not issue or modify any permit, license, or certificate expressly subject to contested case jurisdiction pursuant to S.C. Code Section 48-6-30. Rather, it is a written response to the Silfab Solar facility's submission of modeling data, which the Department reviewed. This correspondence does not equate to issuance of a permit or other decision specifically reviewable pursuant to said statute. *Accord Waldorf v. S.C. Dep't of Health and Envtl. Control*, Nos. 11-ALJ-07-002-CC through 11-ALJ-07-004-CC, 2011 WL 2413301 (S.C. Admin. L. Ct. Mar. 28, 2011) (Anderson, J.) (DHEC's "written response" to a submittal did not qualify as permit or other action subject to contested case review).

Second, none of the air quality statutes or regulations implemented by the Department otherwise require a contested case hearing for review of updated modeling parameters. To the contrary, as discussed above, both Standard 8 within the regulations and Condition I.1 of the permit itself expressly and comprehensively address modeling parameter changes, and they do so by requiring the facility to conduct a review to verify continued compliance, nothing more. No new or revised permit or other reviewable decision by the Department is required.⁴ Absent such legal

⁴ Were a facility not able to verify compliance as required, then at that point the Department could pursue further action to obtain the necessary compliance demonstration or to respond to any noncompliant modeling demonstration. While it is possible that such steps could at some point lead to a reviewable decision subject to contested case review, such scenario is not presented in this case and need not be

duty to issue a reviewable decision, no contested case is triggered. *Amisub of SC, Inc. v. S.C. Dep't of Envtl. Control*, 403 S.C. 572, 596, 743 S.E.2d 786 (2013).

Because the modeling review that occurred in this case was an activity fully captured by existing regulations and an existing permit that was previously placed on public notice and subject to review, it is not a newly reviewable action, and any concerns about the permit's provisions on this topic should have been addressed at the time of permitting. To conclude otherwise would inflate the Department's limited role in reviewing the facility's verification of compliance and invent a legal duty that does not exist. *Accord Coastal Conservation League v. S.C. Dep't of Health and Envtl. Control*, No. 22-ALJ-07-0082-CC, 2022 WL 3373821, at *9 (S.C. Admin. L. Ct. Aug. 10, 2022) (Reibold, J.) (finding no contested case where DHEC's regulatory role was limited to requesting documentation from a facility verifying the applicability of a coastal permitting exception, as opposed to issuing any permit or other reviewable decision). Further, to construe the Department's routine review as giving rise to a contested case would render every routine update to modeling parameters the legal equivalent of a new permit, an impractical result that would strip the applicable regulations and permit language of all meaning and effect.

In sum, the Department has issued no new permit subject to contested case review, and nothing in the governing air quality statutes and regulations would require the opportunity for a hearing for review of an update to modeling parameters. Because these laws create no legal duty to issue a reviewable decision, contested case jurisdiction is not available on such basis.

B. The Department's letter does not implicate the Petitioner's legal rights or privileges, and therefore is not a contested case pursuant to either the APA or Article I, Section 22 of the S.C. Constitution.

ALC contested case jurisdiction can only arise if "the legal rights of a party are impacted

considered at this time.

by an agency's decision." *Charleston Radiologists, P.A. v. S.C. Dep't of Health and Envtl. Control*, No. 00-ALJ-07-0328-CC, 2001 WL 263390, at *2 (S.C. Admin. L. Ct. Feb. 22, 2001) (Anderson, J.). This premise reflects both the APA's "contested case" definition, *see* S.C. Code § 1-23-505(3) (requiring that a "contested case" involve determination of a party's "legal rights, duties, or privileges"), as well as the limits of constitutional due process, *see* S.C. Const. Art. I, sec. 22 (applicable to any person "finally bound" by any "quasi-judicial decision of an administrative agency affecting private rights"). The Petitioner's legal rights and privileges are not impacted in this case.

As this Court has repeatedly held, mere correspondence that is not a dispositive decision does not implicate a party's legal rights or privileges and is not reviewable. *See, e.g., Green Street Storage, LLC v. S.C. Dep't of Health and Envtl. Control*, 20-ALJ-07-0194-CC, 2021 WL 3466158, at *3, n.6 (S.C. Admin. L. Ct. Aug. 2, 2021) (Robinson, J.); *Charleston Radiologists, P.A. v. S.C. Dep't of Health and Envtl. Control*, No. 00-ALJ-07-0328-CC, 2001 WL 263390, at *2 (S.C. Admin. L. Ct. Feb. 22, 2001) (Anderson, J.); *Tract 7, LLC v. S.C. Dep't of Health and Envtl. Control*, No. 15-ALJ-07-0258-CC, 2015-WL 4716701, at *2 (S.C. Admin. L. Ct. July 28, 2015) (Anderson, J.)⁵ Here, as discussed above, the Department's letter does not issue, deny, renew, suspend, or revoke any permit, license, order or render any otherwise dispositive decision. Silfab Solar's underlying permit was issued months before the letter in dispute. The terms of that permit expressly provide for the modeling parameter updated that occurred in this case, and that permit remains unaffected by the facility's updated modeling and the Department's review and letter in

⁵ The above cited holdings involve preliminary correspondence where no decision had yet been made on the matters. Here, by contrast, the only relevant decision was made well before the challenged letter, when the Silfab Solar permit was issued. That permitting decision is not and cannot lawfully be challenged in this action.

response.

The letter's mere documentation that Silfab Solar had submitted required information, and that the Department had reviewed that information and verified compliance, does not convert the Department's review into a dispositive decision implicating the Petitioner's legal rights or privileges. If this were so, then any and every review by the Department, however narrow or routine—from reviews of source test plans and test results, to reviews of required facility reporting, to reviews of facility operational and maintenance plans, to permitting exemption reviews, to inspection reporting, and much more (and these are just within the Department's Bureau of Air Quality alone) might conceivably be subject to contested case review, an impractical and implausible outcome. *See Amtsub of SC, Inc.*, 403 S.C. at 596 (finding no contested case in response to another situation identified by DHEC as "subject[ing the agency] to an overwhelming number of contested case matters on everyday decisions that the General Assembly did not see fit to subject to ... the contested case process"). In verifying that information submitted by Silfab Solar had not altered the facility's compliance status, the Department's letter simply maintained the status quo. As such, the Department cannot have issued any dispositive decision implicating legal rights, and the Department had no legal duty to issue a decision that would do so.

Moreover, the legal rights of Petitioner, if any, were affected when the original permit addressing updates to modeling parameters was not appealed by the Petitioner earlier this year. As discussed above, the underlying permit contains Condition I.1, which states in relevant part that "[a]ny changes in the parameters used in [the facility's air dispersion modeling] demonstration may require a review by the facility to determine continuing compliance with [the state and federal ambient air quality] standards." This language implements Section II.C of Standard 8, which states that "[c]hanges in ... parameters will require a review by the facility to determine if they have an

adverse impact on the compliance demonstration.” Accordingly, Petitioner waived its right to challenge this provision of the permit when it elected not to challenge the permit before the DHEC Board and this Court and allowed the time to contest it to expire.⁶

II. PETITIONER’S CONTESTED CASE HEARING REQUEST IS INCOMPLETE AND UNTIMELY, BARRING PROCEDURAL JURISDICTION.

As a secondary matter, this Court need not reach the question of whether the July 30, 2024, letter at issue presents a contested case because the Petitioner failed to meet threshold requirements for procedural jurisdiction.

SCALC Rule 23(B) provides that “the Court may dismiss a contested case ... for failure to comply with any of the rules of procedure for contested cases, including the failure to comply with any of the time limits provided in these rules or by order of the Court.” SCALC Rule 11 establishes a generally applicable timeframe for contested case hearing requests except where the timeframe is “otherwise provided by statute.” In this case, the Department’s enabling statute specifically provides “thirty calendar days after the mailing of a decision” of the Department pursuant to S.C. Code Section 48-6-30(D)(1) for an affected person to request a contested case hearing before this Court. S.C. Code Ann. § 48-6-30(D)(2). Because the enabling statute provides a specific method for seeking review before this Court, a contested case hearing request must be filed within thirty

⁶ It is also notable that Silfab Solar’s original modeling used a much more conservative stack height modeling parameter than necessary, with the result being that the updated modeling parameters show increased emissions dispersion (in other words, better air quality results) than in the original model. Practically speaking, the Petitioner’s rights cannot be affected by an even better modeling demonstration than the one that originally demonstrated compliance and underlies the issued permit. This not only leaves the ALC without “contested case” jurisdiction, but also leaves the Petitioner without standing as “affected persons”—an additional related basis for dismissal in this case. See S.C. Code Ann. § 48-6-30(D)(2) (conferring statutory standing upon any “applicant, permittee, licensee, certificate holder, or affected person desiring to contest the department decision”); see also *Preservation Soc. v. S.C. Dep’t of Health and Envtl. Control*, 430 S.C. 200, 216, 845 S.E.2d 481 (2000) (indicating that the term “affected persons,” used identically in the predecessor DHEC statute, is intended to capture those suffering adverse environmental consequences from a challenged action).

days of the date of mailing to a permittee and to affected persons who have asked in writing to be notified in accordance with the statute.

In this case, the letter at issue was sent electronically to the permittee through the Department's ePermitting system on July 30, 2024. *Hall Aff.*, ¶ 8. The Petitioner had not specifically requested in writing to be notified of the letter prior to it being sent to the permittee. *Id.* ¶ 9. Accordingly, the mandatory time period for filing of a complete contested case hearing request, were review considered to be otherwise available, would have expired on August 29, 2024, thirty days after electronic mailing of the letter. The Petitioner has failed to meet this deadline.⁷

As discussed in the Factual Background section above, the initial Request for Contested Case Hearing and accompanying filing fee are documented as having been received by the Court on September 9, 2024. However, the Petitioner's request could not then be assigned to an Administrative Law Judge, as the form remained unsigned at that time, and the Court this sent the September 10, 2024, memorandum requesting the form be signed. The memorandum specifically disclaimed that "[n]othing in this Memorandum extends or tolls any statutory deadline for filing the request for hearing/appeal with the Court." The resubmitted, signed form was not sent until October 2, 2024, and the form was stamped with a filing date of September 9, 2024.

The Petitioner failed to file a complete contested case hearing request in accordance with S.C. Code Section 48-6-30 and the SCALC Rules by the prescribed deadline, as the signed version of the form was not submitted to the Court until October 2, 2024, 64 days after mailing of the

⁷ Respondents contend that the letter at issue was not a decision subject to contested case review. However, if the letter were considered reviewable, then the applicable statute provides that notice of such matters for which a written decision under S.C. Code Section 48-6-30(C) is required should be sent "by mail, delivery, or other appropriate means to the applicant, permittee, licensee, certificate holder, and affected persons who have requested in writing to be notified." S.C. Code Ann. § 48-6-30(D)(1).

letter. The stamped filing date of September 9, 2024, while earlier in time, still reflects a late filing date of 41 days after mailing.

Even now, the Petitioner has not yet filed a complete contested case hearing request in accordance with all applicable ALC Rules. As noted above, the identity and contact information for the Petitioner(s) is not stated, and the alleged decision being contested was not attached, per SCALC Rule 11(D)'s requirements.

Because the Petitioner has yet to file a timely and complete request for contested case hearing, this Court lacks procedural jurisdiction⁸ (even were the Department's letter considered to present a contested case), and this case is further subject to dismissal for failure to comply with all applicable rules of procedure under SCALC Rule 23(B).

CONCLUSION

For the foregoing reasons, Petitioner's Request for Contested Case Hearing in this matter should be dismissed.

[SIGNATURE PAGE FOLLOWS]

⁸ See *Carolina Bar Grp., LLC D/B/A TLC Sports Bar v. S.C. Dep't of Revenue*, No. 21-ALJ-17-0404-CC, 2022 WL 467835, at *2, n.2 (S.C. Admin. L. Ct. Feb. 8, 2022) (Anderson, J.) (citing *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011)) (explaining that "an administrative agency is deprived of procedural jurisdiction if the appeal request is defective," and citing the S.C. Supreme Court's holding that "the question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction").

Respectfully submitted,

**FOR RESPONDENT SOUTH CAROLINA
DEPARTMENT OF ENVIRONMENTAL
SERVICES**



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November 27, 2024
Columbia, South Carolina

Solar was issued a permit on March 1, 2024 ("Permit"), by the Department's predecessor, the S.C. Department of Health and Environmental Control (Exhibit A).

4. On March 13, 2024, several community members filed a request for DHEC Board review of the permit's issuance, stating various questions and concerns. On April 17, 2024, the DHEC Board notified the requestors that it would not be conducting a final review conference in the matter. No further review of the permit was sought.

5. On June 4, 2024, Silfab Solar informed the Department it would be modifying its proposed stack height to ensure compliance with county requirements governing building/equipment height. In response, the Department informed Silfab Solar that it would need to submit an updated air dispersion modeling analysis to verify the changed stack height and any additional changed modeling parameters would maintain compliance with applicable air quality standards.

6. On July 3, 2024, Silfab Solar submitted updated modeling forms including updated modeling parameters. The updated modeling parameters included updates to stack height, stack diameter, and exit velocity, and accounted for two buildings being constructed nearby. The originally planned stack height was 70 feet, and the updated stack height would be 50 feet. The original modeling was performed using a more conservative parameter of 19.7 feet.

7. The Department reviewed the updated modeling and summarized its analysis and results in an "Air Compliance Analysis Summary Sheet" dated July 22, 2024 (Exhibit B). This is a standard document used by Department staff for such purposes.

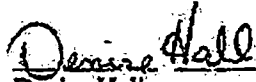
8. On July 30, 2024, the Department sent Silfab Solar a letter electronically through the Department's ePermitting system stating the Department reviewed the facility's updated modeling analysis and the analysis demonstrated continued compliance with the applicable

standards (Exhibit C).


9. The Petitioner in this case did not specifically request in writing to be notified of the Department's July 30, 2024 letter prior to it being sent to Silfab Solar.

