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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Robert Litzenberger,

Petitioner,

vs.

South Carolina Department of
Environmental Services and Branden Baker

Respondents.

Docket No. 26-ALJ-07-0089-CC

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Request for Contested Case Hearing filed by Petitioner Robert Litzenberger contesting the Department's decision to issue a permit to construct an onsite wastewater (OSWW) system to Respondent Branden Baker (Baker). Because the Court has determined that Petitioner's contested case hearing request was not timely filed so as to invoke the ALC's contested case jurisdiction, this matter must be dismissed.

FACTS/PROCEDURAL BACKGROUND

On January 23, 2026, pursuant to S.C. Code Ann. § 48-6-30 (Supp. 2025) and S.C. Code Ann. Regs. 61-56, the Department issued Baker a permit to construct an OSWW system, permit ID No. OSWW047866, authorizing installation of an OSWW system, by a licensed installer, on Baker's property at 218 Talons Ridge Road, Seneca, South Carolina 29762¹ (Permit). Also on January 23, 2026, the Department sent notice of the Permit to Baker electronically through its ePermitting system. On February 23, 2026, in response to a Freedom of Information Act (FOIA) request from Petitioner,² the Department produced to Petitioner a copy of the Permit.

Significantly, since late 2025, Petitioner has had a separate, ongoing matter pending before this Court against the same respondents herein, related to a stormwater discharge permit issued for the same property (Separate Matter).³ On February 23, 2026, Petitioner filed a prehearing statement in the Separate Matter. Included with the prehearing statement was a document styled

¹ Tax Map identification no. # 123-01-01-028.

² Petitioner submitted his FOIA request to the Department on January 27, 2026.

³ See 25-ALJ-07-0420 (challenging Department's issuance of a National Pollutant Discharge Elimination System permit).



as “Request for Contested Case Hearing and Motion to Stay,” hereafter referred to as “Initial Request Document.” Although submitted with the prehearing statement in the Separate Matter, the Initial Request Document appears to be an attempt by Petitioner to challenge issuance of the Permit, rather than the stormwater discharge permit at issue in the Separate Matter. However, the Initial Request Document was not accompanied by a filing fee (either for a contested case request, or for a stay motion), nor did the Initial Request Document attach a copy of the Permit or any other document relating to a final agency determination.

On March 10, 2026, the ALC Clerk’s office issued Petitioner a compliance memorandum (Memorandum) informing Petitioner that his submission neglected to include a \$500 filing fee or “[a] written copy of the written agency decision, order, letter, or determination which gave rise to the request.”⁴ At the bottom of the Memorandum, there was a statement that Petitioner had ten days from the date of the Memorandum to return the appropriate information or his case would be returned as unprocessed. The statement then added in bold print, the following:

DISCLAIMER: Nothing in this Memorandum extends or tolls any statutory deadline for filing the request for hearing/appeal with the Court.⁵

On March 13, 2026, Petitioner properly filed his request for a contested case hearing with the Court by including all necessary materials with his “Request for Contested Case Hearing and

⁴ Because Petitioner opted not to utilize the ALC’s standard “Request for Contested Case Hearing FORM,” and because he included his request amongst documents for a related case, and included no filing fee or an agency decision, it took the Clerk’s Office longer to determine that Petitioner’s submission was intended to be a new request for a contested case hearing and to issue a compliance memorandum regarding it. Indeed, only upon an inquiry from the Department regarding the submission did the ALC Clerk’s office discover that Petitioner had submitted what he intended to be a new request for a contested case hearing and became aware of its deficiencies. While use of the standard form is not mandatory, a petitioner who fails to use the form does so at their own risk. *See* SCALC Rule 11, Notes (“The use of an official Court-provided form to request a contested case is optional. However, any document requesting a contested case must include all the information and meet all the requirements of the ALC Rules.”). The Court notes that, although the Clerk’s Office issues compliance memoranda to assist parties in perfecting contested case requests (and appeals), such assistance is a grace of the Court and does not diminish the responsibility of a would-be petitioner (or appellant) to ensure compliance with the SCALC Rules. The Court also notes that the ALC’s standard contested case request form includes fields aimed at ensuring a petitioner attaches the subject agency decision and remits the required filing fee.

