STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Friends of Horse Creek Valley, Petitioner, vs. South Carolina Department of Environmental Services and Rabbit Hill Class 2 Landfill, Respondent.	Docket No. 24-ALJ-07-0316-CC **ORDER GRANTING RESPONDENT RABBIT HILL'S MOTION FOR SUMMARY JUDGMENT AND DENYING PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

APPEARANCES: For the Petitioner: Michael G. Corley, Esq.
For the Respondent: Chad N. Johnston, Esq.
For the Department: Etta R. Williams Linen, Esq.

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or court) pursuant to a request for a contested case filed by Friends of Horse Creek Valley (Petitioner). The Petitioner challenges the South Carolina Department of Environmental Services' (Department or DES) decision to grant Rabbit Hill Class 2 Landfill (Respondent or Rabbit Hill) a replacement variance for its solid waste management facility.

On February 12, 2025, the Petitioner filed a motion for summary judgment asserting that the case rests upon a question of statutory and regulatory interpretation regarding whether the landfill at issue may be permitted as a "replacement" facility. Specifically, it argues that: (1) the size of the permitted landfill precludes it from being considered a replacement of the existing landfill; (2) DES regulations only allow for either an expansion variance or a replacement variance, but not both, and any reading of the applicable regulations to allow for both would contravene the plain language of the Solid Waste Management Act (Act); and (3) the permitted landfill is an attempted exploitation of the Demonstration of Need (DON) variance.

On March 17, 2025, Respondent Rabbit Hill filed a response in opposition to the Petitioner's motion and a cross-motion for summary judgment. In its motion, the Respondent argues that: (1) the landfill permit application is a bifurcated process and size considerations are

not part of the first phase of consideration, which only entails a DON and Consistency determination; (2) the plain language of the applicable regulations allow for certain eligible facilities to apply for a variance as to the DON component of the first phase of review; and (3) the Department correctly determined that the proposed landfill qualified for a DON variance and satisfied the consistency component.

Also on March 17, 2023, the Department filed a response in opposition to the Petitioner's motion and a cross-motion for summary judgment. The Department argued in its motion that: (1) the ordinary definition of "replacement" encompasses the proposed landfill, and is reasonable and consistent with the applicable regulation's plain language; (2) the proposed landfill is not both a replacement and an expansion facility, nor is it a new facility; and (3) the Department was required to grant a replacement variance to the original landfill in accordance with the DON regulations.

A hearing on the cross-motions for summary judgment was held on June 26, 2025, at the ALC in Columbia, South Carolina. After careful consideration of the parties' arguments and the applicable law, the court finds that the Respondent qualified for a DON variance. Accordingly, the court grants the Respondent's motion for summary judgment.[1]

BACKGROUND

The Respondent owns and operates a permitted Class 2 landfill for the disposal of construction and demolition (C&D) debris located at 550 Rainbow Falls Road, Graniteville, Aiken County, South Carolina 29829 (Existing Landfill or Hilltop Landfill). The Existing Landfill was originally permitted in 1995 (Permit No. 022481-1201) for use as a disposal area only for C&D materials associated with the original permittee's business operations. The landfill has a disposal area of 2.3 acres and a permitted disposal capacity of 225,186 cubic yards. It was initially permitted for a roughly seven-acre disposal area that could accept up to 25,000 cubic yards (or 15,000 tons) of waste per year, though in 2017 it only accepted 3,208 tons. The Hilltop Landfill was sold to B&K Grading and Paving (B&K) in 2019.[2] In 2022, the Hilltop Landfill accepted 46,865 tons of waste. According to a 2023 report, the Hilltop Landfill had 15,000 cubic yards of remaining space.

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[1] To the extent that the Department's motion mirrors that of the Respondent, the Department's motion is granted. To the extent it differs, it is denied

[2] B&K owns the business entity known as Hilltop C&D, LLC, which operates Hilltop Landfill and is the applicant in this case.

