

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Tract 7, LLC,)	Docket No. 15-ALJ-07-0258-CC
)	
Petitioner,)	
)	
vs.)	ORDER
)	
South Carolina Department of Health and)	
Environmental Control, and BP Amoco)	
Chemical Company, Cooper River Plant,)	
)	
Respondents.)	
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This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to Petitioner Tract 7, LLC’s (Tract 7) August 7, 2015 Motion for Reconsideration of the Court’s July 28, 2015 Order of Dismissal granting Respondent BP Amoco Chemical Company’s (BP) Motion to Dismiss for lack of procedural jurisdiction. For the reasons set forth below, the Court affirms its original decision and denies Tract 7’s Motion for Reconsideration.

DISCUSSION

In its Motion for Reconsideration, Tract 7 argues that the Court “fail[ed] to address that the requested modification [of the Coastal Zone Consistency Certification (CZC)] by BP was on an expired permit.” Tract 7 also argues that even had the permit legally existed, it still would have expired in March 2014 and therefore could not have been modified. Finally, Tract 7 argues that the Department is attempting to evade review by rescinding the NOI and “invoking an older decision on the long-expired permit,” i.e., “attempt[ing] to relate its actions back to a time that would preclude any challenge or question of its decision”

First, the Court did address the issue of modification of an expired permit in the last paragraph of its Order of Dismissal. The Court explained that the questions of the validity of the underlying permit and whether it was properly modified were not issues in this matter. Rather, this case concerned the Department of Health and Environmental Control’s (DHEC or Department) issuance and rescission of a Notice of Intent (NOI) to issue a CZC certifying the

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modification. The Court also pointed out that whether the underlying permit was valid and its modification proper were matters of federal law, over which this Court has no jurisdiction.

The Court further found that the Department's failure to hold a final review conference did not create or implicate a final agency decision. There was also no final agency decision because the NOI was rescinded, which the Department had the power to do in order to correct its mistake. This rescission made the NOI void, and therefore there was no staff decision to become a final agency decision. Indeed, the lack of a final agency decision is one of the reasons why the Court concluded that it lacked procedural jurisdiction in this case. The Court further noted that even had the Court found that DHEC's decision to rescind the NOI itself was the final agency decision, Tract 7 failed to timely file a request for a final review conference (RFR) challenging the decision, thus still resulting in this Court's lack of procedural jurisdiction. Had Tract 7 timely filed an RFR of the rescission decision, then it could possibly have challenged in this Court the Department's position that it was "just innocently correcting a mistake."¹

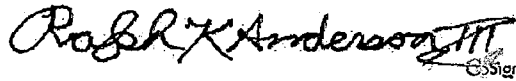
Finally, regarding Tract 7's argument that the Department is attempting to evade review through the rescission, the Court noted in its Order of Dismissal that the issue in this case does not concern mootness, as "Tract 7 is not challenging the 1989 CZC but rather the Department's issuance of the March 24, 2015 NOI to certify a proposed modification to the permit and the Board's decision to deny Tract 7's RFR as to that issue." The Department did rescind the NOI, which could arguably have been considered the final agency decision, which would have allowed a contested case review by this Court under S.C. Code Ann. § 44-1-60 (Supp. 2014). However, Tract 7, as mentioned above and discussed in the Order of Dismissal, failed to timely file an RFR with the Board regarding the rescission, thus still leaving this Court without procedural jurisdiction and rendering any evading review argument itself moot.

For the foregoing reasons, as well as the reasons set forth in the Order of Dismissal, I decline to alter, amend, or vacate the Order of Dismissal.

¹ It is noteworthy that Tract 7 only raised arguments that the Court already addressed in its Order of Dismissal and also failed to cite any legal authority to support its arguments, other than to establish that this Court has subject matter jurisdiction, which this Court already acknowledged in its Order of Dismissal.

ORDER

IT IS THEREFORE ORDERED that Tract 7's Motion for Reconsideration is **DENIED**.
AND IT IS SO ORDERED.

A handwritten signature in black ink that reads "Ralph King Anderson, III". The signature is written in a cursive style. To the right of the signature, there is a small, faint logo that says "eSign".

Ralph King Anderson, III
Chief Administrative Law Judge

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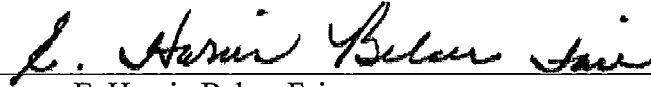
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CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, 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, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



E. Harvin Belser Fair
Judicial Law Clerk

August 18, 2015
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