10. The Department's letter on July 30, 2024, is not a permit issuance or a modification of the Permit. As noted in the letter itself, a revision to the Permit was not required because the updated parameters were submitted in accordance with Section L1 of the Permit.

FURTHER AFFIANT SAYETH NOT.


Denise Hall

Sworn to me this 26th
Day of November, 2024.


Sandra R. Wessinger

Notary Public for S.C.

My Commission Expires: 02-03-25

Exhibit A to Affidavit of Denise Hall

Permit No. C-50000090 v.10



S.C. Department of Health and
Environmental Control

Bureau of Air Quality
Synthetic Minor Construction Permit

Slifab Solar
7149 Logistics Lane
Fort Mill, South Carolina 29715
York County

In accordance with the provisions of the Pollution Control Act, Sections 48-1-50(5), 48-1-100(A), and 48-1-110(a), the 1976 Code of Laws of South Carolina, as amended, and South Carolina Regulation 61-62, Air Pollution Control Regulations and Standards, the Bureau of Air Quality authorizes the construction of this facility and the equipment specified herein in accordance with the plans, specifications, and other information submitted in the construction permit application received on June 05, 2023, as amended. All official correspondence, plans, permit applications, and written statements are an integral part of the permit. Any false information or misrepresentation in the application for a construction permit may be grounds for permit revocation.

The construction and subsequent operation of this facility is subject to and conditioned upon the terms, limitations, standards, and schedules contained herein or as specified by this permit and its accompanying attachments.

Permit Number: CP-5000090 v1.0
Agency Air Number: 2440-0293

Issue Date: March 1, 2024

A handwritten signature in black ink, appearing to read "Steve McCaslin", is written over a horizontal line.

Steve McCaslin, P. E., Director
Air Permitting Division
Bureau of Air Quality

RECORD OF REVISIONS	
Date	Description of Changes

A. PROJECT DESCRIPTION, EQUIPMENT, AND CONTROL DEVICE(S)
Permission is hereby granted to install and operate a new solar cell and panel production facility in Fort Mill, South Carolina.

A.1 EQUIPMENT			
Equipment ID	Equipment Description	Control Device ID	Emission Point ID
MAL1	Module Assembly Lines 1-3	None	General Area Exhaust
MALGCT	Module Assembly Lab and Gel Content Testing	None	General Area Exhaust
CellP1	Phase 1 Cell Manufacturing	SCR1	P1ACID
CellP2	Phase 2 Cell Manufacturing	SCR2	P2ACID
HF-BST-01	Hydrofluoric Acid Storage Tank 1	SCR1	P1ACID
HF-BST-02	Hydrofluoric Acid Storage Tank 2	SCR2	P2ACID
HCL-BST-01	Hydrochloric Acid Storage Tank 1	SCR1	P1ACID
HCL-BST-02	Hydrochloric Acid Storage Tank 2	SCR2	P2ACID
EG1	Emergency Generator 1	None	EG1
Silane Storage	Silane ISO Module MEGC	None	Silane Storage
DFTO1	Direct Fired Thermal Oxidizer	SCR3	P1ACID/P2ACID

A.2 CONTROL DEVICES			
Control Device ID	Control Device Description	Pollutant(s) Controlled	Emission Point ID
SCR1	Wet Scrubber/Phase 1 Acid Scrubber (AEX)	HF, HCl	P1ACID
SCR2	Wet Scrubber/Phase 2 Acid Scrubber (AEX)	HF, HCl	P2ACID
SCR3	Venturi Scrubber	PM, PM ₁₀ , PM _{2.5}	P1ACID/P2ACID

B. LIMITATIONS, MONITORING, AND REPORTING	
Condition Number	Conditions
B.1	<p>Equipment ID: All Control Device ID: All</p> <p>(S.C. Regulation 61-62.1, Section 1(E)) This facility is a potential major source for hazardous air pollutants (HAP) emissions. The facility has requested federally enforceable emissions limitations to limit its potential to emit to less than 10.0 tons per year for any single HAP emission and 25.0 tons</p>

B. LIMITATIONS, MONITORING, AND REPORTING	
Condition Number	Conditions
	<p>per year for any combination of HAP emissions to avoid Title V and MACT.</p> <p>The owner or operator shall maintain records of all hazardous air pollutants (HAP). These records shall include the total amount of each material used, the HAP content in percent by weight of each material, and any other records necessary to determine HAP emissions. Individual HAP and total HAP emissions shall be calculated monthly, and a twelve-month rolling sum shall be calculated monthly. Facility-wide emission totals must include emissions from exempt activities. Emissions from malfunctions are required to be quantified and included in the calculations. The twelve-month rolling sum shall be less than 10.0 tons for each individual HAP, and 25.0 tons for total HAPs. Reports of the calculated values and the twelve-month rolling sum, calculated for each month in the reporting period, shall be submitted semiannually.</p> <p>An algorithm, including example calculations and emission factors, explaining the method used to determine emission rates shall only be included in the initial report. Subsequent submittals of the algorithm are required within 30 days of the change if the algorithm or basis for emissions is modified or the Department requests additional information.</p>
B.2	<p>Equipment ID: All Control Device ID: All</p> <p>(S.C. Regulation 61-62.5, Standard No. 4, Section IX) Where construction or modification began after December 31, 1985, emissions from these sources (including fugitive emissions) shall not exhibit an opacity greater than 20%, each.</p>
B.3	<p>Equipment ID: All Control Device ID: All</p> <p>It has been determined that this facility is subject to S.C. Regulation 61-62.68, Chemical Accident Prevention Provisions, due to in-process storage or use of a regulated substance in quantities above the specified threshold; therefore, the following must be completed:</p> <ul style="list-style-type: none"> • Submittal of a Risk Management Plan (RMP) to the Environmental Protection Agency (EPA) prior to the date the regulated substance is first present above the threshold quantity in a process. • Compliance with the Risk Management Program prior to the date the regulated substance is first present above the threshold quantity in a process. • Submittal of subsequent revisions/corrections/updates of the RMP in accordance with S.C. Regulation 61-62.68.190 and 68.195. • For Program 1 processes, the owner or operator shall submit along with the RMP the certification statement provided in Section 68.12(b)(4). For all other covered processes, the owner or operator shall submit along with the RMP a single certification that, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the information

B. LIMITATIONS, MONITORING, AND REPORTING	
Condition Number	Conditions
	<p>submitted is true, accurate, and complete.</p> <p>If it is determined by the implementing agency (or other delegated authority) that additional relevant information is needed, this facility will be required to submit the information in a timely manner.</p>
B.4	<p>Equipment ID: CellP1, CellP2, HF-BST-01, HF-BST-02, HCL-BST-01, HCL-BST-02, DFTO1 Control Device ID: SCR1, SCR2, SCR3</p> <p>All gauges shall be readily accessible and easily read by operating personnel and Department personnel (i.e. on ground level or easily accessible roof level). Monitoring parameter readings (e.g., pressure drop readings, flow rates, etc.) and inspection checks shall be maintained in logs (written or electronic), along with any corrective action taken when deviations occur. Each occurrence of operation outside the operational ranges, including date and time, cause, and corrective action taken, shall be recorded and kept on site. Exceedance of operational range shall not be considered a violation of an emission limit of this permit, unless the exceedance is also accompanied by other information demonstrating that a violation of an emission limit has taken place.</p> <p>Reports of these occurrences shall be submitted semiannually. If there were no occurrences during the reporting period, then documentation shall be submitted to indicate such. Any alternative method for monitoring control device performance must be preapproved by the Department and shall be incorporated into the permit as set forth in S.C. Regulation 61-62.1 Section II.</p>
B.5	<p>Equipment ID: CellP1, CellP2, HF-BST-01, HF-BST-02, HCL-BST-01, HCL-BST-02, DFTO1 Control Device ID: SCR1, SCR2, SCR3</p> <p>All emissions points, duct work and other locations that are required to be tested, shall be designed and constructed in a manner to facilitate testing in accordance with applicable EPA approved source testing methods; including, but not be limited to, methods specifying test port location and sizing criteria.</p> <p>For any source test required under an applicable standard or permit condition, the owner, operator, or representative shall comply with S.C. Regulation 61-62.1, Section IV - Source Tests.</p> <p>Unless approved otherwise by the Department, the owner, operator, or representative shall ensure that source tests are conducted while the source is operating at the maximum expected production rate or other production rate or operating parameter which would result in the highest emissions for the pollutants being tested. Some sources may have to spike fuels or raw materials to avoid being subjected to a more restrictive feed or process rate. Any source test performed at a production rate less than the rated capacity may result in permit limits on emission rates, including limits on production if necessary.</p> <p>When conducting source tests subject to this section, the owner, operator, or representative shall provide the following:</p> <ul style="list-style-type: none"> • Department access to the facility to observe source tests;

B. LIMITATIONS, MONITORING, AND REPORTING	
Condition Number	Conditions
	<ul style="list-style-type: none"> • Sampling ports adequate for test methods; • Safe sampling site(s); • Safe access to sampling site(s); • Utilities for sampling and testing equipment; and • Equipment and supplies necessary for safe testing of a source. <p>The owner or operator shall comply with any limits that result from conducting a source test at less than rated capacity. A copy of the most recent Department issued source test summary letter, whether it imposes a limit or not, shall be maintained with the operating permit for each source that is required to conduct a source test.</p> <p>Site-specific test plans and amendments, notifications, and source test reports shall be submitted to the Department.</p>
B.6	<p>Equipment ID: CellP1, CellP2, HF-BST-01, HF-BST-02, HCL-BST-01, HCL-BST-02, DFTO1 Control Device ID: SCR1, SCR2</p> <p>Initial source tests to verify the HCl and HF control efficiency of scrubbers SCR1 and SCR2 shall be conducted within 45 days after achieving the maximum production rate or 180 days after startup, whichever comes first, and every two (2) years thereafter. The source tests will be used to verify that each scrubber's control efficiency is at least 96% for each pollutant.</p>
B.7	<p>Equipment ID: CellP1, CellP2, HF-BST-01, HF-BST-02, HCL-BST-01, HCL-BST-02, DFTO1 Control Device ID: SCR1, SCR2</p> <p>Operational ranges for the monitored parameters shall be established to ensure proper operation of the pollution control equipment. These operational ranges for the monitored parameters shall be derived from stack test data, vendor certification, and/or operational history and visual inspections, which demonstrate the proper operation of the equipment. These ranges and supporting documentation (certification from manufacturer, stack test results, 30 days of normal readings, opacity readings, etc.) shall be submitted to the Department within 60 days after the initial source tests required by Condition B.6 are conducted. Operating ranges may be updated following submittal to the Department.</p>
B.8	<p>Equipment ID: CellP1, CellP2, HF-BST-01, HF-BST-02, HCL-BST-01, HCL-BST-02, DFTO1 Control Device ID: SCR1, SCR2</p> <p>The owner or operator shall install, operate, and maintain pressure drop indicators, liquid flow meters, and pH meters, on each scrubber module. Each monitored parameter shall be recorded daily during source operation. Facilities with automated data collection may collect monitoring data on a more frequent basis and calculate the daily average. Readings collected when the source is shutdown or not operating may not be used in the calculation. The owner or operator must get approval from the Department for an increased frequency/averaging plan prior to using averaging for parametric monitoring. The owner or operator shall continue to record daily, the calculated monitoring averages using the approved increased frequency/averaging plan unless prior approval is obtained from the</p>

B. LIMITATIONS, MONITORING, AND REPORTING	
Condition Number	Conditions
	<p>Department for changing the plan.</p> <p>Operation and maintenance checks shall be made on at least a weekly basis. The checks and any corrective actions shall be documented and be submitted semiannually. Each scrubber shall be in place and operational whenever processes controlled by it are running.</p>
B.9	<p>Equipment ID: DFTO1 Control Device ID: SCR3</p> <p>(S.C. Regulation 61-62.5, Standard No. 3, Section III(1)(1)) Emissions from this source shall not exhibit an opacity greater than 20%, each. This is a State Only requirement.</p>
B.10	<p>Equipment ID: DFTO1 Control Device ID: SCR3</p> <p>(S.C. Regulation 61-62.5, Standard No. 3, Section III(1)(2)) Particulate matter emissions from these sources shall not exceed 0.5 lb/10⁶ Btu total heat input. The total heat input value from waste and virgin fuel used for production shall not exceed the Btus used to affect the combustion of the waste. This is a State Only requirement.</p>
B.11	<p>Equipment ID: CellP1, CellP2, DFTO1 Control Device ID: SCR3</p> <p>(S.C. Regulation 61-62.5, Standard No. 4, Section VIII) Particulate matter emissions shall be limited to the rate specified by use of the following equations:</p> <p style="padding-left: 40px;">For process weight rates less than or equal to 30 tons per hour $E = (F) 4.10P^{0.67}$</p> <p style="padding-left: 40px;">For process weight rates greater than 30 tons per hour $E = (F) (55.0P^{0.11} - 40)$</p> <p style="padding-left: 40px;">Where E = the allowable emission rate in pounds per hour P = process weight rate in tons per hour F = effect factor from Table B in S.C. Regulation 61-62.5, Standard No. 4</p> <p>For the purposes of compliance with this condition, the process boundaries are defined as follows:</p> <ul style="list-style-type: none"> • CellP1 and CellP2 - Max Process Weight Rate 0.5 ton/hr
B.12	<p>Equipment ID: CellP1, CellP2, DFTO1 Control Device ID: SCR3</p> <p>The owner or operator shall install, operate, and maintain pressure drop indicators and liquid flow meters on the scrubber. Each monitored parameter shall be recorded daily during source operation. Facilities with automated data collection may collect monitoring data on a more frequent basis and calculate the daily average. Readings collected when the source is shutdown or not operating may not be used in the calculation. The owner or operator must get approval from the Department for an increased frequency/averaging plan prior to using averaging for parametric monitoring. The owner or operator shall continue to record daily, the calculated monitoring averages using the approved</p>