On May 10, 2023, the Respondent sought an increase in the permitted annual disposal rate for the Existing Landfill, from the then permitted annual disposal rate of 57,500 tons per year, to 107,500 tons per year, which the Department approved on January 12, 2024.[3] In 2024, following the increase in its permitted annual disposal rate, the Hilltop Landfill accepted 25,500 tons of waste.

On or about June 6, 2023,[4] the Respondent applied for a replacement variance[5] from the DON requirement in order to replace the Existing Landfill with a new landfill to be located at 331 Dixie Clay Road, Beech Island, Aiken County, South Carolina 29842 (Replacement Landfill). The proposed location for the Replacement Landfill, which is intended to be used commercially, is a roughly 535-acre property with a proposed landfill footprint area of roughly 293 acres.[6] The proposed location is the site of a decommissioned mining operation, which the Respondent has agreed to remediate or mitigate as part of this process.

On September 5, 2023, the Department provided notice to Rabbit Hill that it had reviewed Phase 1 of its replacement request and determined that it was administratively complete. On March 14, 2024, the Department issued its Draft Phase 1 Determination. On March 28, 2024, the Department hosted a public meeting regarding the Phase 1 application, explaining the two-step landfill permitting process and proposed project to the public. The Department's presentation clarified that Phase 1 of the two-step landfill permitting process relates solely to the Department's evaluation of "siting of the landfill" through a DON and consistency review.

On July 17, 2024, the Department issued notice of its Final Phase I Determination by way of a Notice of Decision. The Notice of Decision provides that the decision "applies to the first phase of the landfill permitting process, which deals with need, consistency, zoning, and certain buffers." It further provided that the Department determined that the proposed Replacement Landfill complied with the DON regulations, State and County solid waste management plans, and applicable buffer requirements. The Notice of Decision noted that, having been approved for the

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[3] The increase in annual disposal rate was not challenged and is not before the court.
[4] The Department's final determination in this matter lists the date of receipt of the application as July 13, 2023, while the application letter is dated June 6, 2023.
[5] The Respondent originally applied for a permit for an "expansion" of the Existing Landfill on April 23, 2023. After realizing that its April 23, 2023, application mistakenly characterized the request as an "expansion" request instead of a "replacement" request, the Respondent revised and resubmitted its application as such on June 6, 2023.
[6] There is no evidence as to what the potential volumetric capacity of the Replacement Landfill may be.

first phase of the permitting process, the Respondent may proceed with submitting the technical application for its proposed landfill, which is Phase 2 of the permitting process.[7]

Thereafter, the Petitioner timely requested this contested case hearing. On June 26, 2025, the court held a hearing on the motions.

STANDARD OF REVIEW

The Rules of Procedure for the ALC provide that "[t]he South Carolina Rules of Civil Procedure [(SCRCP)] . . . may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules." SCALC Rule 68. Rule 56 of the SCRCP states that summary judgment is appropriate and should be granted when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (citation omitted). "In determining whether summary judgment is proper, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party." *Byers v. Westinghouse Elec. Corp.*, 310 S.C. 5, 7, 425 S.E.2d 23, 24 (1992) (citation omitted). Stated differently, "the evidence and all reasonable inferences from it are assessed in the light most favorable to the non-moving party . . . ." *Rogers v. Norfolk S. Corp.*, 356 S.C. 85, 90, 588 S.E.2d 87, 92 (2003) (citation omitted).

"[S]ince it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues." *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004) (citation omitted). "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Singleton v. Sherer*, 377 S.C. 185, 197, 659 S.E.2d 196, 202 (Ct. App. 2008) (citations omitted). "Even when there is no dispute as to evidentiary facts, but only as to the conclusion or inferences to be drawn from them, summary judgment should be denied." *Singleton* at 197, 659 S.E.2d at 202 (citations omitted).

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[7] As discussed in further detail below, the Phase 2 portion of the permitting process, the technical review, entails reviewing the operational plan, buffer requirements, design criteria, groundwater separation, and the engineering report (stormwater and settlement calculations).

"[H]owever, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). Thus, "when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001) (citation omitted).

