EXHIBIT 1

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Rodney Connell, Barbara Connell, Edward Steers, Sally Steers, Moustafa Moustafa and Maggie Shatilla, Petitioners, vs. South Carolina Department of Health and Environmental Control, and Charleston Water System, Respondents.	Docket No. 11-ALC-07-0367-CC **AMENDED FINAL ORDER AND DECISION**

Appearances:

For the Petitioners:	Amy E. Armstrong, Esq. and Michael Corley, Esq.
For Respondent DHEC:	Bradley D. Churdar, Esq.
For Respondent CWS:	Leslie S. Riley, Esq., R. Cody Lenhardt, Jr., Esq., and Lucas C. Padgett, Jr., Esq.

STATEMENT OF THE CASE

This matter comes before me pursuant to a Request for Contested Case Hearing filed by the Petitioners on July 15, 2011, challenging the decision of South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (Department or DHEC) to issue a critical area permit, Permit No. OCRM-10-169-D (Permit), and a coastal zone consistency certification (Certification) to Charleston Water System (CWS) for the construction of a force main, a portion of which will be aerially supported. A hearing was held on February 21-23, 2012 before the Administrative Law Court (ALC or Court) in Columbia, South Carolina, and a Final Order and Decision was issued on June 20, 2012. Following that decision, Petitioner timely filed a Motion for Reconsideration on July 2, 2012. In response to the issues raised in that Motion, I am issuing this Amended Final Decision and Order.[1]

[1] Some of Petitioners' arguments were merely a reiteration of the arguments previously addressed in the Court's Order in this matter. See 11 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2810.1 (2d ed. 1995) (While Rule 59(e) motions may be appropriate to preserve an issue raised in a contested case for appellate

ISSUES FOR DETERMINATION

Petitioners raised the following issues for determination by this Court:

1. Whether there are feasible alternatives to the permitted force main location, which would render DHEC's decision inconsistent with the standards contained in 2 S.C. Code Ann. Regs. 30-12 (2011) and the Coastal Management Program (CMP);

2. Whether DHEC appropriately evaluated the extent to which all feasible safeguards were taken to avoid adverse environmental impacts in accordance with 2 S.C. Code Ann. Regs. 30-11(B)(9) (2011);

3. Whether DHEC appropriately evaluated the cumulative effects of the project in accordance with 2 S.C. Code Ann. Regs. 30-11(C)(1) (2011) and the CMP;

4. Whether DHEC evaluated the project to determine whether the plans proposed were submitted in a piecemeal fashion in violation of 2 S.C. Code Ann. Regs. 30-11(C)(2) (2011); and

5. Whether the impacts from the permitted project on adjacent property owners are in violation of 2 S.C. Code Ann. Regs. 30-11(B)(10) (2011).

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of persuasion of the parties, I make the following Findings of Fact by a preponderance of the evidence:

Background

CWS is an agency of the City of Charleston created by statute and provides wastewater treatment service to a population of over 150,000 customers in the greater Charleston, South Carolina area. CWS has a statutory mandate pursuant to S.C. Code Ann. § 5-31-10 et seq. to effectively manage their wastewater collection system and their treatment facility. Wastewater in the Charleston area is collected and treated by CWS at CWS' Plum Island Water Pollution Control Plant (Plum Island).[2] Plum Island has been in operation since 1971 and functions as a

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review or to ask the court to decide an issue which has been raised but not ruled upon, they "may not be used to relitigate old matters."). I did not address those arguments.

[2] In 1967, the State of South Carolina granted to the City of Charleston by 1967 Act No. 674 approximately 76 acres of tidelands surrounding Plum Island. The Act states in particular:

> ...upon the approval of this act, all right, title, interest and estate of the State of South Carolina of, in and to the area above described shall vest in the City Council of Charleston, its successors and assigns, in fee simple, and the interest herein conveyed shall be subject to the **absolute control** of the City Council of Charleston.

(emphasis added). In 1981, title to the above-referenced property was transferred from the City of Charleston to CWS.

regional wastewater treatment facility, as it treats and discharges wastewater from areas in Charleston County beyond the corporate limits of the City of Charleston. It is approximately 20 acres in size and is surrounded by critical area salt marsh on the south side of the Ashley River. CWS owns and operates Plum Island, which currently has a permitted capacity of 36 million gallons per day (MGD). All of the wastewater generated in the City of Charleston and in other surrounding areas[3] is treated to a secondary level at Plum Island and discharged into Charleston Harbor.