⁵ Notably, the ALC Clerk of Court’s Office had issued a similar Compliance Memorandum to Petitioner in conjunction with the Separate Matter, highlighting Petitioner’s failure to include “[a] written copy of the written agency decision, order, letter, or determination which gave rise to the request.” *See* Compliance Memorandum (January 7, 2026), ALC docket no. 25-ALJ-07-0420. In response to the compliance memorandum in the Separate Matter, Petitioner submitted the underlying agency decision within the applicable statutory timeframe after issuance of the NPDES permit at issue in the Separate Matter, and therefore his contested case request was timely filed.

Motion to Stay,” including the filing fee and a copy of the Permit decision for which he was seeking review.⁶ On March 18, 2026, the Court notified that parties that it would proceed with processing of the case, and on March 20, 2026, a Notice of Assignment to the undersigned Judge was issued.

On May 21, 2026, the Department filed a Motion to Dismiss (Motion) the instant case arguing that Petitioner failed to timely file his request for a contested case hearing, thereby depriving this Court of jurisdiction to consider it. On May 26, 2026,⁷ Petitioner filed his Response in Opposition to the Department’s Motion (Response), including several attached documents styled as exhibits in support thereof. On June 11, 2026, the Department filed a Notice of Withdrawal of Motion to Dismiss.⁸

While the Department may have withdrawn its Motion, the question of whether this Court’s jurisdiction was properly invoked is an issue that cannot be waived by the parties and can be raised by the Court on its own motion and at any time.⁹ Notwithstanding the Department’s withdrawal of its Motion, the Court still agrees with the arguments and the conclusion set forth in the Department’s withdrawn Motion that Petitioner’s untimely filing of his contested case hearing request deprives the Court of jurisdiction to hear this matter. Therefore, the Court will proceed to address the timeliness of Petitioner’s filing. And because the Court shares the position that the Department had taken in its withdrawn Motion, to which Petitioner responded with arguments

⁶ According to the case file, Petitioner included a copy of the Permit when filing his request for a contested case hearing filed on March 13, 2026. However, there was some confusion as to whether the Permit was the Department’s final agency decision document. Thus, on March 16, 2026, the Court informed Petitioner via email that it still needed a copy of the Permit decision. On March 17, 2026, Petitioner replied via email with an attachment containing a second copy of the Permit; on March 18, 2026, the Department clarified for Petitioner and the Court that the Permit was the final agency decision document. As discussed *infra*, because Petitioner included the Permit, filing fee, and all other required materials in his March 13, 2026 filing, the Court considers March 13, 2026 the date on which Petitioner filed his request for a contested case hearing.

⁷ Though Petitioner emailed the Court and parties his Response via email on May 25, 2026 (a state and federal holiday), the mailing date for his Response was May 26, 2026. Therefore, the filing date for Petitioner’s Response was May 26, 2026.

⁸ The Department does not explain in its Notice of Withdrawal of Motion to Dismiss why it was withdrawing the Motion.

⁹ *Cf. Town of Hilton Head Island v. Godwin*, 370 S.C. 221, 634 S.E.2d 59 (Ct. App. 2006) (noting that “[t]he lack of subject matter jurisdiction can be raised at any time ... and can be raised sua sponte by the court” and holding that the respondent was procedurally barred on several grounds from challenging his criminal conviction because he failed to timely challenge that conviction, thus depriving the lower court of jurisdiction).

opposing dismissal, the Court will incorporate and respond to Petitioner's arguments in its discussion addressing the timeliness of Petitioner's filing.