DISCUSSION

The relevant background facts in this case are not in dispute. The Respondent owns and operates the Hilltop Landfill and applied for a replacement variance to replace it with the Replacement Landfill, a much larger facility. The Department determined that the Respondent satisfied the applicable regulatory requirements and that the Replacement Landfill qualified for a variance from the DON requirements. The central issues in this case are whether the Replacement Landfill qualifies as a "replacement" of the Hilltop Landfill for purposes of the DON variance, and whether the Department's DON and Consistency determination was otherwise consistent with the regulatory requirements applicable at this juncture. For the reasons set forth below, the court finds that, while the much larger Replacement Landfill is unquestionably not comparable to the modest Hilltop Landfill, it qualifies for a DON replacement variance under the DON regulations and ordinary definition of "replacement," neither of which include any size considerations. The court further finds that the Respondent's request for a variance satisfied the remaining requirements applicable at this juncture.

By way of background, in this State, landfills are subject to a bifurcated permitting process. First, an applicant must request a Determination of Need and Consistency from the Department (Phase 1). S.C. Code Ann. Regs. 61-107.19(D)(1) (Supp. 2024).[8] The Phase 1 DON determination only involves the evaluation of certain siting requirements, including the number of existing landfills of the same type within the planning area. *See* S.C. Code Ann. Regs. 61-107.17(D)(2) (2012); *Greeneagle, Inc. v. S.C. Dep't of Health and Env't Control*, Docket No. 08-ALJ-07-0339-CC (S.C. Admin. Law Ct. Oct. 25, 2010) (finding that "DON might be better understood as an 'Approval of Location'" and that "[t]he DON regulation does not look at 'need' in terms of capacity, but looks at 'need' in terms of location"). As a part of this phase, the applicant must

[8] All references to Regulation 61-107.19 in this order are to Part I of the regulation.

submit certain documentation and information to the Department, which then conducts a public notice and participation process. *See* S.C. Code Ann. Regs. 61-107.19(D)(1)(a) & (D)(2) (Supp. 2024). Thereafter, the Department issues a DON and Consistency. S.C. Code Ann. Regs. 61-107.19(D)(2)(b) (Supp. 2024).

Following the Department's DON and Consistency determination under Phase 1, the applicant may then file an application for a technical review of the proposed landfill—Phase 2 of the permitting process—which is a wholly separate procedure. *See* S.C. Code Ann. Regs. 61-107.19(D)(2)(c)-(g) (Supp. 2024). According to the Department, the Phase 2 portion entails reviewing the operational plan, buffer requirements, design criteria, size, groundwater separation, and the engineering report (stormwater and settlement calculations), among other things.[9] After a similar public notice and participation process, the Department renders a decision for the Phase 2 technical review. *See id.*

With respect to the DON component of the Phase 1 process, section 44-96-290 of South Carolina Code provides that "[n]o permit to construct a new solid waste management facility or to expand an existing solid waste management facility may be issued until a demonstration of need is approved by the [D]epartment . . . ." S.C. Code Ann. § 44-96-290(E) (Supp. 2024). However, that section further provides that "[t]he department may, by regulation, exempt certain facilities from all or part of the requirements of this section." S.C. Code Ann. § 44-96-290(A) (2018). To that end, it requires the Department to promulgate regulations to address "exemptions" and "variances." S.C. Code Ann. § 44-96-290(D)(3) (2018).

Pursuant to the DON regulatory requirements, no new facilities will be permitted if sufficient landfills of the same type already exist within a geographic proximity to the proposed landfill site. *See* S.C. Code Ann. Regs. 61-107.19(D)(1)(c) (Supp. 2024). However, Regulation 61-107.17(D)(6) provides a procedure for certain existing permittees to request a variance from the Department as to the DON requirement. That regulation provides that that "[t]he Department shall grant[10] a variance to the requirements of D.2 for Class Two and Class Three solid waste

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[9] At the hearing, counsel for the Department confirmed that the size of the Replacement Landfill would be analyzed during the technical review as part of Phase 2. *See* S.C. Code Ann. Regs. 61-107.19(D)(2)(a)(2)(d) (Supp. 2024) (providing that the notice of intent to file a permit application for the technical review shall contain "[t]he proposed size of the landfill or landfill expansion, i.e., footprint acreage").

