

**STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS**

Appeal from the Administrative Law Court
Honorable Ralph King Anderson, III, Administrative Law Judge
Case No. 04-ALC-07-0126-CC

Sierra Club,

Appellant,

v.

South Carolina Department of Health and
Environmental Control and Chem-Nuclear
Systems, LLC,

Respondents.

PETITION FOR REHEARING

Respondent South Carolina Department of Health and Environmental Control respectfully petitions for a rehearing on the following grounds:

I. The Opinion Overlooked and Misapprehended the Relationship between the Technical Requirements and Performance Objectives within Regulation 61-63, Part VII.

By narrowly defining and separating "action-based" technical requirements from "results-based" objectives, the Court overlooks and misapprehends the crucial interplay of the performance objectives and requirements of Part VII. The overarching purpose of the Part VII requirements is to ensure that the performance objectives of subsection 7.18 (ALARA) through 7.21 are met, and that the issuance of the license is based on a finding by the Department that it

will not constitute an unreasonable risk to the health and safety of the public.¹ The direct connection between the technical requirements and the performance objectives is evidenced throughout Part VII. Section 7.17 requires that "land disposal facilities be sited, designed, operated...so that reasonable assurance exists that exposures to individuals are within the requirements established in the performance objectives in 7.18 through 7.21." Section 7.7 requires that "specific technical information shall also include the following analyses needed to demonstrate that the performance objectives of this part will be met." Section 7.1.1 provides that the requirement for issuance of a license is based upon a finding by the Department that the issuance of the license "will not constitute an unreasonable risk to the health and safety of the public." Meeting the technical requirements of Part VII of the regulation is driven by achieving the performance objectives and ensuring no unreasonable risk to the public's health and safety.

Importantly, subsection 7.6.3 speaks directly to the connection between the technical requirements and performance objectives. Section 7.6 describes specific technical information "needed for demonstration that the performance objectives and applicable technical requirements will be met." According to subsection 7.6.3, the technical information must include "a description of the principal *design criteria* and their relationship to the performance objectives." Subsection 7.11.11.1 requires that the disposal units be *designed and constructed* to minimize migration of water onto the trenches. The requirements of the regulation cannot be divorced from the performance objectives, and evidence that the performance objectives have been met is appropriate to demonstrate compliance with other requirements of the regulation.

The technical requirements of subsection 7.11.11 are constructed to meet seven listed *objectives*. Subsections 7.11.11.1 and 2 do not contain specific actions to minimize migration of

¹ 24A S.C. Code Reg. Ann. 61-63, subsection 7.1.1, 24A S.C. Code Reg. Ann. 61-63, section 718. "ALARA" means "as low as reasonably achievable" for the release of radioactivity in effluents to the general environment.

water onto the disposal units or to minimize migration of waste or waste-contaminated water out of the disposal units. Subsection 7.11.11.4 does not contain specific actions on how to meet the requirements for the temporary collection and retention of water for a time sufficient to allow for detection and removal or other remedial measures without contamination of groundwater or surrounding soil. Because specific actions are not prescribed in these subsections, it is the results to be achieved are determinative, and evidence of these results is appropriate to show compliance.

In contrast, some technical requirements in Part VII do require specific actions, for example, subsection 7.24.2 of Part VII, which requires that Class C waste be disposed "so that the top of the waste is a minimum of 5 meters below the top surface of the cover..." This requirement illustrates a specific action that must be taken for near surface disposal of Class C waste. Other technical requirements in Part VII may contain requirements for specific actions such as subsection 7.24.2 or, in the case of subsection 7.11.11, may be written as *objectives* to achieve certain results. The technical requirements are written to meet the performance objectives, and results-based evidence is appropriate to show the technical requirements have been met.²

The Court in the present Order imposed a new standard for technical requirements in determining that the ALC erred in finding compliance with subsections 7.11.11.1, 2, and 4. The Court's interpretation misapprehends or overlooks the holding of the Court in *Chem-Nuclear I*.³ In *Chem-Nuclear I*, the Court found that "section 7.11 imposes additional compliance requirements for Chem–Nuclear such that the balancing test of ALARA would not be sufficient

² See *Sierra Club v. SCDHEC and Chem-Nuclear Systems, LLC*, ___ S.C. ___, ___ S.E.2d ___ (Ct.App. 2014) (2014 WL 3734366, *5, filed July 30, 2014) (hereinafter referred to as "*Chem-Nuclear II*").