The wastewater from the West Ashley area of Charleston is transported to Plum Island by the West Ashley Interceptor System (Tunnel System). The Tunnel System which serves approximately 100,000 individuals consists of an excavated tunnel of approximately 8,000 linear feet, located over 100 feet below ground elevation with a 30-inch concrete interceptor, or carrier pipe, located within the tunnel. However, the Tunnel System is in such deteriorating condition that it faces an emergent threat of failure. The interceptor pipe has a limited capacity and CWS has discovered failures in the pipe which has caused sanitary sewer overflows in the West Ashley area. Should this portion of CWS' wastewater tunnel system fail, not only would thousands of individual customers lose wastewater service, but a potential catastrophic impact to the environment could result from untreated wastewater discharges or overflows.

The condition of the Tunnel System is thus endangering the public health and safety for the entire West Ashley Service Area. Therefore, in the late 1980s, CWS began implementing, with the Department's approval, a six-phase plan to replace the existing wastewater tunnel systems within CWS' service area. The most critical phases of the plan were implemented first. The Harbor Tunnel (Phase I) was completed in 2002. The Ashley River Tunnel (Phase II) was completed in 2006. The Cooper River Tunnel (Phase III) was completed in 2007. The Daniel Island Tunnel (Phase IV) was completed in 2008.[4]

CWS is now in the process of implementing Phase V of the six-phase tunnel plan. Phase V, which is estimated to cost approximately $51 million, consists of

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[3] Plum Island also receives wastewater from the James Island Public Service District and the Towns of Hollywood, Meggett, Ravenel, Folly Beach, as well as portions of the former St. Andrews Public Service District.

[4] The Daniel Island Tunnel phase was not a replacement, but a new tunnel installation for expansion of CWS' service area. Phase VI will be an extension of the to be installed new West Ashley tunnel.

pg 30 of 35

- replacement of the Tunnel System serving the West Ashley Service Area (which has been separately permitted by DHEC),
- installation of a new Influent Pump Station to be located on the western side of Plum Island, and
- installation of the force main to transfer wastewater from the IPS along the southern boundary of Plum Island to the existing headworks on the eastern side of Plum Island.

All three of these component pieces are necessary to replace the existing Tunnel System.

As part of this larger replacement project, CWS has received the Permit to install a 48-inch force main pipeline (Force Main) in the critical area salt marsh outside the existing southern high ground boundary of Plum Island, but within the property owned by CWS. Petitioners object to that installation.[5]

Critical Area Permit

The wastewater which will be brought via Tunnel System replacement system from the West Ashley service area to Plum Island terminates at the Influent Pump Station. The Pump Station will pump the wastewater to the headworks of the wastewater treatment facility through the 48-inch Force Main.[6] The wastewater will then be pumped in a southerly direction through the trenched portion of the Force Main. The Force Main is designed to make a 90-degree turn and run elevated through the critical area in an easterly direction. The Force Main would then make a 90-degree turn and run to the headworks of the Plum Island facility.

The Permit at issue in this case authorizes approximately 850' of the Force Main to be located within the critical area. Approximately 140' of the Force Main will be installed in the critical area subsurface through trenching, with the remainder of the Force Main located in the critical area being aerial pile supported. There is no placement of fill material in critical area marsh associated with this permitted project, and the Permit requires all areas of disturbed marsh

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[5] Petitioners are also concerned about a possible future expansion of the high ground footprint of Plum Island, which is contemplated in CWS' long-term master planning documents. However, CWS clearly established that the need for future applications to place fill material in the marsh are speculative at this point. The evidence reflects that there will be no need to expand the footprint of Plum Island for as many as 20 years from now. Furthermore, under current laws, any expansion of the high ground footprint of Plum Island will require its own state and federal permits. Therefore, I undertake my analysis only of the proposed Force Main construction and will not conduct an evaluation of the merits of expanding the footprint of Plum Island; that issue is not before me. I will, however, address the Petitioners' contention that DHEC should have evaluated the merits of a potential future fill project in the context of their analysis of the cumulative effects of the proposed Force Main.

[6] A force main is a pressurized pipeline, whereas a gravity line flows by gravity.

to be returned to their current conditions and replanted where necessary. The realignment of power utility poles is also a permitted aspect of the project for which there has been no objection by Petitioners. The total area of authorized temporary wetland disturbance is 3.16 acres. This acreage constitutes the critical area marsh that will be located in the construction corridors and that may be temporarily impacted.

Feasibility of Force Main Route

Routing the Force Main from the Pump Station to the wastewater headworks involves a myriad of considerations. These considerations must be made in keeping with the requirement that the force main's alignment must avoid the critical area to the "maximum extent feasible."[7] Out the outset, the court recognizes that Plum Island is a unique facility. It is a wastewater treatment facility located on an island approximately 20 acres in size which is a regional treatment plant for the Charleston area serving over 150,000 customers. In fact, development of the island to meet the projected flows up 54 MGD may potentially necessitate placing fill material in the critical area to expand of the high ground footprint of the island.