[10] Use of the word "shall" indicates a mandatory requirement to issue the variance if the stated conditions are met. *See Collins v. Doe*, 352 S.C. 462, 471, 574 S.E.2d 739, 743 (2002) (citations omitted) ("Under the rules of statutory interpretation, use of words such as 'shall' or 'must' indicates the legislature's intent to enact a mandatory

landfills" if certain specified conditions are met. *See* S.C. Code Ann. Regs. 61-107.17(D)(1)(c) (2012). Pursuant to the applicable part of the regulation,

> a. An operating Class Two or Class Three landfill shall receive a variance to construct a replacement Class Two or Class Three landfill at its permitted annual rate of disposal provided it meets all of the following conditions:
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> . . .
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> (2) The [existing] landfill has a permit issuance date on or before the effective date of this Regulation.[11]
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> (3) The landfill exhausts its permitted capacity at its current location (see 6.e below for timing).
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> (4) For the purpose of considering the location of a replacement facility under this section, the location for the replacement facility must be within the facility's existing planning area, provided that, if the planning area includes a portion of a county, the entire county will be considered to be part of the planning area. A Class Two or Class Three landfill, once replaced as provided for in Section D. 6.a., is no longer eligible to receive a variance for replacement under this section.

S.C. Code Ann. Regs. 61-107.17(D)(6)(a) (2012). Accordingly, the regulation allows for a one-time variance for certain existing permittees to replace qualifying existing facilities without having to demonstrate a need for the replacement facility, assuming the applicable conditions are otherwise met. The regulation similarly allows for a variance, without conditions, to expand the volume of an existing facility.[12] S.C. Code Ann. Regs. 61-107.17(D)(6)(b) (2012).

As for the timing of the application for a variance, the regulation provides that:

> An eligible facility shall apply to the Department for a variance to replace or expand the volume of an existing facility prior to exhausting: (1) its permitted capacity, or (2) the operational life of the facility. A facility shall not operate under an expansion variance and a replacement variance simultaneously, with the exception of a reasonable transition period as determined by the Department. A reasonable transition period is considered to be approximately one hundred eighty (180) calendar days.

S.C. Code Ann. Regs. 61-107.17(D)(6)(e) (2012).

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requirement."). As such, the Department does not have discretion to deny a variance if the applicable conditions are met.

[11] The Regulation became effective on June 23, 2000, and was subsequently amended June 26, 2009. *See* S.C. Code Ann. Regs. 61-107.17 (effective June 23, 2000) (amended June 26, 2009).

[12] While "replacement" is not defined in the regulation, "expansion" is defined as "any increase in the permitted volumetric capacity of an existing solid waste management facility." S.C. Code Ann. Regs. 61-107.17(B)(8) (2012); *see also* S.C. Code Ann. Regs. 61-107.19(B)(22) (Supp. 2024) (defining "expand" and "expansion" to mean "any increase in the permitted capacity of a solid waste disposal facility, or any increase in the total volume at a solid waste disposal facility").

The Petitioner argues that the proposed facility is both a replacement and, given the significant increase in size, an expansion of the Hilltop Landfill and, therefore, does not qualify for a DON variance under the DON regulations. It argues that implicit in the regulatory scheme is that a variance is available only for *comparable* replacement facilities and that the sole purpose of subsection 6(e) of Regulation 61-107.17, which the Petitioner's case hinges on, is to prevent exploitation of the DON variance, as it argues is the case here.[13] The Petitioner asserts that there are clear policy arguments favoring expansion of existing facilities, rather than building new facilities, and limiting replacement variances to comparable replacement facilities only.[14] The Respondent and the Department argue that, irrespective of policy arguments, the unambiguous DON regulations allow for a variance for replacement facilities and do not include any size or capacity limitations or considerations as a part of that analysis. They argue that Phase 1 of the landfill permit process only deals with certain citing requirements, while Phase 2 entails the technical review of the proposed facility, during which its size will be considered. They further argue that subsection 6(e) is nothing more than a timing regulation setting forth the appropriate time to apply for the variance and does not add any substantive conditions. The court agrees with the Respondent and the Department.