³ *Sierra Club v. SCDHEC and Chem-Nuclear Systems, LLC*, 387 S.C. 424, 435, 693 S.E. 2d at 13,18 (Ct. App. 2010), *rehearing denied* (3 May 2010), *certiorari denied* (21 July 2011) (hereinafter referred to as *Chem-Nuclear I*).

to address whether Chem-Nuclear is in compliance with section 7.11," and instructed the ALC to apply the factual findings from the 2005 Order to determine compliance.⁴ The Court in *Chem-Nuclear II* restates and narrows the holding by adding that "the [specific] technical requirements" of "section 7.11" require Chem-Nuclear to "take action to design and construct the disposal units and engineered barriers to meet the specifications in those subsections."⁵ The ALC on remand properly followed the instructions of the Court in *Chem-Nuclear I* to look beyond the ALARA standard. Now the Court imposes a new standard of compliance. The Court misapprehended the framework of the Part VII requirements by ignoring the interconnectivity of the technical requirements and performance objectives, and redefining the compliance standard that was not part of the instructions to the ALC on remand. This resulted in an improper conclusion by the Court that subsections 7.11.11.1, 7.11.11.2, 7.11.11.4, and subsection 7.10.7 were not met.

II. The Court misapprehended the requirement of subsection 7.11.11.1 when it found that Chem-Nuclear was not in compliance.

The Court misapprehended the requirement of subsection 7.11.11.1 when it found that "the record in this case conclusively demonstrates Chem-Nuclear has taken no action to *prevent* even one raindrop from migrating onto one active vault or trench."⁶ The regulation does not require a design that prevents rainfall onto the disposal units. It requires that the disposal units and engineered barriers be designed and constructed to meet the *objective* of minimizing the migration of water onto the disposal units. Shallow land disposal by definition cannot provide absolute isolation from the elements, including rainfall.⁷ Without disputing the Court's characterization that rainfall is water or that raindrops could be characterized as migrating from

⁴*Chem-Nuclear I* at 18.

⁵*Chem-Nuclear II*, *7.

⁶*Chem-Nuclear II*, *12.

⁷ Final Joint Brief of Respondents Chem-Nuclear Systems, LLC and South Carolina Department of Health and Environmental Control, R. p.17.

the sky, the regulation, taken as a whole supports the Department's interpretation of the regulation that the intent of subsection 7.11.11.1 is not to prevent rain falling directly onto a disposal unit, but rather that the migration of surface water onto the disposal units is minimized. This interpretation is reinforced by the requirements of subsection 7.6.6 which requires construction of the land disposal facility to include information on methods to control surface water and groundwater access to wastes. The conditions of Chem-Nuclear's license also confirm that subsection 7.11.11.1 addresses the migration of surface water. Condition 71.B of the license requires that the trenches be protected to prevent surface water runoff from entering active trenches.⁸ License condition 73 requires Chem-Nuclear to use proper surface water management techniques to insure that surface runoff is directed away from the trenches.⁹ The Court misapprehended the scope of subsection 7.11.11.1 by finding that rainfall onto the trenches is not minimized, and overlooked the fact that this subsection addresses the migration of water, not the prevention of direct rainfall.

The Court concluded that the findings and directives from the 2005 Order concerning the 2001 DHEC request to review trench construction details and the 2005 report ordered by the ALC, support the importance of implementing measures to address rainfall onto the disposal units.¹⁰ The Court concluded that no measures are currently in place to address concerns related to rainfall on the disposal trenches. Since the 2005 report is not in the record, there is no way for the Court to know what was evaluated, and what changes were or were not made as a result. In *Chem-Nuclear I*, the Court denied Respondent Chem-Nuclear's motion to supplement the record on appeal to include the 2005 report.¹¹ To now use the 2005 report to negatively infer that

⁸ Chem-Nuclear License No. 097, Condition 71.B., R. p.111.

⁹ Chem-Nuclear License No. 097, Condition 71.B., R. p.111.

¹⁰ *Chem-Nuclear II*, *12.

¹¹ *Chem-Nuclear I*, Order on Motion to the Supplement the Record on Appeal, Court of Appeals, 27 May 2008.

neither Chem-Nuclear nor DHEC took any action in response to the report's findings, or to cast doubt on DHEC's enforcement of the requirements of subsection 7.11.11.1 improperly constrains the Department's ability to respond to the Court's statements.