DISCUSSION

In his Response to the Department's withdrawn Motion, Petitioner argued that his attached exhibits, including email correspondence with SCDES personnel, show that he "actively disputed the permit process prior to issuance and repeatedly sought agency review and clarification." He argued that he "repeatedly requested clarification regarding the procedural status of the previously approved Davis Horizons permit and questioned how a subsequent permit submission ... could proceed absent document withdrawal, rescission, modification, or supersession of the prior approval"; Petitioner asserts that these questions remain unresolved, and that "[t]he record demonstrates ongoing FOIA deficiencies and incomplete document production." Petitioner further contended that his attached exhibits "materially contradict representations [by the Department] that no opposition or adverse comments existed" prior to the issuance of the Permit. Petitioner further asserts that correspondence from the ALC "demonstrates that the Court itself identified deficiencies concerning the OSWW permit decision and informed Petitioner that the filed materials did not include the Department's final written decision necessary for docketing." Petitioner further argued that "[a] motion to dismiss is improper where substantial factual disputes remain unresolved." Finally, Petitioner argued that the Court should allow this case to proceed based on "[e]quity and fundamental fairness" because "[t]he documentary history demonstrates that Petitioner consistently acted to preserve appellate rights, obtain agency records, clarify the operative agency decision, cure docketing deficiencies identified by the Court, seek reconciliation of conflicting permit histories, and raise environmental and regulatory concerns before permit finalization."

The Court concludes that dismissal is required because Petitioner's Request for Contested Case was filed too late to invoke the Court's jurisdiction.

Section 1-23-600 of the South Carolina Code (Supp. 2025) grants jurisdiction to the ALC to hear contested cases under the Administrative Procedures Act. However, jurisdiction of the Court must be properly invoked by way of a timely request. An affected party's right to challenge a decision of the Department with respect to a permit is governed by Section 48-6-30(D)(2) of the

South Carolina Code (Supp. 2025). Section 48-6-30(D)(2) provides that the mechanism for such a challenge is a contested case request to this Court “in accordance with the Administrative Procedures Act.” The Administrative Procedures Act (APA), in turn, provides that all requests for a hearing before this Court must be filed in accordance with the Rules of Procedure for the ALC (SCALC Rules). S.C. Code Ann. § 1-23-600(B) (“All requests for a hearing before the Administrative Law Court must be filed in accordance with the court's rules of procedure.”).

SCALC Rule 11 provides in pertinent part that “*Unless otherwise provided by statute*, a request [for a contested case hearing] must be filed and served within thirty (30) days after actual or constructive notice of the agency’s final decision....” (Emphasis added). Because Section 48-6-30(D)(2) provides that a contested case request seeking to challenge a Department permit decision must be filed and served “[w]ithin thirty calendar days after the *mailing* of a decision” (i.e., irrespective of actual or constructive notice), Petitioner was required to file his contested case request within 30 days of the mailing of the Department’s decision, in order to invoke this Court’s jurisdiction. Therefore, because the Department issued and electronically mailed notice of the Permit, which was the final agency decision in this case, to the permittee, Baker, through the SCDES ePermitting system on January 23, 2026,¹⁰ Petitioner was required to file a Request for Contested Case by February 23, 2026¹¹ in order to invoke this Court’s contested case jurisdiction.¹²

¹⁰ Pursuant to Section 48-6-30(D)(1), the Department was required to mail the Permit decision to “the applicant, permittee, licensee, certificate holder, and affected persons who have requested in writing to be notified.” Petitioner was not the applicant, permittee, licensee, or certificate holder for purposes of Section 48-6-30. Assuming *arguendo* that Petitioner was an affected person, the record establishes that he was not an “affected person *who ha[d] requested in writing to be notified*” (emphasis added) of the Department’s decision regarding the Permit. Had Petitioner been entitled to notice of the Department’s permit decision pursuant to Section 48-6-30(D)(1), the Department would have been required to simultaneously mail the Permit to him, and any delay in doing so would have correspondingly delayed the start of the thirty-day period. *See S.C. Coastal Conservation League v. S.C. Dep’t of Health & Env’t Control*, 390 S.C. 418, 429, 702 S.E.2d 246, 252 (2010) (construing analogous statute applicable to the Department’s predecessor agency). However, there is no indication that the Department made such a mailing, and nothing in the numerous correspondences to the Department provided by Petitioner in his response to the withdrawn Motion included any request in writing to be notified of the Department’s permitting decision.