Initially, the court must determine if the Replacement Landfill qualifies as a replacement of the Hilltop Landfill for purposes of the DON variance. The DON regulations unambiguously provide that the Department shall grant a variance to construct a replacement landfill if the applicable conditions are met. However, the term replacement is not defined within Regulation 61-107.17, nor does it furnish any guidelines or parameters to determine what qualifies as a replacement landfill for these purposes. "When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning." *Strother v. Lexington*

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[13] The Petitioner contends that the Respondent only purchased the Hilltop Landfill for purposes of obtaining its existing permit to exploit the DON variance regulations.

[14] At the hearing, counsel for the Petitioner conceded that a replacement isn't required to be the same size and that the Respondent could replace a one-acre landfill with a one-thousand-acre landfill, as long as it demonstrates a need for the larger facility. Thus, it would appear that one of the Petitioner's main objections is to the DON regulation allowing certain facilities to avoid having to demonstrate a need by way of the DON variance, particularly where the replacement facility differs in size from the existing facility. This is consistent with the Petitioner's argument that the enabling statute, section 44-96-290, unambiguously prohibits the expansion or construction of *any* new landfills without a DON. However, that section also explicitly permits the Department to promulgate regulations to exempt certain facilities and to grant variances from the requirements of that section, which the Department did by promulgating Regulation 61-107.17. *See* S.C. Code Ann. § 44-96-290(A), (D)(3); *see also Goodman v. City of Columbia*, 318 S.C. 488, 490, 458 S.E.2d 531, 532 (1995) (citation omitted) ("Regulations authorized by the legislature have the force of law."). Accordingly, this argument fails.

Cnty. Recreation Comm'n, 332 S.C. 54, 62, 504 S.E.2d 117, 122 (1998) (citation omitted); *Byerly v. Connor*, 307 S.C. 441, 444, 415 S.E.2d 796, 799 (1992) ("The words of a regulation must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the regulation's operation."); *see also Murphy v. S.C. Dep't of Health and Env't Control*, 396 S.C. 633, 639, 723 S.E.2d 191, 195 (2012) ("Regulations are interpreted using the same rules of construction as statutes."). To that end, "[w]here a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning." *Lee v. Thermal Eng'g Corp.*, 352 S.C. 81, 91-92, 572 S.E.2d 298, 303 (Ct. App. 2002) (citations omitted).

In this context, the term "replacement" has a simple, rather broad meaning signifying something that substitutes or is used in place of something else, especially in function. *See Replacement*, MERRIAM-WEBSTER.COM, https://www.merriamwebster.com/dictionary/replacement (last visited Aug. 15, 2025) (defining "replacement" as "one that replaces another especially in a job or function"); *Replacement*, DICTIONARY.CAMBRIDGE.ORG, https://dictionary.cambridge.org/us/dictionary/english/replacement (last visited Aug. 15, 2025) (defining "replacement" as "something that you use instead of something else"). Thus, in accordance with the ordinary meaning of the word, all that is required to qualify as a "replacement" landfill under the regulation is that the replacement facility will take the place of the existing facility and be used for the same function.

Here, the proposed Replacement Landfill would be a disposal site for C&D materials, like the Hilltop Landfill, located in the same planning area as the Hilltop Landfill—Aiken County. The Replacement Landfill must also adhere to the Hilltop Landfill's permitted annual rate of disposal. The Replacement Landfill will, therefore, be used for the same purposes, to the same extent allowed, and in the same service area as the Hilltop Landfill. As such, the Replacement Landfill qualifies as a replacement for the Hilltop Landfill in accordance with the usual and customary definition of replacement.