III. The Court misapprehended or overlooked the requirements of subsection 7.11.11.2

Concluding that Respondent Chem-Nuclear is minimizing waste out of the disposal unit, but is not minimizing waste-contaminated water out of the disposal unit misapprehends the requirement of this subsection. The Court stated that "the fact that water migrates onto and, subsequently, out of disposal units does not itself violate this subsection. A violation occurs only when water is allowed to come into contact with waste *and* waste-contaminated water then migrates out of the disposal units."¹² (emphasis added). The Court agreed that Chem-Nuclear minimized the migration of waste out of the disposal units and had taken action to reduce the migration of waste-contaminated water out of the disposal units, but found that it did not "reduce to the smallest amount possible."¹³ The ALC found, and the Court agreed, that the use of disposal containers prevents waste from coming into direct contact with water that enters vaults, which reduces of migration of waste-contaminated water out of vaults. The Court also agreed with the ALC's finding that the drainage holes in the vaults allow water to drain away from the waste and decrease the likelihood that water entering the vaults will become contaminated. The Court overlooks the sufficiency of the ALC's findings as substantial evidence that supports compliance with the objectives of subsection 7.11.11.2.

The Court found that "the ALC could not rely on the fact that the 2005 Order did not contain the conclusion we ordered the ALC to make on remand - whether, based on the factual findings in the 2005 Order, the disposal units minimized the migration of waste-contaminated

¹² *Chem-Nuclear II*, fn. 12.

¹³ *Chem-Nuclear II*, *14.

water out of them."¹⁴ Herein lies the conundrum faced by the ALC. The ALC was constrained by the Court's instructions in *Chem-Nuclear I* to make additional findings based on the existing findings in the 2005 Order. As directed on remand, the ALC used the record to the fullest extent possible to determine compliance with this subsection, and the Court acknowledged that the record supported that Chem-Nuclear had taken measures to reduce the migration of waste-contaminated water out of disposal units.

Yet the Court found that the ALC erred in relying in part on the absence of negative findings in the 2005 Order to further support its determination that Chem-Nuclear had complied. The lack of findings in the 2005 Order is not indicative of a lack of compliance with the subsection. Some of the issues remanded were not specifically addressed in the 2005 findings, but the ALC was nonetheless confined to them. Thus the Court shifts an impossible burden of proof to the Respondents.

IV. The Court misapprehended subsection 7.11.11.4 in its application of requirements for a leachate collection system.

By applying a definition of leachate and leachate collection system that is not part of the regulation, the Court misapprehends the requirements of subsection 7.11.11.4 and overlooks the findings in support of a conclusion that the requirements are being met. Even though the regulation does not require a "leachate collection system," the Court uses a definition of leachate collection system as the compliance requirement for subsection 7.11.11.4. The Court first adopts a definition of "leachate" that is taken from an appendix to a federal regulation establishing criteria for the disposition of tailing and waste from uranium mills.¹⁵ The Court then adopts a definition of a "leachate collection system" by using definitions in the United States

¹⁴ *Chem-Nuclear II*, *15.

¹⁵ *Chem-Nuclear II*, *16.

Environmental Protection Agency regulations for the management of sewage sludge units under the federal Clean Water Act and the management of hazardous waste disposal units under the federal Resource Conservation and Recovery Act.¹⁶ The Court then applies these unrelated definitions to a leachate management system that is not part of subsection 7.11.11.4. The adoption of inapplicable requirements that do not account for the fact that the management of low-level radioactive waste is different than for the management sewage sludge, hazardous waste, and highly radioactive uranium tailings, resulted in the Court improperly redefining the requirements of subsection 7.11.11.4.

The Court overlooked the findings that show the disposal units are constructed and designed to meet the *objective* of subsection 7.11.11.4. The factual findings in the record show that in the trenches, there is a layer of sand on the sloped floor to aid in directing water to the French drains; any water entering the French drains is directed to the sumps. Standpipes have been placed in the sumps to detect water.¹⁷ Water may be pumped into an adjacent pond, preventing infiltration into the surrounding soils. Read in conjunction with the objective of subsection 7.11.11.3 – detection of water and other liquids in the disposal units - these measures, while not defined as a leachate collection system in the regulation, serve to meet the purpose of such a system. This is further evidenced by requirements of subsection 7.6.6 requiring the description of the construction and operation of the land disposal facility to include methods to control surface water and groundwater access to the wastes.