¹¹ Because thirty days from January 23, 2026 fell on a Sunday, the filing deadline was extended to the next day that was neither a holiday nor on a weekend, which was February 23, 2026, pursuant to SCALC Rule 3(A).

¹² While an administrative law judge has discretion, pursuant to SCALC Rule 3(B), to “extend or shorten the time to take any action” for good cause shown, he or she may only do so “except as otherwise provided by rule or law.” The thirty-day filing deadline for filing contested case hearing requests is not only set forth in SCALC Rule 11(C), but it is also required under Section 48-6-30(D)(2), and the undersigned therefore does not have the discretion to extend the deadline.

Here, Petitioner failed to file his contested case hearing request by February 23, 2026. First, his contested case request could not be deemed filed until he complied with the requirement to remit a proper filing fee; Petitioner's Initial Request Document was not accompanied by a filing fee as required by the SCALC Rules. *See* SCALC Rule 11(A) ("A request for a contested case hearing, accompanied by a filing fee as provided in Rule 71, must be filed with the Clerk of Court...");¹³ *id.* Rule 71 ("Each request for a contested case hearing ... before the Court must be accompanied by a non-refundable filing fee in the amount set forth in Rule 71(C). A case will not be assigned to an administrative law judge and will not be processed until the filing fee has been paid or a waiver has been granted pursuant to Rule 71(B).").¹⁴ Second, Petitioner failed to include with his Initial Request Document the underlying agency decision as required by the SCALC Rules. *See* SCALC Rule 11(D)(3) ("The request ... shall contain ... a copy of the agency's written final decision, order, letter, or determination that gave rise to the request."). Simply put, Petitioner failed to timely file a contested case request in accordance with SCALC Rules. Because the APA, specifically Section 1-23-600(B), requires that such a request be filed in accordance with this Court's rules, and because Section 48-6-30 requires that such a request be made in accordance with the APA, Petitioner's Initial Request Document was not a filed request for a contested case hearing. As discussed above, the first compliant contested case hearing request occurred on March 17, 2026, which was well beyond the February 23, 2026 deadline for invoking the Court's contested case jurisdiction. Section 48-6-30(D) is a statute of creation, and as such must be strictly

¹³ According to the Notes to SCALC Rule 11, "any document requesting a contested case must include all the information and meet all the requirements of the ALC Rules. The stamping of a document as 'FILED' by Court staff does not establish that a document was timely filed with the Court."

¹⁴ *Cf.* SCALC Rule 7(A) ("[A] motion must ... be accompanied by a filing fee as provided in Rule 71"); Notes to SCALC Rule 7 ("A **motion will not be deemed filed with the Court until the fee has been paid...**") (emphasis added); *cf. also* Notes to SCALC Rule 36 (stating that an appeal is perfected "by filing the notice of appeal **and submitting the appropriate filing fee.**") (emphasis added); *cf. also* *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 445-46, 586 S.E.2d 124, 128 (2003) (noting there is "no statutory provision that permits the waiver of filing fees for an appeal brought under the APA," and therefore Court "must collect" the fee in cases not involving fundamental constitutional rights) (*abrogated on other grounds by* *Allen v. S.C. Dep't of Corr.*, 439 S.C. 164, 886 S.E.2d 671 (2023))).

complied with. *Simpson v. Sanders*, 314 S.C. 413, 445 S.E.2d 93 (1994) (holding that “strict compliance” with the terms of a statute of creation “is mandatory in order to exercise the right” created by that statute); *cf. Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 94, 668 S.E.2d 795, 796-97 (2008) (noting that “jurisdictional appealability issues are governed by statute[,]” and “the right of appeal arises from and is controlled by statutory law”) (citations and quotation marks omitted).¹⁵

In *Buchanan v. S.C. Dep’t of Env’t Servs. & Silfab Solar*, the petitioner sought to challenge a letter sent electronically by the Department regarding a permit, but the petitioner had failed to perfect the filing of his request for a contested case hearing by failing to include an original signature pursuant to SCALC Rule 6(A). S.C. Admin. Law Ct., docket no. 24-ALJ-07-0367, 2024WL5236607 *2 (Dec. 23, 2024). The attempted filing was made on September 9, 2024. The ALC Clerk of Court sent a memorandum to the petitioner the following day, and the deficiency was corrected on October 5, 2024. *Id.* As part of its basis for dismissing the petitioner’s contested case, the court agreed with the Department that the petitioner failed to meet the requirements for procedural jurisdiction and stated thus:

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.