B. LIMITATIONS, MONITORING, AND REPORTING	
Condition Number	Conditions
	<p>Increased frequency/averaging plan unless prior approval is obtained from the Department for changing the plan.</p> <p>Operation and maintenance checks shall be made on at least a weekly basis. The checks and any corrective actions shall be documented and be submitted semiannually. The scrubber shall be in place and operational whenever processes controlled by it are running.</p>
B.13	<p>Equipment ID: CellP1, CellP2, DFT01 Control Device ID: SCR3</p> <p>Operational ranges for the monitored parameters shall be established to ensure proper operation of the pollution control equipment. These operational ranges for the monitored parameters shall be derived from stack test data, vendor certification, and/or operational history and visual inspections, which demonstrate the proper operation of the equipment. These ranges and supporting documentation (certification from manufacturer, stack test results, 30 days of normal readings, opacity readings, etc.) shall be submitted to the Department within 60 days after startup. Operating ranges may be updated following submittal to the Department.</p>

C. NESHAP (40 CFR 61 AND 40 CFR 63)	
Condition Number	Conditions
C.1	(40 CFR 61.04(b); 40 CFR 63.9; 40 CFR 63.10) All NESHAP notifications and reports shall be sent to the Department.
C.2	(40 CFR 61.04(b); 40 CFR 63.9; 40 CFR 63.10) All NESHAP notifications and the cover letter to periodic reports shall be sent to the United States Environmental Protection Agency (US EPA) as required by the specific subpart.
C.3	<p>Emergency engines less than or equal to 150 kilowatt (kW) rated capacity, emergency engines greater than 150 kW rated capacity designated for emergency use only and operated a total of 500 hours per year or less for testing and maintenance and have a method to record the actual hours of use, such as an hour meter, and diesel engine driven emergency fire pumps that are operated a total of 500 hours per year or less for testing and maintenance and have a method to record the actual hours of use, such as an hour meter, have been determined to be exempt from construction permitting requirements in accordance with South Carolina Regulation 61-62.1.</p> <p>(40 CFR 60; 40 CFR 63) If present, these sources shall still comply with the requirements of all applicable regulations, including but not limited to the following:</p> <p>New Source Performance Standards (NSPS) 40 CFR 60 Subpart A (General Provisions); NSPS 40 CFR 60 Subpart IIII (Stationary Compression Ignition Internal Combustion Engines); NSPS 40 CFR 60 Subpart IIII (Stationary Spark Ignition Internal Combustion Engines); National Emission Standards for Hazardous Air Pollutants (NESHAP) 40 CFR 63 Subpart A (General</p>

C. NESHAP (40 CFR 61 AND 40 CFR 63)	
Condition Number	Conditions
	Provisions); and NESHAP 40 CFR 63 Subpart ZZZZ (Stationary Reciprocating Internal Combustion Engines).

D. GENERAL FACILITY WIDE	
Condition Number	Conditions
D.1	The permittee shall pay permit fees to the Department in accordance with the requirements of S.C. Regulation 61-30, Environmental Protection Fees.
D.2	<p>In the event of an emergency, as defined in S.C. Regulation 61-62.1, Section 14(L), the owner or operator may document an emergency situation through properly signed, contemporaneous operating logs, and other relevant evidence that verify:</p> <ol style="list-style-type: none"> 1. An emergency occurred, and the owner or operator can identify the cause(s) of the emergency; 2. The permitted source was at the time the emergency occurred being properly operated; 3. During the period of the emergency, the owner or operator took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and 4. The owner or operator gave a verbal notification of the emergency to the Department within twenty-four (24) hours of the time when emission limitations were exceeded, followed by a written report within thirty (30) days. The written report shall include, at a minimum, the information required by S.C. Regulation 61-62.1, Section 14(X)(c)(i) through 14(X)(c)(viii). The written report shall contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken. <p>This provision is in addition to any emergency or upset provision contained in any applicable requirement.</p>
D.3	<p>(S.C. Regulation 61-62.1, Section 14(O)) Upon presentation of credentials and other documents as may be required by law, the owner or operator shall allow the Department or an authorized representative to perform the following:</p> <ol style="list-style-type: none"> 1. Enter the facility where emissions-related activity is conducted, or where records must be kept under the conditions of the permit. 2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit. 3. Inspect any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under this permit. 4. As authorized by the Federal Clean Air Act and/or the S.C. Pollution Control Act, sample or monitor, at reasonable times, substances or parameters for the purpose of assuring

D. GENERAL FACILITY WIDE	
Condition Number	Conditions
	compliance with the permit or applicable requirements.
D.4	(S.C. Regulation 61-62.1, Section 11(D)(1)(a)) No applicable law, regulation, or standard will be contravened.
D.5	(S.C. Regulation 61-62.1, Section 11(D)(1)(e)) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this regulation or with the terms of any approval to construct, or who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to enforcement action.

E. EMISSIONS INVENTORY REPORTS - RESERVED
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F. GENERAL RECORD KEEPING AND REPORTING	
Condition Number	Conditions
F.1	(S.C. Regulation 61-62.1, Section 11(D)(1)(g)) A copy of the Department issued construction and/or operating permit must be kept readily available at the facility at all times. The owner or operator shall maintain such operational records; make reports; install, use, and maintain monitoring equipment or methods; sample and analyze emissions or discharges in accordance with prescribed methods at locations, intervals, and procedures as the Department shall prescribe; and provide such other information as the Department reasonably may require. All records required to demonstrate compliance with the limits established under this permit shall be maintained on site for a period of at least five (5) years from the date the record was generated and shall be made available to a Department representative upon request.
F.2	(S.C. Regulation 61-62.1, Section 11(D)(2)) The owner or operator shall submit reports required in this permit in a timely manner and according to the reporting schedule established through the Department's approved electronic permitting system.
F.3	(S.C. Regulation 61-62.1, Section 11(D)(2)) All reports and notifications required under this permit shall be submitted to the Department.
F.4	(S.C. Regulation 61-62.1, Section 11(A)(3)) The owner or operator shall submit written notification to the Department of the date construction is commenced, postmarked within thirty (30) days after such date.
F.5	(S.C. Regulation 61-62.1, Section 11(D)(1)(c)) For sources not required to have continuous emission monitors, any malfunction of air pollution control equipment or system, process upset, or other equipment failure which results in discharges of air contaminants lasting for one (1) hour or more and which are greater than those discharges described for normal operation in the permit application, shall be reported to the Department within twenty-four (24) hours after the beginning of the occurrence and a written report shall be submitted to the Department within thirty (30) days. The

F. GENERAL RECORD KEEPING AND REPORTING	
Condition Number	Conditions
	<p>written report shall include, at a minimum, the following:</p> <ol style="list-style-type: none"> 1. The identity of the stack and/or emission point where the excess emissions occurred; 2. The magnitude of excess emissions expressed in the units of the applicable emission limitation and the operating data and calculations used in determining the excess emissions; 3. The time and duration of excess emissions; 4. The identity of the equipment causing the excess emissions; 5. The nature and cause of such excess emissions; 6. The steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of such malfunction; 7. The steps taken to limit the excess emissions; and, 8. Documentation that the air pollution control equipment, process equipment, or processes were at all times maintained and operated, to the maximum extent practicable, in a manner consistent with good practice for minimizing emissions. <p>The initial twenty-four (24) hour notification should be made to the Department's local Environmental Affairs Regional Office.</p> <p>The written report should be sent to the Department.</p>

G. PERMIT EXPIRATION AND EXTENSION	
Condition Number	Conditions
G.1	<p>(S.C. Regulation 61-62.1, Section 11(A)(4) and (5) and S.C. Regulation 61-62.1, Section 11(J)(1)(f)) Approval to construct shall become invalid if construction:</p> <ol style="list-style-type: none"> a. Is not commenced within eighteen (18) months after receipt of such approval; b. Is discontinued for a period of eighteen (18) months or more; or c. Is not completed within a reasonable time as deemed by the Department. <p>The Department may extend the construction permit for an additional eighteen (18) month period upon a satisfactory showing that an extension is justified. This request must be made prior to the permit expiration.</p> <p>This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months</p>

G. PERMIT EXPIRATION AND EXTENSION	
Condition Number	Conditions
	of the projected and approved commencement date.

H. PERMIT TO OPERATE	
Condition Number	Conditions
H.1	(S.C. Regulation 61-62.1, Section II(F)(3)) When a Department issued construction permit includes engineering and/or construction specifications, the owner or operator or professional engineer in charge of the project shall certify that, to the best of his/her knowledge and belief and as a result of periodic observation during construction, the construction under application has been completed in accordance with the specifications agreed upon in the construction permit issued by the Department. If construction is certified as provided above, the owner or operator may operate the source in compliance with the terms and conditions of the construction permit until the operating permit is issued by the Department. If construction is not built as specified in the permit application and associated construction permit(s), the owner or operator must submit to the Department a complete description of modifications that are at variance with the documentation of the construction permitting determination prior to commencing operation. Construction variances that would trigger additional requirements that have not been addressed prior to start of operation shall be considered construction without a permit.
H.2	(S.C. Regulation 61-62.1, Section II(F)(1)) The owner or operator shall submit written notification to the Department of the actual date of initial startup of each new or altered source, postmarked within fifteen (15) days after such date. Any source that is required to obtain an air quality construction permit issued by the Department must obtain an operating permit when the new or altered source is placed into operation and shall comply with the requirements of this section.
H.3	(S.C. Regulation 61-62.1, Section II(F)(4)(b)) The owner or operator shall submit a written request to the Department for a new or revised operating permit to cover any new or altered source postmarked within fifteen (15) days after the actual date of initial startup of each new or altered source. (S.C. Regulation 61-62.1, Section II(F)(4)(c)) The written request for a new or revised operating permit must include, at a minimum, the following information: <ol style="list-style-type: none"> i. A list of sources that were placed into operation; and ii. The actual date of initial startup of each new or altered source.

I. AMBIENT AIR STANDARDS	
Condition Number	Conditions
I.1	<p>(S.C. Regulation 61-62.1, Section 11(D)(2)) Air dispersion modeling (or other method) has previously demonstrated that this facility's operation will not interfere with the attainment and maintenance of any state or federal ambient air standard. Any changes in the parameters used in this demonstration may require a review by the facility to determine continuing compliance with these standards. These potential changes include any decrease in stack height, decrease in stack velocity, increase in stack diameter, decrease in stack exit temperature, increase in building height or building additions, increase in emission rates, decrease in distance between stack and property line, changes in vertical stack orientation, and installation of a rain cap that impedes vertical flow. Parameters that are not required in the determination will not invalidate the demonstration if they are modified. Variations from the input parameters in the demonstration shall not constitute a violation unless the maximum allowable ambient concentrations identified in the standard are exceeded.</p> <p>The owner or operator shall maintain this facility at or below the emission rates used in the most recent air dispersion modeling (or other method) demonstration submitted to and approved by the Department, not to exceed the pollutant limitations of this permit. Should the facility wish to increase the emission rates used in the demonstration, not to exceed the pollutant limitations in the body of this permit, it may do so by submitting a new demonstration for approval. This condition along with the referenced modeling demonstration will also serve to meet the intent of S.C. Regulation 61-62.5, Standard No. 8, Section 11(D). This is a State Only enforceable requirement.</p>

Exhibit B to Affidavit of Denise Hall
Air Compliance Analysis Summary Sheet

AIR COMPLIANCE ANALYSIS SUMMARY SHEET

COMPANY/FACILITY: Silfab Solar
LOCATION (COUNTY): Fort Mill (York) **DATE:** 07/22/24
PERMIT NUMBER: 2440-0293 **REVIEWED BY:** GSQ

REQUEST:	<input type="checkbox"/> CONSTRUCTION PERMIT	<input checked="" type="checkbox"/> STATE PERMIT
	<input type="checkbox"/> OPERATING PERMIT - NEW	<input type="checkbox"/> CONDITIONAL MAJOR
	<input type="checkbox"/> OPERATING PERMIT - RENEWAL	<input type="checkbox"/> GENERAL CM
	<input type="checkbox"/> PERMIT - MODIFICATION	<input type="checkbox"/> TITLE V PERMIT
	<input checked="" type="checkbox"/> AIR COMPLIANCE DEMO	<input type="checkbox"/> PSD MAJOR
ANALYSIS:	<input type="checkbox"/> AMBIENT AIR QUALITY STANDARDS	<input type="checkbox"/> PSD INCREMENT
	<input checked="" type="checkbox"/> TOXIC AIR POLLUTANTS	<input checked="" type="checkbox"/> DE MINIMIS
	<input checked="" type="checkbox"/> EXEMPTION	<input type="checkbox"/> DEFERRAL
OTHER:	<input type="checkbox"/> EXPEDITED	<input checked="" type="checkbox"/> COLLOCATED (Y or N)

PROJECT DESCRIPTION: Silfab Solar is proposing to construct a solar panel manufacturing facility. The facility will consist of three panel module assembly lines, two cell manufacturing production lines, and storage tanks. The facility has submitted a compliance demonstration that includes changes to stack parameters and additional buildings associated with the facility. In addition, a construction permit exemption request was submitted to construct four 8.0 MMBtu/hr natural gas-fired boilers.

SUMMARY OF ANALYSIS & RESULTS: S&ME, Inc. submitted a modeling analysis on behalf of the facility. The additional boilers are categorically exempt from modeling requirements since their maximum heat input capacity is less than 10 MMBtu/hr each and burn only virgin fuels.
Standard 2: Emissions from cell manufacturing and the thermal oxidizer are exempt from Standard No. 2 modeling requirements on the basis that emissions are less than 1.14 lb/hr.
Standard 7: Since this is not a PSD project, no Standard 7 analysis is required.
Standard 8: Hydrochloric acid and hydrogen fluoride modeling analyses are revised from the compliance demonstration provided with the original application (see modeling summary dated 6/27/2023). The facility is modeled using AERMOD to demonstrate compliance with applicable Standard No. 8 Maximum Allowable Ambient Concentrations. Storage tank emissions are vented directly to the acid scrubbers (P1ACID and P2ACID, with 96% efficiency) and not directly to the atmosphere.