While the court acknowledges that the Replacement Landfill, which would be used for commercial purposes, is substantially larger than the modest Hilltop Landfill, which was used exclusively for the prior permittee's personal business waste, that does not preclude it from qualifying as a replacement for these purposes. Though the DON variance regulation requires the replacement facility to comport to the permitted *annual rate of disposal* of the existing facility, it does not contain similar requirement with respect to the size or volumetric disposal capacity of the

replacement facility. There are no disposal capacity or size restrictions included within the regulation or in the ordinary definition of replacement, and the court is without authority to impose an additional requirement into the regulation that does not exist.[15] *See Consumer Advoc. for State v. S.C. Dep't of Ins.*, 397 S.C. 599, 602, 725 S.E.2d 708, 710 (Ct. App. 2012) (citation omitted) ("The court has no right to add the words [the legislature] omitted, nor to interpolate them on conceits of symmetry and policy.") (alteration in original); *State v. White*, 338 S.C.56, 58, 525 S.E.2d 261, 263 (Ct. App. 1999) (citation omitted) ("[Courts] cannot under our power of construction supply an omission in the statute."); *Kiawah Dev. Partners, II v. S.C. Dep't of Health and Env't Control*, 411 S.C. 16, 39, 766 S.E.2d 707, 720 (2014) (stating that a court's role is to "apply and interpret, not rewrite, regulations"). Thus, the mere fact that the Replacement Landfill differs in size from the Hilltop Landfill does not necessarily disqualify it from being considered a replacement under the usual and customary meaning of the word and, therefore, the DON regulations.[16]

Furthermore, the Department is charged with administering the DON variance regulations and likewise interpreted the term replacement in accordance with its usual and customary meaning, which does not include size or capacity considerations. Because this interpretation is not patently absurd or inconsistent with the DON variance regulation, and given that the size and capacity of the Replacement Landfill will be analyzed during the technical review phase, the court finds that the Department's interpretation is reasonable and entitled to deference. *Kiawah Dev. Partners, II*, 411 S.C. at 33, 766 S.E.2d at 717 (citing *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)) ("If the statute or regulation 'is silent

[15] Had the Department or the General Assembly intended for a replacement facility to abide by the existing facility's permitted volumetric capacity or size, that requirement could have been added to the regulation along with the requirement to adhere to the permitted annual disposal rate. It would also have been simple to supply a definition for replacement that places conditions or limitations on the size or capacity of the replacement facility. However, nothing in the regulation suggests that a replacement landfill must be a copy of or similar to the one it replaces. There is similarly nothing in the regulation to indicate that a DON variance is not available if the new facility has more volumetric capacity or that would prohibit the Department from granting a replacement variance when the size or capacity may be larger. If the Department reconsiders this position and desires a more restricted interpretation of a replacement facility for environmental or planning reasons, it is certainly at liberty to revise Regulation 61-107.17 accordingly.

[16] By way of analogy, moving from a 1,000-square-foot home to a 10,000-square-foot home does not make the new home any less a replacement for the original residence.

or ambiguous with respect to the specific issue,' the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference.").[17]

Similarly, while the Hilltop Landfill was exclusively used by the prior permittee for C&D waste generated from his personal business, there is no restriction on the permit limiting it to private or non-commercial use only. Irrespective of how the prior permittee chose to utilize the Hilltop Landfill, it is, nevertheless, a Class Two C&D commercial landfill, just as the Replacement Landfill would be. Thus, the size disparity and difference in how the Replacement Landfill would be used does not negate the fact that it will be used for the same function as the Hilltop Landfill it proposes to replace. Accordingly, the court finds that the Replacement Landfill qualifies as a replacement of the Hilltop Landfill for purposes of the DON variance regulations.[18]