The Court noted that “[I]n determining compliance with the technical requirements of subsection 7.11.11.4, however, we consider the actions taken by Chem-Nuclear to comply, not the reasons why it decided not to implement a certain measure based on its own ALARA

¹⁶ Id.

¹⁷ 2005 Order, pp. 18-20.

analysis."¹⁸ This statement illustrates the flaw in the Court's separation of ALARA from the technical requirements of Part VII. The Court misapprehended and overlooked the totality of the regulatory framework, and isolated individual requirements from the regulation as a whole. A determination of technical compliance requires consideration of action taken with ALARA being part of the evaluation.

Again, the absence of findings in the 2005 Order does not mean that the regulations at issue here are not being met. The Court found that the ALC erred because it cited "no additional evidence" of Chem-Nuclear's compliance with the "testing" of water pumped from the trenches under subsection 7.11.11.4. The absence of a specific finding in the 2005 Order regarding testing should not be used by this Court to assume that Chem-Nuclear is not testing. Again, the conundrum is a newly conceived issue against a record limited to the 2005 findings. The absence of a specific finding does not support a conclusion that Chem-Nuclear failed to comply with the regulation or that DHEC failed to enforce the law.

V. The Court misapprehended the regulatory framework in holding the ALC erred in affirming the Department's determination that Chem-Nuclear complied with subsection 7.10.7.

The Court misapprehended and overlooked the fact that the Department renewed Chem-Nuclear's license based upon a demonstration by Chem-Nuclear that provided reasonable assurance that the technical requirements of the part were met.¹⁹ The Court concluded that because it found Chem-Nuclear was not in compliance with subsections 7.11.11.1, 2, and 3, DHEC "failed to enforce the law" as to these subsections. The Court found in *Chem-Nuclear I* that section 7.11 imposed additional compliance requirements, and "it is no longer reasonable for DHEC to argue Chem-Nuclear complied with subsection 7.10.7 without considering what action

¹⁸ *Chem-Nuclear II*, fn. 15.

¹⁹ 24A S.C. Code Ann. Regs. 61-63, subpart 7.10.7.

Chem-Nuclear took to comply with the 'specific technical requirements' of 7.11.11."²⁰ The Court has misapprehended the critical connection between the requirements of Part VII and the performance objectives and has created its own narrow framework that imposed "specific actions" onto the stated objectives in subsection 7.11.11. Having established a new interpretation of the requirements of subsection 7.11.11, the Court then faults the ALC and DHEC for the absence of specific findings from the 2005 Order that address the Court's newly conceived factors for compliance.

Part of the Court's concern that DHEC did not follow the law was DHEC's decision not to amend the requirements for issuance of the license after the ALC instructed Chem-Nuclear to submit a report to DHEC on the feasibility of covering trenches and sealing vaults.²¹ The Court stated that while the report's evaluation was not before it, the fact that DHEC did not require Chem-Nuclear to take *any* action or make *any* changes to its disposal practices "casts doubt upon DHEC's decision to renew the license." The Court improperly based this determination in part on matters that are outside of the record. The 2005 report is not part of the record on appeal and there is no evidence in the record as to the actions DHEC did or did not require as a result of the report. The Court assumed there were no changes based on the report even though it acknowledged that it did not know the results of the studies or the reasons for the Department's concurrence. The Court used a report not in the record and the details of which were not known to it to cast doubt on the Department's decision to renew the license and to conclude that it failed to enforce the law with no recourse for the Department to defend or explain the report or its concurrence with it, or whether in fact any changes were made as a result of it.

²⁰ *Chem-Nuclear II*, *19.

²¹ *Chem-Nuclear II*, *20.

The use of the report as evidence of concern over the Department's decision to renew the license is illustrative of a larger problem associated with the constraints of applying findings from the 2005 Order to the current site operations in 2014. In ten years of appeals, the ALC twice affirmed the Department's decision to renew the license. This Court in *Chem-Nuclear I* affirmed the Department's license decision, but remanded certain sections of the regulation for additional findings by the ALC. The Court of Appeals' order required the ALC and the parties to apply the findings from the 2005 Order. Yet the Court casts doubt on the Department's decision to renew the license without providing the opportunity to create a complete record.