The modeling analysis involves two separate phases. Emissions from only one operating stack (P1ACID) are modeled with Phase 1, and two possible stacks are modeled with Phase 2. The two stacks (as shown by Phase 2) have identical stack parameters. Only the locations of the stacks and the distribution of emissions between the two stacks are different from each other. As a conservative measure, a worst-case stack scenario analysis was conducted to determine the worst-case concentration by modeling the entire emissions from each individual stack separately. The results revealed that Stack P2ACID is the worst-case stack, meaning that the maximum concentration is derived from modeling the entire quantity of emissions from P2ACID. As a result of this analysis, the permitted emissions from stacks P1ACID and P2ACID will have a lower impact than what was modeled from P2ACID.

The following changes are made in the modeling analyses to accommodate "as built" specifications in order to comply with Condition L1 of the air construction permit issued on March 1, 2024:

1. The stack height was modified to 50 feet to comply with the county ordinance.
2. The "as built" stack diameter is increased from 1.5 feet to 5.5 feet to accommodate wind velocity design and seismic requirements since the stack is no longer designed to vent from the roof of the main building.
3. The fan speeds are increased significantly above the original design fan speed of 9,706 ACFM. Phase 1 fan speed from scrubber 1 will be 45,000 ACFM. Phase 2 fan speed from the scrubbers are increased to 70,000 ACFM. As a result, the modeled exit velocities are adjusted due to fan speeds and stack diameter revisions.
4. Two buildings will be constructed near the proposed scrubbers and have been included to account for downwash within the model.

This is a complete modeling summary for the facility. Changes from the 6/27/2023 modeling summary are marked in bold.

STANDARD NO. 8 - TOXIC AIR POLLUTANTS ANALYSIS: Phase 1					
Pollutant	CAS Number	Basis	Maximum Concentration ($\mu\text{g}/\text{m}^3\text{yr}$)	Standard ($\mu\text{g}/\text{m}^3$)	% Of Standard
Hydrochloric Acid	7647-01-0	AERMOD	12.18	175.00	7
Hydrogen Fluoride	7664-39-3	AERMOD	0.65	2.05	32

1) The highest 24-hour concentrations are rounded to two decimal places to compare to the standards.

STANDARD NO. 8 - TOXIC AIR POLLUTANTS ANALYSIS: Phase 2					
Pollutant	CAS Number	Basis	Maximum Concentration ($\mu\text{g}/\text{m}^3\text{yr}$)	Standard ($\mu\text{g}/\text{m}^3$)	% Of Standard
Hydrochloric Acid	7647-01-0	AERMOD	17.60	175.00	10
Hydrogen Fluoride	7664-39-3	AERMOD	0.57	2.05	42

1) The highest 24-hour concentrations are rounded to two decimal places to compare to the standards.

2) The modeling analysis uses scenarios to determine the worst-case stack and the resulting worst-case off-property concentration regardless of which stack the permitted emissions are emitted from. The worst-case scenario result, when all emissions are routed through emission point ID P2ACID, is shown in this table. (The maximum concentration is slightly lower than this table shows when emissions are routed through P1ACID or any combination of P1ACID and P2ACID.)

STANDARD NO. 8 - TOXIC AIR POLLUTANTS DE MINIMIS ANALYSIS			
Pollutant	CAS Number	Emission Rate (LB/DAY) ^m	De Minimis (LB/DAY)
Toluene	108-88-8	2.616	24.000

1) Emission rates are rounded to three decimal places to compare to the de minimis threshold.

STANDARD NO. 2 AND 7 - EXEMPTED AMBIENT AIR QUALITY STANDARDS EMISSION RATES (LB/HR)						
Emission Point ID	PM ₁₀	PM _{2.5}	SO ₂	NO _x	CO	Lead
P1ACID/P1ACID2 (CellP1/CellP2) ⁽¹⁾	0.46	0.46	--	--	--	--
P1ACID/P2ACID (DFTO-Combustion)	0.04	0.04	0.004	0.59	0.49	0.000003
FACILITY TOTAL	0.50	0.50	0.004	0.59	0.49	0.000003

1) Facility total process emissions after Phase 2 construction is complete (includes both PECVD and LPCVD processes)

STANDARD NO. 8 - TOXIC AIR POLLUTANTS EMISSION RATES (LB/HR): Phase 1				
Emission Point ID	Equipment ID	Hydrochloric Acid	Hydrogen Fluoride	
		7647-01-0	7664-39-3	
P1ACID	CellP1	0.993	5.30E-02	
	HCl-BST-01 ⁽¹⁾	0.001	--	
	HF-BST-01 ⁽¹⁾	--	2.33E-04	
FACILITY TOTAL		0.994	5.32E-02	

1) HF and HCl storage tank emissions are vented to the acid scrubber (P1ACID with 96% efficiency).

STANDARD NO. 8 - TOXIC AIR POLLUTANTS EMISSION RATES (LB/HR) Phase 2					
Emission Point ID	Equipment ID	Hydrochloric Acid	Hydrogen Fluoride	N/A	N/A
		7647-01-0	7664-39-3		
P1ACID	CellP1	0.993	5.30E-02	--	--
	HCl-BST-01 ⁽¹⁾	0.001	--	--	--
	HF-BST-01 ⁽¹⁾	--	2.33E-04	--	--
P2ACID ⁽²⁾	CellP2	0.746	3.30E-02	--	--
	HCl-BST-02 ⁽¹⁾	0.001	--	--	--
	HF-BST-02 ⁽¹⁾	--	2.33E-04	--	--
FACILITY TOTAL		1.741	8.64E-02	--	--

1) HF and HCl storage tank emissions are vented to the acid scrubbers (P1ACID and P2ACID, with 96% efficiency).

2) For Phase 2, the facility will route all emissions through both P1ACID and P2ACID, consistent with the approved construction permit as written, considering a similar distribution of emissions through each emission point, as shown in this table. The facility provided a conservative modeling analysis by defining the worst-case stack and by demonstrating that any distribution of emissions between the two stacks will comply with Standard No. 8. The results of this analysis demonstrates that any combination from both stacks would comply with SC Standard No. 8. The worst-case stack is P2ACID, which assumes that the total emissions (1.741 lb/hr) vent through the P2ACID stack.

STANDARD NO. 8 - DE MINIMIS TOXIC AIR POLLUTANTS EMISSION RATES (LB/HR)				
Emission Point ID (Equipment ID)	Toluene			
	108-88-8			
General Exhaust Area (MARGCT)	0.109			
FACILITY TOTAL	0.109			

EMISSION POINT DESCRIPTIVE INFORMATION

Emission Point ID	Source Identification & Description (Equipment ID)	Date Installed (Modified)	Status	Other
BLR1	8.0 MMBtu/hr Phase 1 Boiler (BLR-1)	2024	Exempt Std 2, 7, 8: < 10 MM BTU/HR burning virgin gas fuels	
BLR2	8.0 MMBtu/hr Phase 1 Boiler (BLR-2)	2024	Exempt Std 2, 7, 8: < 10 MM BTU/HR burning virgin gas fuels	
BLR3	8.0 MMBtu/hr Phase 2 Boiler (BLR-3)	2024	Exempt Std 2, 7, 8: < 10 MM BTU/HR burning virgin gas fuels	
BLR4	8.0 MMBtu/hr Phase 2 Boiler (BLR-4)	2024	Exempt Std 2, 7, 8: < 10 MM BTU/HR burning virgin gas fuels	
EG1	300 HP Diesel Emergency Generator (EG1)	2024	Exempt Std 2, 7: Emergency generator operating <500 hr/yr, the application has less than 100 hours per year for routine testing and maintenance Exempt Std 8: Burns only virgin fuel or specification used oil.	
General Area Exhaust	Module Assembly Lab and Gel Content Testing (MALGCT)	2024	VOC and Toluene emissions only	
General Area Exhaust	Module Assembly Lines 1-3 (MAL1)	2024	Exempt: VOC emissions only	
General Area Exhaust	Paste	2024	Exempt: VOC emissions only	
General Area Exhaust	Printing	2024	Exempt: VOC emissions only	
P1ACID	Phase 1 Cell Manufacturing with Phase 1 Acid Scrubber (CellP1)	2024	Exempt Std 2, 7: PM ₁₀ , PM _{2.5} < 1.14 lb/hr	Control device: Wet Scrubber/ Phase 1 Acid Scrubber SCR1
	20,000-Liter (5,284-gal) Hydrochloric Acid Storage Tank 1 (HCL-BST-01)	2024		Emissions vented through SCR1/ EPID P1ACID
	30,000-Liter (7,926-gal) Hydrofluoric Acid Storage Tank 1 (HF-BST-01)	2024		Emissions vented through SCR1/ EPID P1ACID
P2ACID	Phase 2 Cell Manufacturing with Phase 2 Acid Scrubber (CellP2)	2024	Exempt Std 2, 7: PM ₁₀ , PM _{2.5} < 1.14 lb/hr	Control device: Wet Scrubber/ Phase 2 Acid Scrubber SCR2
	20,000-Liter (5,284-gal) Hydrochloric Acid Storage Tank 2 (HCL-BST-02)	2024		Emissions vented through SCR2/ EPID P2ACID
	30,000-Liter (7,926-gal) Hydrofluoric Acid Storage Tank 2 (HF-BST-02)	2024		Emissions vented through SCR2/ EPID P2ACID
P1ACID/P2ACID (DFTO-combustion)	Direct Fired Thermal Oxidizer (6.0 MMBTU/hr natural gas burner)	2024	Exempt Std 2, 7: PM ₁₀ , PM _{2.5} , SO ₂ , NO _x < 1.14 lb/hr Exempt Std 2: CO < 10 lb/hr Exempt Std 2: Pb < 0.114 lb/hr (facility-wide) Exempt Std 8: Burns only virgin fuel	

POINT SOURCE PARAMETERS: Phase 1

Emission Point ID ⁽¹⁾	Date Last Modeled	Location (UTM)		Release Height AGL (ft)	Exit Temp. (°F)	Exit Velocity (ft/sec)	Inside Diameter (ft)	Discharge Orientation	Cap? (Y/N)	Distance To Property Line (ft)	Building Parameters		
		East (m)	North (m)								Height (ft)	Length (ft)	Width (ft)
P1ACID	7/22/24	504946	3880896	50	78	31.6	5.5	Vertical	N	175	See Modeling Files ⁽¹⁾		

NAD83 datum unless otherwise noted.

1) Two buildings are added to the modeling analysis to address building downwash completely. (7/19/2024)

POINT SOURCE PARAMETERS: Phase 2

Emission Point ID ⁽²⁾	Date Last Modeled	Location (UTM)		Release Height AGL (ft)	Exit Temp. (°F)	Exit Velocity (ft/sec)	Inside Diameter (ft)	Discharge Orientation	Cap? (Y/N)	Distance To Property Line (ft)	Building Parameters		
		East (m)	North (m)								Height (ft)	Length (ft)	Width (ft)
P1ACID	7/22/24	504946	3880896	50	78	49.1	5.5	Vertical	N	175	See Modeling Files ⁽¹⁾		
P2ACID (Worst-case stack)	7/22/24	504955	3880901	50	78	49.1	5.5	Vertical	N	175			

NAD83 datum unless otherwise noted.

1) Two buildings are added to the modeling analysis to address building downwash completely. (7/19/2024)

2) In Phase 2, all emissions will be routed through both emission points (P1ACID and P2ACID) as permitted. Both stacks are identical by design, and their locations are about 10 meters from each other. The scenario modeling results identify that the worst-case stack is P2ACID.

AERMOD / AERMAP SPECIFICATIONS TABLE

MET DATA	UZA-GSO 2015-2019 [Surface = Rock Hill, SC (669 ft MSL); Upper Air = Greensboro, NC]											
	ADJ_U*	Y	(Y/N)									
NED TERRAIN FILES	York, SC											
PROJECTION DATUM	NAD27			NAD83	Y		WGS-84			NWS-84		
RURAL or URBAN?	Rural	Y		Urban								
ELEVATIONS EXTRACTED	Buildings	Y		Sources	Y		Tanks			Receptors	Y	

HISTORY

Date	By	Reason	Description
7/22/2024	GSQ	Compliance Demo	Modeling revisions for HF and HCL using AERMOD for "as built" specifications in order to comply with Condition L1 of the air construction permit. Criteria emissions and the newly added boilers are exempt from modeling.
6/27/2023	GSQ	Expedited CP	Modeled for HF and HCL using AERMOD. Criteria emissions are exempt.

Exhibit C to Affidavit of Denise Hall

July 30, 2024 Letter



SC DEPARTMENT of
**ENVIRONMENTAL
SERVICES**

Air Permitting Division
Bureau of Air Quality
2600 Bull St
Columbia, SC 29201

July 30, 2024

VIA EPERMITTING

Matthew Korzelius
Silfab Solar
7149 Logistics Lane
Fort Mill, SC 29715

RE: Updated Modeling Analysis and Exemption for Four Natural Gas-fired Boilers at Silfab Solar
Permit Number EX-50000162 v1.0
Agency Air Number: 2440-0293

Dear Mr. Korzelius:

The Bureau of Air Quality (Bureau) received your letter dated June 25, 2024, notifying the Bureau of plans to install for four (4) 8.0 MMBtu/hr natural gas-fired boilers that qualify as exempt from construction permitting. The Department acknowledges receipt of this information; however, notification to the Department of sources exempt under S.C. Regulation 61-62.1, Section II(B)(2)(b) is not required. Because the boilers are exempt, a construction permit is not required, and no construction permit will be issued.

The boilers are exempt from construction permit requirements per S.C. Regulation 61-62.1, Section II(B)(2)(b):

Boilers and space heaters of less than 10 million Btu/hr rate input capacity which burn only virgin gas fuels.