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[17] In *Kiawah*, our Supreme Court summarized the deference doctrine in this state as follows: "where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts, including the ALC, will defer to the agency's interpretation absent compelling reasons. [Courts] defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'" *Kiawah Dev. Partners, II*, 411 S.C. at 35, 766 S.E.2d at 718 (citing *Chevron,* 467 U.S. at 844). The court is cognizant of the recent U.S. Supreme Court decision in *Loper Bright Enterprises v. Raimondo*, which overruled *Chevron* and the deference framework established pursuant thereto. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13, 144 S.Ct. 2244, 2273 (2024). More specifically, the court overruled the precedent that "required courts to defer to 'permissible' agency interpretations of the statutes those agencies administer—even when a reviewing court reads the statute differently" in cases in which "'the statute [was] silent or ambiguous with respect to the specific issue' at hand." *Id.* at 377, 397 (citing *Chevron*). It characterized this as "demand[ing] that courts mechanically afford *binding* deference to agency interpretations . . . ." *Id.* at 399 (emphasis in original). The Court concluded that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," leaving in place *Skidmore v. Swift & Co.*, 323 U.S. 134, 65 S.Ct. 161 (1944), which endorsed "exercising independent judgment . . . consistent with the 'respect' historically given to Executive Branch interpretations." *See id.* at 399, 412. This court notes, however, that *Loper* dealt with the U.S. Supreme Court's review of a federal agency's interpretation of a federal statute under the federal version of the Administrative Procedures Act (APA). *See generally Loper*, 603 U.S. at 377-82. Conversely, the *Kiawah* case dealt with the South Carolina Supreme Court's review of a state agency's interpretation of state statutes and regulations under the state's version of the APA. *See generally Kiawah Dev. Partners, II*, at 411 S.C. at 28-29. Additionally, in clarifying our state deference doctrine in *Kiawah*, the South Carolina Supreme Court cited to a long lineage of South Carolina cases that consistently applied those principles, including several cases that predate *Chevron*. *See id.* at 34, 766 S.E.2d at 718 (citing *Faile v. S.C. Emp. Sec. Comm'n*, 267 S.C. 536, 540, 230 S.E.2d 219, 222 (1976) (stating that an agency's interpretation will not be overruled "without cogent reasons") and *Hadden v. S.C. Tax Comm'n*, 183 S.C. 38, 48, 190 S.E. 249, 253 (1937) (stating that an agency's interpretation "will not be overruled without cogent reasons")). Thus, in the absence of any South Carolina appellate court decision overruling our state deference cases, including *Kiawah*, and substituting our state deference doctrine with *Loper* deference, it is unclear what impact, if any, the *Loper* decision has on our state deference doctrine. Notably, while the *Loper* decision was cited and discussed generally by the South Carolina Court of Appeals in *Colonial Pipeline Co. v. S.C. Dep't of Revenue*, 443 S.C. 448, 458-59, 905 S.E2d 129 134-35 (Ct. App. 2024), the court did not formally adopt, nor did it apply *Loper* style deference, as the issue of agency deference was not reached in that case.

[18] The court is sympathetic to the Petitioner's argument. Though this court is not prepared to say—for purposes of the DON variance only—that the size differential is so extreme as to lead to a patently absurd result or to disqualify the Replacement Landfill from being considered a replacement, it is unmistakably pushing the upper limits of logic and reason. *See id.* (citation omitted) ("A merely conjectural absurdity is not enough; the result must be 'so patently absurd that it is clear that the [General Assembly] could not have intended such a result.'"). While this case might be

As to the Petitioner's claim that subsection 6(e) of the DON regulation only exists to prohibit a facility from operating under both a replacement and expansion variance at the same time, the court finds that this argument misconstrues that provision, as well as the facts of this case. Here, the Respondent applied for and was granted a replacement variance only. Per the regulatory definitions of "expansion" and the DON regulatory procedures, an expansion variance relates to the expansion of an *existing* landfill. *See* S.C. Code Ann. Regs. 61-107.17(B)(8); S.C. Code Ann. Regs. 61-107.19(B)(22). Nothing suggests that the Hilltop Landfill ever received an expansion variance. Similarly, the presently unpermitted and non-operational Replacement Landfill has not received an expansion variance. Thus, there is nothing to indicate that the Respondent has or will operate with both an expansion and replacement variance simultaneously. Moreover, it is clear that subsection 6(e) is, as the Department and Respondent suggest, merely a timing provision. The DON variance regulation specifically references subsection 6(e) for "timing" purposes, and the subsection itself sets forth when an existing facility must apply to the Department for an expansion or replacement variance. *See* S.C. Code Ann. Regs. 61-107.17(D)(6)(a)(3), (D)(6)(e). While the regulation provides that a facility may not operate under both an expansion and a replacement variance simultaneously, except during a reasonable transition period, this can only be reasonably construed as prohibiting an existing facility with an expansion variance from also obtaining a replacement variance and continuing operations at the existing facility beyond the period necessary to transition operations to the replacement facility. Subsection 6(e) does not impose any additional requirements or restrictions on DON variance applicants; it merely establishes the timeline for seeking and implementing a variance.