Moreover, in this case deference should be given to DHEC's interpretation of its own regulations. While the Court may correct the decision of the ALC if it is affected by an error of law and questions of law are reviewed de novo, the Court will generally give deference to an agency's interpretation of its own regulation.²² As an "Agreement State" with the Nuclear Regulatory Commission (NRC), DHEC is required to promulgate regulations that are compatible with NRC regulation 10 C.F.R. Part 61.²³ In 1995, the Department promulgated substantial revisions to Part VII requiring engineered barriers and the use of disposal vaults for all waste classes, and codifying the requirement for enhanced caps on all disposal trenches, resulting in regulations more stringent than NRC.²⁴ The Department has vigorously enforced the design and construction criteria for the disposal units to meet the objectives of subsection 7.11.11. These criteria have been promulgated in regulation as license conditions and are incorporated as Condition 82 of the license. The Department's actions are wholly consistent with the requirements of subsection 7.11.11. Regulations are construed using the same canons of

²² *S. Carolina Dep't of Revenue v. Blue Moon of Newberry, Inc.*, 397 S.C. 256, 260-61, 725 S.E.2d 480, 483 (2012), reh'g denied (May 4, 2012), citing *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003)

²³ *2005 Order*, p.3, para. 2; p.5, para. 6.

²⁴ *Id.*, p.5, para. 5.

construction as statutes.²⁵ By imposing compliance standards and specific actions that do not meet the plain language of subsection 7.11.11, the Court has overlooked and misapprehended the canon of construction that 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.²⁶ Furthermore, by isolating the requirements of subsections 7.11.11.1, 2, and 3 from the performance objectives of sections 7.18 through 7.21, the Court overlooked or misapprehended the canon of construction that the regulation must be construed as a whole rather than read in its component parts in isolation.²⁷

VI. The Court misapprehended or overlooked the legal error in the remedy ordered by the Court.

The Court misapprehended or overlooked the legal error in the remedy it ordered. The Court invalidated the license, and ordered Respondents DHEC and Chem-Nuclear to prepare and submit a plan of compliance to the ALC within 90 days of the date of the order; the ALC must then review the plan and either set a compliance schedule to implement it or determine that the plan will not bring Chem-Nuclear into compliance and revoke the license. Here, the Court has before it an appeal from the ALC which upheld DHEC's decision to renew the license. In a contested case before the ALC, the burden of proof is on the party contesting a permitting decision. See, 2005 Order, *Conclusions of Law*, paragraph 3, which specifically concludes that the burden of proof rests on the Petitioner.²⁸ In a contested case, the ALC has jurisdiction to make a final agency decision, based on a record made at an evidentiary hearing See, Engaging

²⁵ S.C. Ambulatory Surgery Ctr. Ass'n v. S.C. Workers' Comp. Comm'n, 389 S.C.380, 389, 699 S.E. 2d 146, 151 (2010).

²⁶ Byerly v. Connor, 307 S.C. 441, 444, 415 S.E.2d 796, 799 (1992).

²⁷ Spruill v. Richland Cnty. Sch. Dist. 2, 363 S.C. 61, 64, 609 S.E.2d 524, 526 (2005).

²⁸ 2005 Order, p. 60.

and Guarding Laurens County's Environment (EAGLE) v. SCDHEC.²⁹ The authority and responsibility for making an initial decision is at the regulatory agency. This remedy is in conflict with these basic tenets of administrative law.

Throughout the Order and in the remedy at the conclusion of the Order, the Court impermissibly shifts the burden of proof to the applicant and DHEC. Where the Court finds an absence of sufficiency in the record, a negative assumption is made against the applicant and agency, which impermissibly shifts the burden of proof away from the contesting party. Here, the remedy places upon the applicant and agency the burden of providing a plan for a compliance determination to the ALC. The burden in the case is shifted to the applicant and agency.

More disconcerting is the absence of a provision for an evidentiary hearing in the process the Court orders. Here, the Court has misapprehended or overlooked the fundamental role of ALC under the Administrative Procedures Act – which is to render decisions based on an evidentiary record developed at an evidentiary hearing. In Engaging and Guarding Laurens County's Environment (EAGLE) v. SCDHEC, the Supreme Court stated that the ALC is authorized to make a final determination – after a final agency decision and subject to judicial review – as to whether an administrative agency should have granted or denied a particular permit.³⁰ While the ALC is not bound by the agency's factual findings or permitting decision, it is required to conduct a de novo hearing in contested cases, complete with presentation of evidence and testimony.

Indeed, the difficult status of this case is due in part to the lack of an evidentiary hearing on the issues raised in the first remand to the ALC. This Court should not negate the fundamental role of the ALC and expand its function beyond the arena of rendering decisions

²⁹ Engaging and Guarding Laurens County's Environment v. SCDHEC, 407 S.C. 334, 755 S.E.2d 444 (2014).