The facility shall maintain on-site any records necessary to determine compliance with the exemption requirements. Should any of the information concerning this project be found in error or obsolete, a new review shall be required. Please retain this letter for your records.

Additionally, the Department reviewed the updated air dispersion modeling parameters submitted on July 2, 2024. The modeling analysis demonstrated continued compliance with the modeling standards. Since the modeling parameters were submitted in accordance with Condition 1.1 of Construction Permit CP-0000090, a construction permit revision was not required, and none is being issued.

If you have any further questions or concerns, please contact me at (803) 898-4127 or David.Nasol@des.sc.gov.

Sincerely,

David D. Nasol
Air Permitting Division
Bureau of Air Quality

info@dms.sc.gov | des.sc.gov | 803.898.3431

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Walter Buchanan,)
) Docket No. 24-ALJ-07-0367-CC
)
)
) Petitioner,)
)
) PETITIONER MEMORANDUM IN SUPPORT
) OF PETITIONER MOTION FOR
) RECONSIDERATION
 Vs.)
) SCRPC 59(e)
)
)
) South Carolina Department of)
) Environmental Services and Silfab Solar,)
)
)
) Respondents.)
)
)

TO: Hon. Ralph King Anderson, III – Presiding Judge
Sarah Martinez, Esq.-Attorney for Respondent SCDES
Ethan R. Ware, Esq.-Attorney for Respondent Silfab Solar

Petitioner here files its memorandum in support of reconsideration and moves the court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure for an Order to Reconsider, Alter or Amend the December 23, 2024 order of dismissal. This court dismissed with prejudice predicated on joint motions to dismiss filed by Respondents South Carolina Department of Environmental Services (Department) and Silfab Solar (Silfab). Petitioner seeks this court reconsider predicated on permit no. CP500090.v.1.0 which was a major, not a minor change and evolution from the first permit. Petitioner further asks the court to consider new evidence obtained by FOIA requests, as to the department. Exhibit-A. This information was not within petitioner possession at the time petitioner filed for contested hearing with this court. ¹

¹ Petitioner acknowledges that it did not pursuant to Rule 19 of the SCALC rules timely file a response but respectfully disagrees that this omission is deemed *consent to the relief sought by petitioners* or that the department complied with due process by failure to share information related to stack height under air modeling due to location and proximity to schools and residences,

BACKGROUND

On March 1, 2024 the Department's predecessor DHEC issued an air quality permit to Silfab. The permit is for construction of a manufacturing operation involving production of solar cell and solar panels at 7149 Logistics Lane, Fort Mill. The location lies within 175 feet of petitioner Buchanan's home, and directly adjacent to Flint Hill elementary school. As noted by the court and Respondent briefs, the facility will necessarily include chemical storage tanks, boiler(s), applicable emission limits, source testing, monitoring, record keeping and reporting requirements. Silfab is the sole determiner of air quality standards compliance requirements. The products Silfab wishes to manufacture (solar cells and solar panels) via chemical manufacture are heavy industrial in nature, utilizing mix of chemicals including hydrochloric acid (HCl) and hydrofluoric Acid (HF). No mention is made within the order of the combustible chemical Silane (SiH₄) which is to be stored in tanks within proximity to petitioner's residence and newly constructed Flint Hill Elementary School, situated directly adjacent to the Silfab plant. Petitioner respectfully avers that reconsideration is warranted in light of the following.

LEGAL STANDARD SCRCP 59

"A motion under Rule 59(e) long has been viewed as "*motion to reconsideration*" despite the absence of those words from the rule." *Elam v. S.C. Dept. of Transportation*, 361 S.C. 9, 21, 602, S.E.2d 772, 778 (2004). The purpose of a motion filed pursuant to Rule 59(e) of the SCRCP is to "request the trial judge to reconsider matters properly encompassed in a decision on the merits". Rule 59(e), SCRCP. *Arnold v. State*, 309 S.C. 157, 172-73, 420 S.E.2d 834,842 (1992)

particularly given the change in topography where construction by both Silfab Solar and the adjacent Flint Hill Elementary School, under the singular lens of Silfab certifications.

(quoting *Budinich v. Becton-Dickinson and Co.*, 486 U.S. 196, 200, 108 S.Ct. 1717, 1720, 100 L.Ed.2d 178, 184 (1988)). As a result, “a party is usually allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.” *Elam*, 362 S.C. at 21, 602 S.E.2d at 778-9. Thus, a motion for reconsideration is “one final chance not only to call the court’s attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. *Id.* (emphasis added). Rule 59 motions are appropriate, and should be granted, if the court finds that there has been an intervening change of controlling law, that new evidence has become available, or that there is a need to correct a clear error or prevent manifest injustice. *Robinson v. Wix Filtration Corp. LLC*, 599 F3d 403, 411 (4th Cir. 2010)

ARGUMENT

- 1. Permit CP5000090.v.1.0 and Permit CP5000090.v.1.0 are essentially the same permit where the department placed upon Silfab after June 4, 2024 sole compliance by Silfab as to state and federal ambient air quality standards.**

Petitioner avers that Permit CP5000090.v.1.0 is but an evolution of the first permit. As stated by the department, “The facility increased the proposed stack height for the acid scrubber from 19.7’ ft to 70 ft subsequent to the analysis summarized above. Exhibit-A. The issue implicating manifest injustice and denial of due process is that at no time did the public become aware of Silfab lowering of stack height to 50’ ft. Petitioner asserts reconsideration is warranted, irrespective of 50’ ft. (the desired change by Silfab) being in excess of 19.7 ft. or less than 70’ ft. where construction evidences change of topography near petitioner’s home, which lies 175 feet from the plant. Flint Hill Elementary School lies directly adjacent to the plant.

Viewing Exhibit-A, the department is in direct e-mail communication with Silfab. The decision that the 19.7 ft parameters and air modeling is a foregone conclusion. Addressing public comments procedure, the department writes to Silfab: “Next will be the Public hearing where the public will

deliver their comments/questions to us. A court stenographer will record and document the comments received. We will address these comments along with the comments received during the 30-day notice in writing in the days following the hearing in a document called "Response to Comments. *After which we will issue the permit. (*sic)*" Exhibit-A, p. 2. At no time does the department require further of Silfab, nor does the department at any time discuss the lowering of stack height to 50' ft. with the public for comment or otherwise. Silfab is advised by the department that "facilities do not typically present at the public meeting/hearing", (Exhibit-A, p.4) all the while discussing yet un-resolved contingencies in emergency situations, or should power be lost. Exhibit-A, p. 4. "I was assuming that the tanks would still emit emissions even if the power goes out. If that is the case, the tanks would be a process still running. Let me know if this assumption is incorrect. Exhibit-A, p. 5. The tanks at issue involve Hydrofluoric Acid (HF), specifically. This court described the chemical as hydrogen fluoride, (Order, p. 2 of 8 at line 1) the gaseous result of heating and chemical treatment of Hydrofluoric Acid, which must be vented through scrubbers. The initial permit that later evolves into CP5000090.v.1.0 is yet predicated on assumptions and un-tested result should emergency back up power be required.

"Lets say we lose power in the facility, so machines go down and production stops. We have our wet scrubber systems tied to (*sic) our production equipment exhausts (*sic), that have not stopped producing; it is also tied to our vent systems for our storage tanks. Inexplicably, Silfab is inquiring of the department the following – "*How long must the scrubber system continue to operated under emergency power ? 1). Until we register 0 emissions? (2). As long as the main power is down ? (3) When production stops the scrubbers can go down ?* (Exhibit-A, p. 5-6). It is Silfab, not the department, that bears the burden of being able to answer such important questions,

no different than being transparent about the Light Industrial zoning. This is particularly the case is stack height is now being lowered to 50' ft.

2. The administrative law court should reverse the dismissal due to clear error to avoid manifest injustice.

The manifest injustice is also the omission of mention chemical *Silane*, which will transport to and be stored in tanks at the Silfab Site. Which, again, is zoned Light Industrial. Silane is extremely combustible. Prior to the proposal for Silane tanks in permit CP5000090.v.1.0, the building at 7149 Logistics Lane was a *distribution warehouse*. Not a chemical manufacturing facility. Additionally, as noted by this court's order Silfab plans added four (4) fired boilers. This court's order notes that said boilers were "*exempt*" from construction permitting requirements-*a matter unrelated to the facility's updated modeling analysis*. Petitioner respectfully asserts error where stack diameter, stack height, and exit velocity change were not announced publicly for comment or challenge after Silfab's July 3 2024 updated modeling forms to the department. If the public had no notice or opportunity to review updated parameters required of Silfab – and if Silfab omitted from the department proper stack height in its initial permit - then petitioner respectfully asserts the petitioner has standing and reconsideration of the order is warranted. Even as late as February 2024 Silfab cannot answer DES as to monitoring parameters. Exhibit-A, p. 6: "*Are the 30 days of normal readings to be done at full capacity? or is it acceptable to conduct the observations during normal running at less than full capacity?*" Silfab is inexplicably asking this of the department, which should confirm to the court there is zero method by which air quality standards can be measured by the Fox accurately under either permit, given desired changes to stack height, diameter, and location upon a property not zoned for heavy industrial process. s

As noted by the court's order, Condition I.1 of the permit CP500090 provides in relevant part that "[a]ny changes in the parameters used in [the facility's air dispersion modeling] demonstration may require a review by the facility to determine continued compliance with [the state and federal ambient air quality] standards. In summary, Silfab and only Silfab, determines compliance standards. The decision by the department under issuance of permit one CP500090 was a foregone conclusion viewing argument #4, *infra*. Yet, none of the updated modeling was shared with the public by the department after July 3, 2024. *Why not?*

If a chemical manufacturing operation which has the potential for health or safety hazard, nuisance, or otherwise, this court has Subject Matter Jurisdiction. Pursuant to S.C. Code Ann. §48-6-30(A) specifically gives the administrative law court jurisdiction over contested cases generated by department decisions as cited by the court's order p. 4 of 8 paragraph (3). The court should not under the guise of permit evolution from CP500090 to CP5000090.v.1.0 dismiss as the matter involves renewal, if not outright modification, of an evolving permit affecting the petitioner and public. It thus implicates legal rights, duties, privileges (the right to notice and opportunity to be heard as to Silfab July 3, 2024 updated modeling). Petitioner respectfully asserts Dismissal with Prejudice is unduly harsh where a contested hearing was sought under initial filing, and this court should not evade the evolution of permit evolution under guise of "memorialization" that Silfab's April 17, 2024 permit CP5000090 remained compliant. The department merely puts the fox in charge of the henhouse here, with Condition I.1 permitting Silfab (and Silfab only) to address modeling parameter changes by requiring the facility to conduct a review to verify continued compliance. Only one (1) modeling analysis can be possible under this scenario, that of Silfab. Silfab had constructive knowledge of where and how it would operate, an adjacent elementary

school. Silfab had constructive notice of the sheer density of residential homes near its location including that of petitioner.

- 3. The administrative law court should reverse and remand the case to the department for contested hearing involving Silfab compliance with air modeling predicated on location, state and federal standards where Silfab contemplates a heavy industrial industry upon a tract zoned Light Industrial.**

Petitioner respectfully asserts it was Silfab who requested a 70' ft stack height change after issuance of permit CP5000090, Exhibit-A, p. 1-2. On June 4, 2024 Silfab informed DHEC that it needed (*sic) to modify its proposed stack heights (at permit issuance 19.7 ft) to ensure compliance with *county requirements* regarding building / equipment height, without expressly noting location or the York County zoning code. The code permits stack height of 50' ft. only. At no place in respondent memorandums or the court's order cite the location is zoned Light Industrial in Fort Mill, not zoned a Heavy Industrial tract. Silfab and its landlord Exeter 7149 Logistics had constructive notice of the location and the construction of schools within proximity to its planned operation. Petitioner therefore respectfully asserts that in the interest of location to his home and – particularly in interest to the health and of children – that reversal and remand to the department is necessary to avoid manifest injustice, and that dismissal despite error of counsel for petition to file objecting memorandum is unduly harsh. At all times the department should have – but did not – share with the public the *two* changes in stack height, width of stacks, and changes to exit velocity from stacks.

- 4. Newly discovered evidence warranting reconsideration and potential for change in controlling law. Exhibit-B.**

“Next will be the Public Hearing where the public will deliver their comments/questions to us. A court stenographer will record and document the comments received. We will address these comments along with the comments received during the 30-day notice in writing in the days following the hearing in a

document called "Response to Comments". *After which we will issue the permit (*sic).*

Petitioner asserts that reconsideration is warranted predicated on the department's duty to disseminate information to the public pertaining to stack height, diameter, and exhaust velocity, changed by Silfab from permit CP500090 to permit CP5000090.v.1.0. While the court notes that the first department permit included emission of hydrogen fluoride (HF), this is the gaseous byproduct form of treated toxic Hydrofluoric Acid (HF) liquid, also to be stored in tanks at the Silfab site and treated on site. In this case, respondent Silfab will be utilizing over a million gallons of water per day to treat HF in its manufacturing process, which will exit via air emissions through exhaust stacks that have twice undergone height change with zero ability to test in advance by Silfab or the department. The exhaust stack system was approved under permit CP500090 at 19.7' ft. specifically. Silfab, citing "*county requirements*", then sought to raise the stack height to 70' ft. At present, Silfab seeks to lower stack height, *now*, to 50' ft. height. York County zoning does not permit 70' ft stack height in this location.

While petitioner counsel acknowledges no objection to the Respondents' filings to dismiss was filed of record and this was error of petitioner counsel (anticipating a hearing on the same), dismissal with prejudice is a severe and drastic remedy where more is at stake than procedure. This would include home owners and school children within proximity to a chemical manufacturing process that is heavy industrial by Silfab's design, where haphazardly Silfab cannot decide on proper stack height nor test before operations commence. It is proposed upon a tract not zoned for this. Rather, the Silfab location is zoned Light Industrial. Silfab had constructive notice of the zoning designation and the location is was choosing to operate from well prior to petition to the department for air permits. Petitioner respectfully avers the court should reconsider the dismissal, Reverse and Remand. The Silfab chemical manufacturing

facility will be the first of its kind in South Carolina; an un-tested chemical manufacturing operation on improperly zoned tract does not belong adjacent to an elementary school or dense district of residential homes.

