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JUN 09 2015

**SC SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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

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Appellate Case No. 2013-000364

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Ann Dreher,.....Respondent

v.

South Carolina Department of Health and Environmental Control,.....Petitioner,

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**RESPONDENT’S REPLY TO SOUTH CAROLINA COASTAL CONSERVATION  
LEAGUE’S RESPONSE IN OPPOSITION TO  
MOTION TO STRIKE AND EXCLUDE**

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The South Carolina Coastal Conservation League (“SCCCL”) attempts to justify its entirely improper inclusion of material absent from the Record on Appeal in this matter by describing it as “part of the legal authority” and the “legislative history.” These documents consist of minutes of meetings and attachments thereto (Exhibits C and D; brief pp. 28-38) and a mark-up of proposed regulations with additions and strike outs (Exhibit F; pp. 40-49). Exhibits C and D are clearly hearsay as they are some unnamed person’s recollection or recap of discussions had by a number of people on two occasions in 2005 with attachments containing the ruminations or suggestions of unidentified people never called to testify in this matter about the regulations at issue. For example, pages 30-33 are designated “Marsh Islands Statistical Summary” compiled by some unnamed person.

(E.g., “I did not use the Marsh Island Assessment Tool” p. 30, and “However, after speaking with Steve Moore about it, I felt like CSC had made the correct decision.” p. 32). How is Ann Dreher supposed to examine the author of these statements for probative value at this stage? As set forth in Respondent’s motion, it is doubtful these documents would have been admitted at the contested case hearing, certainly not absent someone who participated in these meetings being present to testify. Surely they should not be admitted now. SCCCL also cites to an article written by Nancy Vinson citing an address made by two former employees of DHEC as being “other authorities.” That is stretching the limit of “legal authority” beyond the point of recognition.

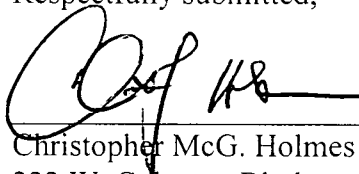
Just as one example of the prejudice to Respondent, SCCCL in its brief references these meeting minutes as having determined that there were 1,321 marsh islands in Charleston County. (SCCCL brief p. 8). That is a pretty precise number. It would be helpful to have the opportunity to ask the person who made that calculation how it was arrived at and, more importantly, was Ann Dreher’s Tract D identified and included in that total.

SCCCL makes much of its “history in the permitting of bridges to small marsh islands on South Carolina’s coast” and the intense interest of its membership in this issue. Respondent would point out, however, that neither the SCCCL nor any of its members submitted any comments or objections when this permit was applied for in 2009. When the permit decision was appealed to the ALC in January of 2010, neither the SCCCL nor any of its members sought to intervene in the proceedings or to appear as witnesses or otherwise present evidence. When respondent appealed the ALC decision to the Court of Appeals, the SCCCL did not request permission from that court to file an amicus brief. When DHEC moved for a rehearing before the Court of Appeals, the SCCCL did not ask to file an amicus brief in support of that motion. When DHEC petitioned this Court for a

writ of certiorari, the SCCCL did not file a motion for leave to serve an amicus brief in support. It is only now, after more than six years and at least five opportunities that SCCCL has attempted to insert itself, and these improper documents which were in existence prior to the application and appeals, into the proceedings. The inadmissible nature of the documents and the prejudice to Respondent should be obvious and not allowed.

On a related matter, DHEC now attempts to bootstrap SCCCL's efforts by submitting an affidavit from one of its employees purporting to legitimize these documents. It should be sufficient for Respondent to point out that this individual has been an employee of the agency throughout this process and was never identified as a witness or called to testify. This affidavit should be consigned to the same trash can as the attachments to SCCCL's brief. The Motion to Strike and Exclude should be granted.

Respectfully submitted,



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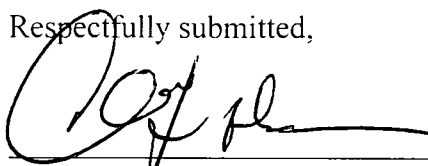
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Attorney for Respondent

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Respectfully submitted,



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Attorney for Respondent

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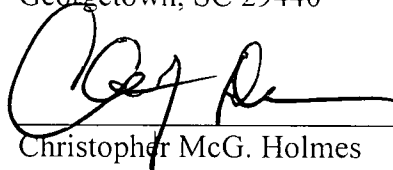
CERTIFICATE OF SERVICE

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The undersigned hereby certifies that on June 5, 2015, he served **RESPONDENT'S REPLY TO SOUTH CAROLINA COASTAL CONSERVATION LEAGUE'S RESPONSE IN OPPOSITION TO MOTION TO STRIKE AND EXCLUDE** via United States mail, first class, postage prepaid, on the following parties and counsel of record as listed below:

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JUN 09 2015

**SC SUPREME COURT**

June 5, 2015

Daniel E. Shearouse, Clerk  
South Carolina Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

RE: Ann Dreher v. SCDHEC;  
Opinion No. 27507

Dear Mr. Shearouse:

Enclosed please find the original and six copies of Respondent's Reply to South Carolina Coastal Conservation League's Response in Opposition to Motion to Strike and Exclude in the above referenced matter along with Certificate of Service for same

Sincerely,



Christopher McG. Holmes  
Attorney for Respondent

encl a/s

cc: Bradley D. Churdar, Esq.  
Amy E. Armstrong, Esq.  
Ann Dreher