³⁰ Engaging and Guarding Laurens County's Environment v. SCDHEC, 407 S.C. 334, 755 S.E.2d 444 (2014).

based on an evidentiary process. It is error of law to make an administrative law judge an expert who renders a decision based on a technical review, rather than one who issues a decision after an adjudicatory process.

Moreover, the remedy misapprehends or overlooks the role of the agency in the permitting process. It is not the role of an administrative agency to provide reports to the ALC for review and for the ALC to then render permitting decisions.

The Department is the agency charged by law with the responsibility for the control of radiation sources.³¹ The Department is required to establish the terms and conditions of licenses, to issue, amend, revise, or modify licenses, or to suspend or revoke licenses by reason of amendments to the Act, or by reason of rules, regulations, and orders issued by the Department.³² At issue in this appeal is the Department's decision to *renew* Chem-Nuclear's operating license. The question before the Court is whether the Department's decision to renew the operating license was proper. If a determination was made that it was not proper, the remedy would not be revocation of the license; the license renewal would be reversed but the operating license in effect prior to the renewal would be valid. Ordering the ALC to evaluate a written plan for compliance and to revoke the license for non-compliance abrogates the statutory and regulatory responsibilities that lie squarely with the Department and sets forth a remedy that was not the issue before the Court. The remedy ordered by the Court overlooks the procedural requirements in the regulation that must be followed for license revocation by the Department.

This remedy is outside the limits adopted in the Eagle case. There, the Supreme Court **emphasized** that the ALC did not conceive a new factor or consider evidence outside the

³¹ S.C. Code Ann. § 13-7-10.

³² S.C. Code Ann. Reg. 61-63, subsection 2.19.1.

existing record. Here, the ALC is being directed to decide a new factor not previously before the agency, and without benefit of any evidence or record.

The issue before the Court on appeal is the propriety of the Department's decision to renew Chem-Nuclear's license, not whether the license should be revoked. If the Court is to pursue a new factor, the permit decision should be remanded back to the agency for review in light of the Court's ruling. Or, at a minimum, the matter should be remanded back to the ALC for a full evidentiary hearing on the issues that the Court found to be deficient, complete with the issuance of findings of fact and conclusions of law.

For these reasons the Department petitions the Court to rehear the case, to find the ALC did not err in affirming Respondent Chem-Nuclear complied with subsections 7.1.11.1, 7.11.11.2, 7.11.11.4, and 7.10.7 and the Department properly renewed the license, or in the alternative, to remand to the Department for further proceedings.

Respectfully Submitted,

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Columbia, South Carolina

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CERTIFICATE OF SERVICE

I, Sandra R. Wessinger, Legal Assistant for the South Carolina Department of Health and Environmental Control, hereby certify that I have on this **13th day of August, 2014**, served a copy of Respondent SCDHEC's *Petition for Rehearing* upon all parties and counsel of record in the above-captioned case, via United States Mail, First Class, postage prepaid, addressed as follows:

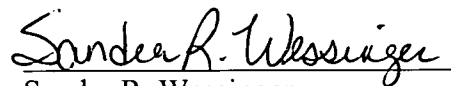
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August 13, 2014
Columbia, SC


Sandra R. Wessinger



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

August 13, 2014

Via Hand Delivery

Honorable Jenny A. Kitchings
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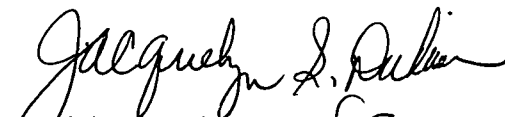
Re: Sierra Club vs. SCDHEC & Chem-Nuclear
Appellate Case No.: 2012-212791

Dear Ms. Kitchings:

Enclosed please find the original and two (2) copies of *Respondent South Carolina Department of Health and Environmental Control's Petition for Rehearing* for filing in connection with the above-referenced case. I would appreciate you returning the stamped copies to our office with the courier.

Should you have any questions or need additional information concerning this matter, please do not hesitate to contact our office.

Sincerely,


Claire H. Prince
Special Counsel

Enclosures:

cc: Amy Armstrong, Esquire
Michael Corley, Esquire
Robert Guild, Esquire
Stephen P. Groves, Sr., Esquire
Mary Shahid, Esquire
Sara S. Rogers, Esquire

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SC Court of Appeals