CONCLUSION

Respondents represent purported perfection in the Silfab process, despite evolutions of the Silfab-desired changes in stack height. From the date of issuance of first permit CP500090, Silfab unilaterally sought raising stack height to 70' ft. This was only mentioned in a footnote in response to public comments. Exhibit-A. "The facility increased the proposed stack height for the acid scrubber stack from 19.7 ft. to 70' ft. subsequent to the analysis summarized above". Whereas the "analysis summarized above" confirmed that 19.7' ft met the regulatory requirements. Then Silfab asks to change the height to 50' ft. This was not mentioned in the first or second public comment afforded by SCDES to the public, and had to be obtained via FOIA petitions which occur after petitioner's filing for contested hearing with this court.

Subsequently, it is no secret that Silfab now seeks to lowered stack height to 50' ft. This is the second change, to comply with county "requirements". The requirement is *zoning*, despite the term itself being expressly omitted. Here, zoning inherently involves a *Light Industrial tract* of property for a heavy industrial chemical manufacturing process. It is likewise omitted from department consideration. Respondent Silfab had constructive knowledge of this. *Did the department*? Change of topography around adjacent schools and homes are omitted, even if Silfab cited two (2) nearby buildings being erected as part of its future processes under permit CP500090.v.1.0. The topography has changed due to construction between the adjacent property of an elementary school and respondent Silfab's construction.

There can be no perfection under a chemical manufacturing process inherently involving combustible and toxic chemicals, even if respondents both assume perfection in air modeling parameters under Silfab sole reports or unilateral "monitoring". Petitioner asserts error warranting reconsideration where the respondents assume perfection under a chemical manufacturing process, situated upon improperly zoned parcel, and continued evolution of permit CP500090 into permit CP500090.v.1.0. This is particularly true given respondent Silfab constructive notice of 70' ft stack height not being compliant with the York zoning codes, the court should not permit either respondent to presupposed air modeling requirements are correct under the change to 50 ft.

As the court notes, the permit issued CP500090v.1.0 facility equipment and operations would include emissions of hydrochloric acid (HCl) and gas emission of hydrogen fluoride (HF).² The July 3, 2024 updated modeling by Silfab to the department included desired changes to stack height, diameter, and exit velocity of treated chemical HF, including accounting for two (2) buildings being constructed nearby. It should be noted, one such building being constructed directly adjacent to the Silfab site is Flint Hill Elementary School, due to open in year 2026. Silfab seeks to begin (and test after operations are initiated) in first quarter of 2025. Petitioner Buchanan's personal residence is but within 175 ft of the Silfab manufacturing site. As the court's dismissal is predicated on petitioner counsel failure to timely file objection to motion, Petitioner prays the court should reconsider as harmless error and predicated on newly acquired evidence and lack of transparency by the department with the public. 50' ft. stack height is admittedly higher than 19.7' ft as initially approved by the first permit. Petitioner respectfully asserts, however, it does not

² Hydrogen fluoride (HF) gas emissions are derived from treatment of Hydrofluoric Acid (HF). The issue of injustice is the mass chemical storage and boiler-fired manufacture process involving the latter. Petitioner respectfully asserts injustice and need for remand on air modeling analysis by entities other than respondent Silfab under either permit, but particularly CP500090.v.1.0.

equated to accurate reporting of air quality compliance where Silfab seeks lowering of exhaust tower stacks where emissions may constitute health hazards or nuisance to adjoining persons or properties.

J. CAMERON HALFORD, LLC

/s/ J. Cameron Halford

S.C. Bar Id. 17184

Post Office Box 172

Barnwell, S.C. 29812

803-524-8659

E-mail: cam@halfordlaw.net

January 2, 2024

ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby Certify that I am the attorney for the Petitioner in the above entitled case, that the Petitioner Memorandum and Exhibit A to Reconsider Dismissal with Prejudice was sent electronically and by U.S. mail by Petitioner Counsel January 2, 2025 submitted and served on counsel for Respondents as follows:

Dawn K. Miller, Esq.
Sarah Martinez, Esq.
SCDES – Office of General Counsel
2600 Bull Street,
Columbia, South Carolina 29201
803-898-7286
Attorneys for Respondent South Carolina
Department of Environmental Services

Ethan R. Ware, Esq.
Ryan W. Trail, Esq.
1230 Main Street, Suite 330
Columbia, South Carolina 29211
803-567-4600
Attorneys for Respondent Silfab Solar, Inc.

Respectfully submitted,



J. CAMERON HALFORD, LLC
/s./ J. Cameron Halford, Esq.
S.C. Bar Id. 17184
Post Office Box 172
Barnwell, South Carolina 29812
803-524-8659
e-mail: cam@halfordlaw.net
ATTORNEY FOR PETITIONER

Exhibit-A

Petitioner Motion to Reconsider, Alter or Amend

Filed January 2, 2025

maximum concentrations decreased from 1.74 $\mu\text{g}/\text{m}^3$ (rural) to 1.39 $\mu\text{g}/\text{m}^3$ (urban) for hydrogen fluoride. Hydrochloric acid emissions model results also show a decrease when applying the urban option from 35.08 $\mu\text{g}/\text{m}^3$ (rural) to 28.92 $\mu\text{g}/\text{m}^3$ (urban). Thus, maximum impacts remain below the applicable hydrogen fluoride and hydrochloric acid standards of 2.05 $\mu\text{g}/\text{m}^3$ and 175 $\mu\text{g}/\text{m}^3$, respectively. Results are summarized in the tables below:

STANDARD NO. 8 - TOXIC AIR POLLUTANTS ANALYSIS - RURAL Option Model Results					
Pollutant	CAS Number	Basis	Maximum Concentration ($\mu\text{g}/\text{m}^3$)⁽¹⁾	Standard ($\mu\text{g}/\text{m}^3$)	% Of Standard
Hydrochloric Acid	7647-01-0	AERMOD	35.08	175.00	20
Hydrogen Fluoride	7664-39-3	AERMOD	1.74	2.05	85

1) The highest 24-hour concentrations are rounded to two decimal places to compare to the standards.

STANDARD NO. 8 - TOXIC AIR POLLUTANTS ANALYSIS - URBAN Option Model Results					
Pollutant	CAS Number	Basis	Maximum Concentration ($\mu\text{g}/\text{m}^3$)⁽¹⁾	Standard ($\mu\text{g}/\text{m}^3$)	% Of Standard
Hydrochloric Acid	7647-01-0	AERMOD	28.92	175.00	17
Hydrogen Fluoride	7664-39-3	AERMOD	1.39	2.05	68

1) The highest 24-hour concentrations are rounded to two decimal places to compare to the standards.

Note: The facility increased the proposed stack height for the acid scrubber stack from 19.7 ft to 70 ft subsequent to the analysis summarized above. Modeling guidance does not require an updated air dispersion analysis for stack height increases due to the fact that better dispersion is expected with higher release heights.

Comments were received about changes in terrain due to the construction of the new school.

Response: National Elevation Dataset (NED) files from USGS are used for source, building, and receptor elevations. DHEC periodically updates NED data sets to maintain up-to-date information. Since maximum impacts occur on the northern property line with significantly

during the 30-day notice in writing in the days following the hearing in a document called "Response to Comments". After which we will issue the permit.

Please let me know your availability the week of October 23th. Also, let me know if you have any additional questions or concerns regarding this process.

Best regards,

David Nasol
Engineering Associate
Bureau of Air Quality - Air Permitting Division
S.C. Dept. of Health & Environmental Control
Office: (803) 898-4127
Connect: www.scdhec.gov [Facebook](#) [Twitter](#)

From: Matt Korzelius <m.korzelius@silfabsolar.com>
Sent: Thursday, September 7, 2023 5:52 PM
To: Nasol, David D. <nasoldd@dhec.sc.gov>
Subject: RE: Air Permit

Caution: This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email.
Hi David,

Another question: Is there a minimum number of people that have to comment to get a public hearing or can the public hearing be requested by only one person and if only one person comments?

Thanks

From: Nasol, David D. <nasoldd@dhec.sc.gov>
Sent: September 7, 2023 4:25 PM
To: Matt Korzelius <m.korzelius@silfabsolar.com>
Subject: RE: Air Permit

Caution: This is an external email

Hi Matt,

We got a significant amount of comments (~50) last night and today with citizens requesting a public hearing. We are planning on holding a public hearing – time/date/location to be determined. After the public hearing, there will be an additional 30 day public comment period. I'll reach back out once we go through the comments received and decide on the time/date/location of the public hearing.

Let me know if you have any questions.

Cc: Treff MacDonald <T.macdonald@silfabsolar.com>; Alex Ghusein <a.ghusein@silfabsolar.com>; Renee Terreri <r.terreri@silfabsolar.com>; Smeet Patel <s.patel@silfabsolar.com>; Earle Aube III <e.aube@silfabsolar.com>; Jay Mitchell <jakemitchell159@yahoo.com>

Subject: RE: Air Permit

*** Caution: This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***
Hi David,

Thanks for the information! We will plan on being there because we are also interested in hearing the public comments and concerns, so don't be troubled about the dates and times; we will work around DHEC's schedule. Do you know if we will be asked to provide a general overview of the company and plans for the SC facility?

Regards,
Matt

Matt Korzelius
Plant Facilities Director



m.korzelius@silfabsolar.com

Tel: +1 905 255 2501 Cell: +1 (716) 949-0241 Fax: +1 (905) 696-0267
7149 Logistics Lane, Fort Mill, SC, 29715, United States



Think Green. Please don't print unless absolutely necessary

From: Nasol, David D. <nasoldd@dhec.sc.gov>
Sent: September 12, 2023 11:12 AM
To: Matt Korzelius <m.korzelius@silfabsolar.com>
Subject: RE: Air Permit

Caution: This is an external email

Matt,

I got some additional clarification on the public meeting/hearing process. We are currently trying to book a location to hold the meeting/hearing. Once a location is booked, we will post a document on our website providing the public with a notice of the meeting/hearing time/date/location. Note-- the notice must be at least 30 days in advance of the meeting/hearing. During the 30 day notice, we are open to receive additional comments on the permit. We are trying to schedule the meeting/hearing the week of October 23th in the evening at a location near the location near the Silfab location. We ask that you (or other Silfab representatives) be present for this. What is your availability in the evenings this week?

At the meeting/hearing, the first portion will be the Public Meeting in which BAQ staff will give a presentation about the permit. After which there will be a question and answer session.

Next will be the Public Hearing where the public will deliver their comments/questions to us. A court stenographer will record and document the comments received. We will address these comments along with the comments received

Plant Facilities Director



m.korzellius@silfabsolar.com

Tel: +1 905 255 2501 Call: +1 (716) 949-0241 Fax: +1 (905) 696-0267
7149 Logistics Lane, Fort Mill, SC, 29715, United States



Think Green: Please don't print unless absolutely necessary.

From: Nasol, David D. <nasoldd@dhec.sc.gov>
Sent: September 19, 2023 3:21 PM
To: Matt Korzellius <m.korzellius@silfabsolar.com>
Subject: RE: Wet Scrubbers

Caution: This is an external email

Matt,

I will direct you to Condition B.8 of the draft permit. The condition specifies that "Each scrubber shall be in place and operational whenever processes controlled by it are running, except during periods of scrubber malfunction or mechanical failure." I assume that if the power goes out, the scrubber would go offline as well, meaning it would be a scrubber malfunction or mechanical failure. I understood that scrubber malfunction or scrubber mechanical failure to mean that: "The scrubber itself fails while the tools are still running". Is this not the case? If the power goes down the tools feeding the scrubber will be down as well, so technically nothing is feeding to the scrubber. Can you please clarify this information?

- I was assuming that the tanks would still emit emissions even if the power goes out. If that is the case, the tanks would be a process still running. Let me know if this assumption is incorrect.

In addition, Condition D.2 specifies the documentation/notifications required to be provided when an emergency occurs. This seems to be aligned with a situation of a power loss. An emergency occurs such as a sever storm and takes out the power.

Am I able to see the draft permit?

- Yes, I have attached a copy to this email. It should be the same as the one I sent out before public notice.

Let me know if you have any additional questions.

Thanks David

Best regards,

David Nasol
Engineering Associate
Bureau of Air Quality - Air Permitting Division
S.C. Dept. of Health & Environmental Control
Office: (803) 898-4127
Connect: www.scdhec.gov [Facebook](#) [Twitter](#)



From: Matt Korzelius <m.korzelius@silfabsolar.com>
Sent: Tuesday, September 19, 2023 12:10 PM
To: Nasol, David D. <nasoldd@dhec.sc.gov>
Subject: Wet Scrubbers

*** Caution: This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email.
 *** Hi David,

Quick question for you regarding our emergency backup power:

Let's say we lose power in the facility, so machines go down and production stops. We have our wet scrubber systems tied to our production equipment exhausts, that have now stopped producing, but it is also tied to our vent systems for our storage tanks. How long must the scrubber system continue to operate under the emergency backup power?

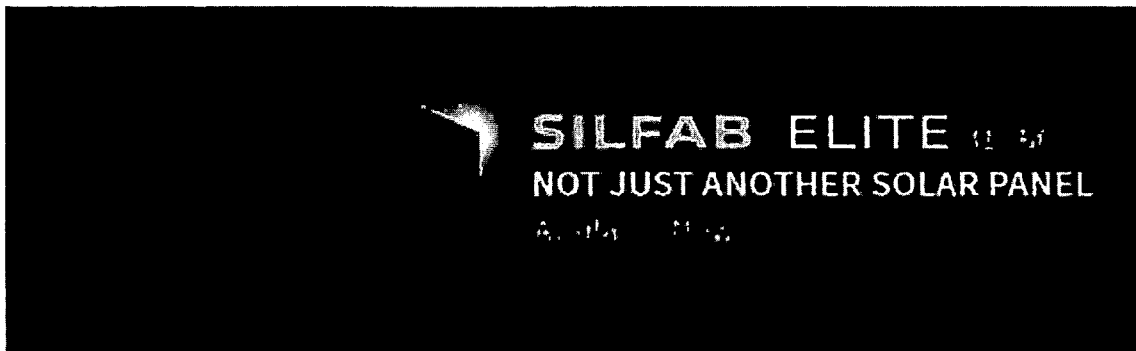
1. Until we register O emissions?
2. As long as the main power is down?
3. When production stops the scrubbers can go down?