Id. at *4 n.9. The Court finds the instant case to be analogous to this aspect of *Buchanan*. In the instant case, Petitioner similarly had not requested in writing to be notified of the Department decision. The Department’s decision was sent electronically to the permittee, thus starting the thirty-day window for invoking this Court’s contested case jurisdiction by filing a request for a contested case hearing. As in *Buchanan*, Petitioner, in multiple respects, failed to perfect his filing

¹⁵ In addition to being a statute of creation requiring strict compliance, Section 48-6-30 includes language demonstrating the General Assembly’s intent that untimely requests are not subject to determination by this Court. *See id.* at (D)(2) (identifying statutory provisions applicable to “*timely* requests for a contested hearing of decisions from the Department”) (emphasis added).

by failing to include crucial components, namely a copy of the final agency decision and the filing fee. By the time Petitioner cured the deficiencies and properly filed his request for a contested case hearing, on March 13, 2026, it was, as the request in *Buchanan*, untimely. Therefore, the Court concludes, as it did in *Buchanan*, that the untimely filing of a request for a contested case hearing has deprived it of jurisdiction to consider this matter, and that dismissal is appropriate.

In his response to the withdrawn Motion, Petitioner advanced an argument that he “repeatedly contacted the Department,” “repeatedly sought clarification” from the Department, and “actively disputed the permit process.” Petitioner’s response did not state the significance of these characterizations or explain how, under applicable law, such correspondence might toll or extend the timeliness requirement for invoking this Court’s contested-case jurisdiction. To the extent Petitioner was attempting to argue that he should have been personally mailed or emailed the Permit upon its issuance, based on his earlier communications with Department, the Court does not agree. Pursuant to Section 48-6-30(D)(1), notice by mail or email is only required to be provided to an “applicant, permittee, licensee, certificate holder, and affected persons who have requested in writing to be notified.” Petitioner was not an applicant, permittee, licensee, or certificate holder for purposes of the notice requirements pursuant to Section 48-6-30. Also, while Petitioner may have been an affected person, he was not an “affected person **who ha[d] requested in writing to be notified**” (emphasis added) of the Department’s permitting decision in this case. There is no indication in the record that the Department ever received such a request for notification of the Department’s Permit decision, and Petitioner did not specifically argue and establish in his Response that he did so.¹⁶

Petitioner also advanced an argument that the Court itself did not immediately recognize that the Permit was a final decision of the Department, contending that “the Court itself identified deficiencies concerning the OSWW permit decision.” Regardless of whether the ALC Clerk of Court’s office or the undersigned was able to immediately ascertain whether the Permit was the

¹⁶ While Petitioner may have sought agency review and clarification of the permitting process and made a FOIA request for documents relating thereto, it does not appear that Petitioner ever requested in writing, prior to the Department’s decision, to be notified of the Department’s decision regarding the issuance of the Permit. And, as discussed above, because Petitioner was also not an applicant, permittee, licensee, or certificate holder, he was not entitled pursuant to Section 48-6-30(D)(1) to have a copy of the decision sent to him upon its issuance. Thus, the thirty days to file a request for a contested case hearing began when the Department sent the decision to the permittee, Baker.