Having determined that the Replacement Landfill qualifies as a replacement and that subsection 6(e) of the DON regulation does not preclude the Respondent's DON variance, the court must determine whether the Respondent meets the remaining regulatory requirements to obtain a replacement variance. As stated above, pursuant to the applicable DON requirements, the Department is required to issue a DON replacement variance for a Class Two landfill, such as the Hilltop Landfill, if: (1) the landfill permit was issued prior to the effective date of the regulation; (2) the landfill exhausts its permitted capacity at its current location; (3) the location of the

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an extreme example, without any statutory or regulatory limitations on the size or capacity of a replacement facility for purposes of a DON variance, the court is, nevertheless, constrained to find that it is permissible under the current DON regulations.

proposed replacement facility is within the facility's existing planning area; (4) the landfill has not previously received a variance for replacement; and (5) the landfill applies for the replacement variance prior to exhausting its permitted capacity. *See* S.C. Code Ann. Regs. 61-107.17(D)(6)(a), (D)(6)(e).

Here, the permit for the Hilltop Landfill was issued in 1995, prior to the effective date of Regulation 61-107.17.[19] The Hilltop Landfill is also nearing exhaustion of its permitted disposal capacity. The Replacement Landfill would be located in Aiken County, which is encompassed within the Hilltop Landfill's planning area. The Hilltop Landfill has not previously received a variance for a replacement or been replaced. Finally, the Respondent applied for the replacement variance prior to exhausting its permitted capacity at the Hilltop Landfill. The Department also found that the Replacement Landfill complied with the State and County solid waste management plans, local zoning, land use and any other applicable ordinances, as well as applicable buffer requirements. Accordingly, the court finds that the Respondent has met the remaining regulatory requirements to receive a replacement variance for the Hilltop Landfill. As such, the Department must grant a replacement variance to the Respondent. *See* S.C. Code Ann. Regs. 61-107.17(D)(1)(c), (D)(6)(a).

CONCLUSION

The DON regulation allows qualifying solid waste facilities, like the Hilltop Landfill, to receive a replacement variance, and the usual and customary meaning of "replacement" encompasses the Replacement Landfill. While the court acknowledges the vast disparity in size between the two facilities, it is not the court's place to impose additional requirements into the DON regulatory framework, and it is premature and speculative for this court to consider any factors or considerations related to Phase 2 of the landfill permitting process—the technical review. Consequently, the court finds that the Department's determination that the Respondent qualified for a replacement variance was both warranted and appropriate.

ORDER

[19] The parties' interpretations of the effective date for purposes of this requirement differ, with the Respondent arguing that the effective date of the regulation is June 26, 2009, while the Department notes that the regulation became effective on June 23, 2000. While the court is inclined to believe that June 23, 2000, is the operable effective date, the court need not decide which date is correct, as the permit in this case was issued in 1995, well before either date.

THEREFORE, IT IS HEREBY ORDERED that the Respondent's Motion for Summary Judgment is **GRANTED**.

IT IS FURTHER ORDERED that the Departments' Motion for Summary Judgment is **GRANTED** as to the Respondent's eligibility for a DON variance and **DENIED** to the extent that it differs from the Respondent's motion.

IT IS FURTHER ORDERED that the Petitioner's Motion for Summary Judgment is **DENIED**.

AND IT IS SO ORDERED.

S. Phillip Lenski
S.C . Administrative Law Judge

October 14, 2025
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Erika S. Easler, 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).

Erika S. Easler
Judicial Law Clerk

October 14, 2025
Columbia, South Carolina