Thanks,
 Matt

Matt Korzelius
 Plant Facilities Director



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 Tel: +1 905 255 2501 Cell: +1 (716) 949-0241 Fax: +1 (905) 696-0267
 7149 Logistics Lane, Fort Mill, SC, 29715, United States.



Think Green. Please don't print unless absolutely necessary.

Thanks,
Denise

Denise H. Hall
Manager, Permit Section

Combustion and Waste
Bureau of Air Quality

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halldh@dhec.sc.gov

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Connect: www.scdhec.gov Facebook Twitter



From: Matt Korzelius <m.korzelius@silfabsolar.com>
Sent: Wednesday, February 28, 2024 7:41 AM
To: Hall, Denise <halldh@dhec.sc.gov>
Cc: Nasol, David D. <nasoldd@dhec.sc.gov>
Subject: RE: [SC DHEC - Air Permitting] draft documents for review

*** Caution: This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email.
*** Hello Denise,

I understand what you are saying but, B13 states that "These operational ranges for the monitored parameters shall be derived from **stack test data**.....**stack test results**.....shall be submitted to the Department within 60 days after startup."

So, what I am saying is that it is very likely that we will not be at full operation within 60 days of starting the DFTO, venturi scrubber and acid scrubber (which will be started up together) because we will be ramping up over the course of 3-4 months to prove out equipment and recipes. If it is merely the operational parameters that have to be reported within the 60 day period it should be stated as such but, as it reads now, it clearly states that stack test results are due within the 60 day time period.

Are the 30 days of normal readings to be done at full capacity? Or is it acceptable to conduct the observations during normal running at less than full capacity?

Regards,
Matt

Matt Korzelius


CERTIFICATE OF SERVICE

I hereby Certify that I am the attorney for the Petitioner in the above entitled case, that the Petitioner Exhibit A (6 pages) to Reconsider Dismissal with Prejudice was sent electronically and by U.S. mail by Petitioner Counsel January 2, 2025 submitted and served on counsel for Respondents as follows:

Dawn K. Miller, Esq.
Sarah Martinez, Esq.
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Attorneys for Respondent South Carolina
Department of Environmental Services

Ethan R. Ware, Esq.
Ryan W. Trail, Esq.
1230 Main Street, Suite 330
Columbia, South Carolina 29211
803-567-4600
Attorneys for Respondent Silfab Solar, Inc.

Respectfully submitted,


J. CAMERON HALFORD, LLC
/s/ J. Cameron Halford, Esq.
S.C. Bar Id. 17184
Post Office Box 172
Barnwell, South Carolina 29812
803-524-8659
e-mail: cam@halfordlaw.net
ATTORNEY FOR PETITIONER

judgment: “(1) to accommodate an intervening change in controlling law; (2) to account for new evidence ...; or (3) to correct a clear error of law or prevent manifest injustice.” *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993). “[M]ere disagreement” will not suffice. *Id.* at 1082; *see also, e.g., Mastercard International Inc. v. S.C. Dep’t of Rev.*, No. 20-ALJ-17-0008-CC, 2024 WL 3333777, at *1 (S.C. Admin. L. Ct. Jul. 2, 2024) (Durdan, J.) (denying motion for reconsideration that did “not seek to correct manifest errors of law or fact or to present newly discovered evidence”); at *Tractor Supply Co. v. S.C. Dep’t of Rev.*, No. 19-ALJ-17-0416-CC, 2024 WL 86950, at *2 (S.C. Admin. L. Ct. Jan. 3, 2024) (Anderson, J.) (denying motion for reconsideration seeking to relitigate old matters and that “presented no new or compelling argument for why the Court should change its position”).

DISCUSSION

For all the reasons detailed below, this case does not present any viable basis for reconsideration, alteration, or amendment of the Court’s judgment.

I. Petitioner’s failure to respond to Respondents’ previous motion to dismiss precludes reconsideration.

The Petitioner did state any opposition to the November 27, 2024 Motion to Dismiss decided upon by this Court. SCALC Rule 19(A) expressly provides that “[f]ailure of a party to timely file a response [to a motion] may be deemed a consent by that party to the relief sought in the motion or petition.” The Petitioner’s Motion for Reconsideration acknowledges this “error,” but nonetheless seeks reconsideration based on the Petitioner’s underlying concerns about the facility and its permit. Pet.’s Mot. For Reconsideration at 8. As stated above, reconsideration is not available to address matters that the Petitioner had the opportunity to present previously but did not. *Exxon Shipping Co.*, 554 U.S. at 486, n.5; *Kiawah Property Owners Grp.*, 359 S.C. at 113, 597 S.E.2d at 149. As such, the Petitioner’s motion should be denied.

II. The arguments presented in the Petitioner's motion do not indicate any error of law or otherwise cognizable basis for reconsideration of the Court's decision.

Even had the Petitioner timely filed any opposition to the Respondents' previous Motion to Dismiss, the Petitioner fails to present any cogent dispute with the Court's dispositive findings that procedural jurisdiction and subject matter jurisdiction were both lacking in this case. As such, reconsideration must be denied.

A. Petitioner's motion leaves undisputed the absence of procedural jurisdiction, making reconsideration unwarranted.

In its December 23, 2024, Order of Dismissal ("Order of Dismissal"), this Court found that the Petitioner's contested case hearing request lacked procedural jurisdiction because the Petitioner failure to perfect his contested case hearing request until October 5, 2024, after expiration of the deadline prescribed by S.C Code Section 48-6-30(D)(2). See Order of Dismissal at 6-7, n.9. The Petitioner's motion does not even make mention of the timeliness issue presented in this case or the Court's resulting finding that that procedural jurisdiction was lacking. Although the Court's Order of Dismissal focuses on the issue of subject matter jurisdiction, procedural jurisdiction remains a distinct prerequisite for contested case review, and the issue was fully considered and decided upon as an additional basis for dismissal. See *id.* For the reasons already detailed in Respondents' Motion to Dismiss (at 11-13), the Court properly determined that the Petitioner's contested case hearing request was not timely filed. As the Petitioner has not addressed much less disputed this basis for dismissal, dismissal remains proper, and Petitioner's motion for reconsideration must be denied.

B. The Petitioner presents no basis for reconsideration of the Court's decision that subject matter jurisdiction is lacking.

The Court's Order of Dismissal held that the July 30, 2024, letter challenged by the Petitioner did not give rise to a reviewable "contested case" under either the Administrative

Procedures Act ("APA") or the South Carolina Constitution because Silfab Solar's submission of updated air dispersion modeling did not trigger any Department requirement to issue any final decision and the Department's review of the facility's updated modeling and verification of compliance did not create any legally protected right or privilege owing to the Petitioner. Order of Dismissal at 5-6. Although the Petitioner ostensibly opposes the Court's decision that contested case jurisdiction was lacking, no clear factual or legal dispute with the Court's conclusion and rationale can be discerned from the Petitioner's motion. The Petitioner's generalized concerns about the Silfab Solar facility and disagreement with the dismissal of this case are not grounds for reconsideration.

Among the Petitioner's concerns, the Petitioner speaks of an "evolution" from one permit to another, claiming that "Permit CP5000090.v.1.0 is but an evolution of the first permit." Pet.'s Mot. For Reconsideration at 3, 6. It is unclear what the Petitioner is referring to when speaking of a new or evolved permit, but in any event, as explained in Respondents' Motion to Dismiss and likewise determined in the Court's Order of Dismissal, only one permit has ever been issued for the Silfab Solar facility. *See* Respondents' Motion to Dismiss, Exhibit A to Affidavit of Denise Hall (copy of the permit). That permit has at no time been changed or modified, either by the Department's July 30, 2024, letter, or otherwise. The original permit terms remain unchanged and continue to apply.

While the Petitioner expresses displeasure with the absence of any public notice or comment period in reference to the facility's modeling parameter changes (Pet.'s Mot. For Reconsideration at 4-5, 8), neither the permit nor regulations require such procedures for modeling updates such as these, and the Petitioner identifies none. As explained in the Respondents' Motion to Dismiss (at 7-8) and the Court's decision (at 5), Condition I.1 of the permit and underlying

regulations (Regulation 61-62.5, Standard No. 8) expressly authorize modeling parameter changes after permit issuance and specifically require the facility to conduct a review to verify continued compliance. Any concerns Petitioner had about Silfab Solar's issued permit, including but not limited to any concerns about Condition I.1's allowance of modeling parameter changes, were required to have been brought within the requisite statutory timeframe for seeking review (at that time, pursuant to S.C. Code Section 44-1-60). See Order of Dismissal at 6, n.8. Nothing in the Petitioner's motion for reconsideration presents any legal grounds for a different outcome.

The Petitioner's motion references myriad other concerns, including but not limited to concerns about silane storage at the facility, Silfab Solar's role in updating its modeling, potential hazards associated with facility operations, process emissions, and facility zoning and siting. Pet.'s Mot. For Reconsideration at 5-9. None of these concerns specifically call into question the Court's reasoning or evince any legal or factual basis for a different outcome. The mere existence of the Petitioner's various concerns is not a "manifest injustice" and does not give rise to contested case jurisdiction where no legal basis exists.

The Petitioner offers a series of exhibits as "new evidence" ostensibly in support of its motion. The first is an excerpt from the Department's response to comments noticed with the issued permit, which summarizes the modeling results at the time of permit issuance and notes the facility's modeled 19.7-foot stack height and planned 70-foot stack height at that time. The other exhibits represent email correspondence between the Department and the facility responding to facility questions about the process for permit issuance and draft permit terms. These exhibits, which date back prior to permit issuance, cannot be considered "new" evidence in support of reconsideration, and further—irrespective of their date—are not relevant to the presence or absence of contested case jurisdiction for the Department's July 30, 2024, letter acknowledging

receipt and review of Silfab Solar's updated modeling.

CONCLUSION

For the reasons set forth above, the Department requests that this Court deny the Petitioner's Motion for Reconsideration.

Respectfully submitted,



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January 10, 2025
Columbia, South Carolina

have been raised prior to the Order, are not grounds for reconsideration. See *Lanier v. Lanier*, 364 S.C. 211, 220, 612 S.E.2d 456, 461 (Ct. App. 2005) (“Where a litigant could have discovered the evidence prior to trial, he or she is not entitled to relief . . .”) (evaluating significance of new evidence for purposes of a motion for a new trial under Rule 60(b)(2), SCRCF); *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995) (“A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial.”). Petitioner’s Motion asks the Court to reconsider the legal analyses outlined in the Order under the guise of 1) discovery of “new evidence,” which Petitioner could have obtained by due diligence long before dismissal; and 2) “manifest injustice” alleged through issues Petitioner takes with Respondent’s permit, rather than the letter, which is the subject of this action. Accordingly, Respondent respectfully requests the Court deny Petitioner’s Motion.

STANDARD OF REVIEW

Rule 29.D, SCALC, allows a party to move for reconsideration “subject to the grounds for relief set forth in Rule 59, SCRCF.” Rule 59(e), SCRCF, permits a party to request a court “reconsider matters properly encompassed in a decision on the merits.” *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). “In cases permitting an agency to reconsider its decision, courts have emphasized that an agency’s power to reconsider or rehear a case is not an arbitrary one, and such power should be exercised only when there is justification and good cause; i.e., newly discovered evidence, fraud, surprise, mistake, inadvertence or change in conditions.” *Bennett v. City of Clemson*, 293 S.C. 64, 66-67, 358 S.E.2d 707, 708-09 (1987) (citing 2 Am.Jur.2d, Administrative Law, § 522 et seq. (1962 & Supp. 1986)). As indicated in the “Notes” to Rule 59(e), the scope of Rule 59 is “substantially” the same as the federal rule.²

² “Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004).

Federal caselaw provides Rule 59 only is properly used to amend a judgment if the movant can show: “(1) an intervening change in the controlling law, (2) new evidence that was not available at trial, or (3) that there has been a clear error of law or a manifest injustice.” *Robinson v. Wix Filtration Corp.*, 599 F.3d 403, 407 (4th Cir. 2010). A party’s dissatisfaction with the outcome of the underlying litigation is not grounds for relief under Rule 59. Furthermore, courts have held a motion to reconsider should not be a “vehicle for rearguing the law, raising new arguments, or petitioning the court to change its mind.” *Lyles v. Reynolds*, Civil Action No. 4:14-1063-TMC, 2016 WL 1427324, at *1 (D.S.C. Apr. 12, 2016) (citing *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008)); see also *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) (“A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.”).

ARGUMENT

1. The Motion cannot overcome the procedural failure that the Court lacks jurisdiction to hear a challenge to the July 30, 2024 letter.

The Court has determined and ruled the July 30, 2024 letter challenged by Petitioner, which documents Department receipt of Respondent’s submission of air quality modeling data and confirming Respondent’s compliance with applicable standards, is not a “contested case” sufficient to establish subject matter jurisdiction in the Administrative Law Court. See Order, 4-6. The Court’s rationale is simple: the alteration of stack height does not “modify” the permit; it merely implements provisions of an existing permit, which were expressly contemplated and accounted for in the original permit. *Id.* at 5. Therefore, the ministerial letter could not give rise to a “contested case” under S.C. Code Ann. § 48-6-30(A) and S.C. Code Ann. § 1-23-505(3), because contested cases require the decision involve “issuance, denial, renewal, suspension, or revocation” of a

permit and where “legal rights, duties, or privileges of a party are required by law or by” the Constitution to be determined by an agency or the Court. *Id.*

Moreover, the Order further finds no constitutional ground for the letter being a contested case. “The fact that the Department reviewed [Respondent’s] updated modeling and verified its continued compliance does not create a legal protected right and thus, Petitioner has failed to show a deprivation of its legal rights and privileges.” Order, 6. The Order makes clear the July 30, 2024 letter is not a contested case sufficient for the Court to exert subject matter jurisdiction.