final agency decision in this case (i.e., upon the Court's eventual receipt of the untimely submitted Permit), Petitioner's own Initial Request Document—like his contested case request filed on March 13, 2026—expressly stated the Permit was the Department's "final agency decision." The very fact that Petitioner attempted to request a contested case hearing after the Permit was issued reflects Petitioner's belief the Permit was the Department's final agency decision. Thus, Petitioner could have and should have included a copy of the Permit, which he had received from the Department, in his Initial Request Document (as he later did on March 13, 2026 when he filed his Request for Contested Case). Indeed, on the date his Initial Request Document was submitted, Petitioner had no reason to believe that the Court would have questions or seek confirmation regarding whether the Permit was the final agency decision.¹⁷ And even if the Court could excuse Petitioner's failure to attach the final agency decision to his Initial Request Document on this basis, the Initial Request Document would still have been incomplete/not perfected and would not have been considered filed on February 23, 2026 because it was not accompanied by a filing fee. Petitioner should have been aware of this requirement, not only from the SCALC Rules (set forth above), which are available to the public on the Court's website, but also because, shortly before he attempted to file the Initial Request Document in this case, Petitioner included a filing fee in a separate contested case hearing involving a different permit, i.e. the Separate Matter.

Petitioner's deficient submission on February 23, 2026 did not toll the thirty (30) days required by the statute (as noted at the bottom of the compliance memorandum issued by the ALC Clerk of Court to Petitioner), and Petitioner did not comply and properly file his request for a contested case hearing until March 13, 2026. This date was eighteen (18) days beyond the filing deadline of February 23, 2026, rendering Petitioner's request for a contested case hearing untimely.

Petitioner also argued that "[a] motion to dismiss is improper where substantial factual disputes remain unresolved." This argument is unavailing. Petitioner appeared to be confusing a

¹⁷ The undersigned convened a conference call with the parties on April 15, 2026, more than one month **after** Petitioner filed his compliant Request for Contested Case Hearing, to get clarity from the Department as to whether the permit was the final agency decision and that there was no other written determination. This teleconference had no bearing on Petitioner's failure to include the Permit with his Initial Request Document on February 23, 2026, or his failure to properly file a Request for Contested Case Hearing until March 13, 2026, nor was Petitioner reliant on the conference call to properly file his Request for Contested Case Hearing.

motion to dismiss for a motion for summary judgment. It is a motion for summary judgment, rather than a motion to dismiss, that is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), South Carolina Rules of Civil Procedure. As stated above, the Court cannot consider the merits of the case, including any factual disputes involved therein, if its jurisdiction was not timely invoked, which is what happened here.

Finally, Petitioner’s Response advanced an argument that the Court should allow the case to proceed based on “equity and fundamental fairness.” As stated above, the deadline for filing a request for a contested case before the ALC involving a permitting decision by SCDES is jurisdictional and is set forth by statute, Section 48-6-30(D)(2). Section 48-6-30 is a statute of creation, and as such must be strictly complied with. *Simpson, supra*; *cf. Skinner, supra*. As it has been said, “equity follows the law.” *Cf. Morgan v. S.C. Budget & Control Bd.*, 377 S.C. 313, 319, 659 S.E.2d 263, 267 (Ct. App. 2008); *Town of Hilton Head Island v. Godwin*, 370 S.C. 221, 634 S.E.2d 59 (Ct. App. 2006) (overturning a lower court’s decision to deny a motion to dismiss for lack of jurisdiction that had been based on “substantial justice” because the lower court had been deprived of jurisdiction due to the respondent’s untimely challenge).

Because Petitioner failed to file his request for a contested case within thirty (30) days of the Department’s issuance its final agency decision, the Permit, as required by Section 48-6-30(D)(2), the Court lacks statutory authority to consider this matter as a contested case, and thus the Court must dismiss Respondent’s case.

ORDER

IT IS THEREFORE ORDERED that Petitioner’s case is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.

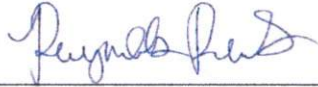


June 16, 2026
Columbia, South Carolian

Samuel L. Johnson
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Reynolds C. Rawls, 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).



Reynolds C. Rawls
Judicial Law Clerk

June 16, 2026
Columbia, South Carolina

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SC Court of Appeals