The Court also denied jurisdiction on a second theory: Petitioner’s failure to timely challenge the July 30, 2024 letter. The Order states:

As a secondary argument, Respondents argue that even if the letter at issue was a contested case, Petitioner has failed to meet the requirements for procedural jurisdiction. The Court agrees. Rule 23(B)[, SCALC,] provides that “the Court may dismiss a contested case . . . for failure to comply with any of the rules of procedure for contested cases, including the failure to comply with any of the time limits provided in these rules or by order of the Court.” Here, subsection 48-6-30(D)(2) of the South Carolina Code provides “thirty calendar days after the mailing of a decision” of the Department for an affected person to request a contested case hearing before this Court. The letter at issue was sent electronically on July 30, 2024. Petitioner did not specifically request, in writing, to be notified of the letter prior to it being sent. Accordingly, Petitioner had until August 29, 2024, thirty days after electronic mailing of the letter, to file its request. However, Petitioner did not perfect its request for a contested case until October 5, 2024, thus making it untimely.

Order, 6-7, n. 9. Nothing in the Motion or Petitioner Memorandum changes this conclusion or the facts upon which it is based. As such, Respondent respectfully requests the Court affirm its prior decision and deny this Motion for Reconsideration.

2. The Motion cannot overcome the procedural failure that Petitioner did not submit opposition to the Joint Motion to Dismiss.

The Court determined “Petitioner’s failure to file a response to [the Respondents’ Joint Motion to Dismiss] is deemed consent to the relief requested by Respondents pursuant to the Court’s Rules

of Procedure.” Order, 6 (citing Rule 19(A), SCALC). “[A] motion to reconsider is not a vehicle for rearguing the law, raising new arguments, or petitioning a court to change its mind.” *Lyles v. Reynolds*, Civil Action No. 4:14-1063-TMC, 2016 WL 1427324, at *1 (D.S.C. Apr. 12, 2016) (citation omitted) (emphasis added). Unless Petitioner can show it timely filed a response in opposition to the Joint Motion to Dismiss, there is no issue to be reconsidered.

3. The “new evidence” raised in the Motion should have been discovered by due diligence and cannot be the basis for reconsideration.

Petitioner claims it has discovered new evidence supporting reconsideration, namely pre-suit emails between the Department and Respondent. Notably, Petitioner states the information was obtained by Freedom of Information Act request and “[t]his information was not within petitioner possession at the time petitioner filed for contested hearing with this court.” Petitioner Memorandum, 1.

By relying on possession, Petitioner misstates the standard for whether evidence is “new” such that it warrants reconsideration. When evaluating new evidence in a motion for reconsideration or relief from a final order (including by new trial),³ courts do not look to possession of information, but rather whether it could have been obtained by due diligence. *See Lanier v. Lanier*, 364 S.C. 211, 220, 612 S.E.2d 456, 461 (Ct. App. 2005) (“Where a litigant could have discovered the evidence prior to trial, he or she is not entitled to relief . . .”)

³ The SCALC Rules make the events justifying relief from a final order under Rule 60(b), SCRCP, directly applicable to a motion for reconsideration before the Administrative Law Court. Rule 29.D, SCALC (“Any party may move for reconsideration . . . subject to the grounds for relief set forth in Rule 59, SCRCP . . .”); *see also* Rule 59(a), SCRCP (“A new trial may be granted . . . on all or part of the issues . . . in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in the courts of the State”). Rule 60(b), SCRCP, states the court may relieve a party from an order for “newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b).” (emphasis added). *See also Carolina Water Serv., Inc. v. S.C. Dep’t of Health and Env’t Control*, 1999 WL 100847 (S.C. Admin. L. Ct. 1999) (including the events listed under Rule 60(b), SCRCP as grounds for reconsideration in the Administrative Law Court).

South Carolina courts hold Petitioner to the following test to determine whether evidence is "new":

[T]he moving party must establish that the newly discovered evidence: '(1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching.'

Southeastern Housing Foundation v. Smith, 380 S.C. 621, 638, 670 S.E.2d 680, 689 (Ct. App. 2008) (quoting *Lanter*). The information cited by Petitioner includes one page of the permit, No. CP-50000090v1.0, a series of emails from September, 2023, and one email from February, 2024. All of the information Petitioner represents as "new evidence" justifying reconsideration was obtainable by Petitioner prior to the Joint Motion to Dismiss.

Even if the information is "new," it does not affect issues material to the case. See Petitioner Memorandum, Exhibit A (documents Petitioner asserts are "new"). The permit excerpt, page 8 of Permit No. CP-50000090v1.0, merely shows the change to stack height contemplated by the permit Petitioner elected not to contest and the same change the Court determined did not give rise to a contested case. The September 2023 and February 2024 emails Petitioner cites reflect routine communications about (1) the procedure of public comment and hearing on the uncontested permit, (2) discussion of draft permit conditions, which ultimately became part of the final uncontested permit; and (3) a request by Respondent for instruction on how to perform monitoring in start-up conditions when implementing the uncontested permit. These types of exchanges occur with nearly every significant permit after they are issued.

Respondent respectfully requests the Court recognize Petitioner has failed to produce new evidence sufficient to warrant reconsideration and deny the Motion accordingly, since the information was available to Petitioner and is not substantive to the issues of the case.

4. The Court's dismissal of this case does not rise to "manifest injustice."

Even if Petitioner could overcome its procedural failures, it still fails to identify "manifest injustice" which could justify reconsideration. Petitioner identifies the first "manifest injustice" it believes warrants reconsideration:

The issue implicating manifest injustice and denial of due process is that at no time did the public become aware of [Respondent] lowering of stack height to 50' ft. Petitioner asserts reconsideration is warranted, irrespective of 50 ft. (the desired change by [Respondent]) being in excess of 19.7 ft. or less than 70' ft. where construction evidences change of topography near petitioner's home, which lies 175 feet from the plant. Flint Hill Elementary School lies directly adjacent to the plant.

Petitioner Memorandum, 3. This is simply not accurate.

First, the underlying permit issued to Respondent, which is the focus of the challenge by Petitioner, could have been appealed by Petitioner, but it elected not to challenge it. Had it done so, Petitioner could have properly contested those terms allowing lowering of the stack height where it is confirmed that change does not affect the level of air emissions from the facility.

Second, Petitioner does not cite to a requirement to publicly notice a change a provision included in a prior air permit, because such a requirement does not exist. See Order, 6 ("[Respondent's] permit was issued months prior to the Department's July 30 letter and the terms of that permit expressly provide for the modeling parameter to be updated."). Petitioner's disagreement with the terms of the permit does not establish that a decision on the July 30, 2024 letter implicates manifest injustice; it evidences Petitioner's regret for not challenging the permit in the first place.

Third, Petitioner suggests manifest injustice may involve "the omission of mention chemical *Silane*, which will transport to and be stored in tanks at the [Respondent] Site." Petitioner Memorandum, 5. Petitioner fails to state any basis for including silane in the permit, nor does it

cite to any authority for including silane in the permit. *See id.* Petitioner's argument on this point then shifts into the same argument stated above that the Department failed to provide notice of the change in stack height. *See id.* In either case, Petitioner takes issue with the permit, not the July 30, 2024 letter that is the subject of this action.

Fourth, Petitioner suggests further manifest injustice exists because 1) in Petitioner's view, the permit creates health risks to Petitioner and others nearby, and 2) because dismissing the case would be "unduly harsh." Petitioner Memorandum, 7 ("Petitioner therefore respectfully asserts that in the interest of location to his home and – particularly in interest to the health and of children – that reversal and remand to the department is necessary to avoid manifest injustice, and that dismissal despite error of counsel for petition to file objecting memorandum is unduly harsh.").

This argument fails:

1. The permit was issued after the Department determined the permit provides protection to human health and the environment. *See S.C. Code Ann. Reg. § 61-62(A)(2)* ("No permit to construct or modify a source will be issued if emissions interfere with attainment or maintenance of any state or federal standard."). Speculative health risks allegedly associated with a duly issued, lawful permit are not manifest injustice, nor can they be remedied in this action.
2. It is not "unduly harsh" to authorize a permit where Petitioner declined to challenge terms of the permit in accordance with state regulations and cannot identify specific health threats posed by the permit, and in fact, it would be unduly harsh to allow all of the work and effort behind a State issued air permit to be vacated based on unfounded and untimely claims.

Petitioner's assertion of "manifest injustice" is supported merely by the restatement of information the Court was well aware of at the time of dismissal: the location of the facility and

the procedure that gave rise to the July 30, 2024 letter. Petitioner Memorandum, 8-9. Strict application of the rules of the Court is not manifest injustice. Petitioner's request for reconsideration amounts to nothing more than a petition for the court to change its mind. That is not the purpose of a motion for reconsideration, and therefore, the Motion must be denied.

CONCLUSION

Because (1) the Court accurately determined the July 30, 2024 letter is not a contested case; (2) the Court appropriately dismissed the case for failure to oppose the Joint Motion to Dismiss; (3) Petitioner failed to present newly discovered evidence sufficient to warrant reconsideration; and (4) Petitioner failed to identify any manifest injustice resulting from the Order of Dismissal, there is no valid basis for reconsideration of this case. Respondent respectfully requests the Court affirm its Dismissal with Prejudice and deny Petitioner's Motion for Reconsideration.

Respectfully submitted,



WILLIAMS MULLEN

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Attorneys for Respondent Silfab Solar, Inc.

January 10, 2025
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Walter Buchanan,

Petitioner,

vs.

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

Respondents.

DOCKET NO. 24-ALJ-07-0367-CC

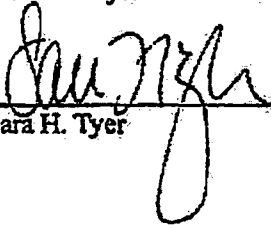
CERTIFICATE OF SERVICE

I hereby certify that I have served the below names parties at their address of record in the above-captioned matter by electronically mailing and depositing it in the United States Mail.

Pleading: Silfab Solar, Inc.'s Response to Petitioner Motion to Reconsider Alter or Amend Judgment Dates December 23, 2024

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Counsel South Carolina Department of Environmental Services



Sara H. Tyer

January 10, 2025
Columbia, SC

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Feb 14 2025

SC Court of Appeals

Appeals Case No.

Hon. Ralph King Anderson, III
Chief Administrative Law Judge

Administrative Law Court Case No. 24-ALJ-07-0367-CC

Walter Buchanan,

Appellant

v.

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

Respondents

NOTICE OF APPEAL

Pursuant to Rule 202 of the South Carolina Appellate Court Rules, Walter Buchanan here Provides Notice of Appeal of the Order of the Administrative Law Court dated January 17, 2025 Hon. Ralph King Anderson, III. Appellant here certifies that the Order was received December 23, 2024, with denial by the court of Motion to Reconsider January 17, 2025, attached as Exhibit-A to this Notice of Appeal. Petitioner's Rule 59(e) motion was denied by the ALC on January 17, 2025, appellant counsel receiving e-mail delivery of the order same date.

Respectfully submitted this 14 th day of
January, 2025.

J. Cameron Halford, Esq.
/s/ J. Cameron Halford
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ATTORNEY FOR APPELLANT WALTER
BUCHANAN

Other Counsel of Record :

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ATTORNEYS FOR RESPONDENT
SILFAB SOLAR, INC.

RECEIVED

Feb 14 2025

CERTIFICATE OF SERVICE

SC Court of Appeals

I hereby Certify that I am the attorney for Appellant Walter Buchanan in the above case and that I did file and serve the foregoing Notice of Appeal with the South Carolina Administrative Law Court and the South Carolina Court of Appeals with copy to Respondent Counsel as addressed below this February 5, 2025:

South Carolina Administrative Law Court
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Respectfully submitted,

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STATE OF SOUTH CAROLINA
Administrative Law Court

Ralph K. Anderson, III
Chief Judge

Jana E. Cox Shealy
Clerk



PHONE: (803) 734-0550
WEB: WWW.SCALC.NET

Memorandum

To: J. Cameron Halford, Esquire, In Re: Walter Buchanan v. South Carolina Department of Environmental Services and Silfab Solar, Inc.
From: Clerk's Office, Administrative Law Court
Date: September 10, 2024
Re: Compliance with ALC Rules 11 and 71

The Administrative Law Court received a Request for Contested Case Hearing Form and a check for \$500.00 on September 9, 2024. In accordance with ALC Rule 11 (E):

Any request which is incomplete or not in compliance with this rule (ALC Rule 11) or Rule 71 will not be assigned to an administrative law judge until all required information is received and the filing fee is processed.

Accordingly, your case will not be assigned until the following information is received from you:

- Filing Fee of \$_____ in accordance with ALC Rule 71
- Name of the party requesting the hearing and the issue(s) for which the hearing is requested
- A copy of the written agency decision, order, letter, or determination which gave rise to the request
- Relief requested
- A proof of service showing you sent your request for hearing to all parties
- Other: I am returning your Request for Contested Case Hearing Form for your original signature. I am also returning the Agency Information Sheet that you included with your filing. The Agency will file this once the case is assigned.

C: SC DES

Please return the appropriate information within 10 days of the date of this Memorandum or your case will be returned to you unprocessed. **DISCLAIMER:** Nothing in this Memorandum extends or tolls any statutory deadline for filing the request for hearing/appeal with the Court.

Edgar A. Brown Building - 205 Pendleton Street, Suite 224 - Columbia, South Carolina 29201-3755