In determining the needs of its wastewater system, and in particular Plum Island, CWS must plan well in advance of current needs. Accordingly, CWS has long-term plans that project and plan as much as 25 to 50 years into the future. Such long-term planning is a necessary and prudent component of operating a publicly-owned wastewater treatment facility. CWS most recent projection, the 2010 Master Plan Update, projects that Plum Island will need to process 42 MGD by 2035 and 54 MGD, by 2060.[8] Furthermore, the 2010 Siting Evaluation recommended CWS treat all wastewater at Plum Island and, if necessary, expand the high ground footprint of Plum Island for this purpose.

CWS analyzed and presented to this Court three potential options for routing the Force Main from Pump Station to the wastewater headworks.[9] The feasibility of those options is

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[7] See 2 S.C. Code Ann. Regs. 30-1(23) (2011) and 2 S.C. Code Ann. Regs. 30-12 (D)(2) (2011) as explained below.

[8] CWS typically re-evaluates its long-term plans every five years. The need for regular re-evaluation arises due to the dynamic nature of wastewater treatment. Water usage rates, regulatory requirements, growth projections and technology change frequently. Accordingly, those needs as stressed by Petitioners could be reduced in the future. However, those needs could just as likely occur more rapidly as well.

[9] Notably, Petitioners did not present any other alternative option. They rather challenged the feasibility of Option 3 asserting that Option 1 or 2 were better alternatives.

pg 50 of 25 SCD

addressed below, including "consideration of factors of environmental, economic, social, legal and technological suitability of the proposed activity and its alternatives." S.C. Code Ann. Regs. 30-1(D)(23). The feasibility of routing the Force Main in this case must also consider the future flow projections to the Plum Island Facility as well as:

- the cost of the potential options to the taxpayers,
- the risk associated with inspecting the force main,
- the ability to inspect the force main, and
- the urgency of replacing a system that presents a potential ominous environmental impact if it fails.

Option 1

The first Option is to construct a 900' tunnel approximately 120' below Plum Island through the use of a roadheader, digger shield or handmine operations. The tunnel would contain the 48-inch force main. The tunnel would consist of a 12-foot diameter tunnel portion and two vertical shafts, one at each end of the tunnel portion. One vertical shaft would be a part of the Pump Station. The second vertical shaft would bring the force main to the surface of Plum Island near the eastern side and would require that the force main be grouted in place, which would result in only one point of access for inspection, maintenance and repair. Once at the surface, a portion of the force main would be located near the surface to connect with the existing headworks of the facility.

Option 1 would be the shortest route from the new Pump Station to the headworks of Plum Island. Importantly, it would avoid, to a large extent though not entirely, conflict with existing facilities. It would also have limited socioeconomic impact to neighboring property owners, as well as having minor environmental impacts because there would be no direct impacts to the marsh from the force main itself.[10]

However, Option 1 presents distinct and overriding disadvantages. As set forth below, it involves the construction of a large diameter tunnel approximately 120' below ground surface with the installation of a 48-inch force main within that tunnel. It would be drilled through an

[10] Petitioners' expert testified that Option 1, in his opinion, would be **possible** to construct. However, Mr. Strickland did not discount the disadvantages of Option 1. Moreover, he is not a tunnel engineer and has never designed a pipeline located within a tunnel.

pg 6 of 25 SCD

underlying layer of rock called "marl." An additional vertical shaft would have to be constructed to allow for conveyance of the wastewater from the tunnel to the surface. Though this option would allow inspection of the Force Main, it would nevertheless be difficult to inspect and maintain because only one shaft would be available for access and inspection. Due to the requirement that the second shaft be fully grouted, inspection and maintenance of the entire length of the tunneled would have to occur through that single point of access that is approximately **120'** below ground surface. In the event of a failure of the Force Main, it would be very difficult to repair. The inspection and maintenance area within the tunnel would be considered a "confined space,"[11] which would mean additional regulatory requirements for CWS and would present health and safety risk for CWS employees.

The near surface portion of Option 1 would also conflict with certain existing facilities and planned replacement facilities which would be needed only to reach a capacity of 42 MGD. Those facilities would need to be relocated.

Significantly, Option 1 would be much more expensive—costing an estimated 6.4 million dollars. That cost would exceed the construction cost of Option 3 by approximately 2.6 million dollars. Moreover, the construction time for Option 1 is the greatest of all the options. This is a great concern due to the emergent need for the Tunnel System replacement.

Therefore, I conclude Option 1 is not reasonable or practicable. In sum, as testified by Mr. Farmer "there were more negative disadvantages to option one than there were to option three."

Option 2

The second Option is to install a force main within the existing high ground footprint of Plum Island. This option offered two potential installation methods: buried and pile supported. Option 2 did not consist of a specific route but looked for any on-island routing that would be

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[11] A "confined space" is a concept or term employed in OSHA regulations. A confined space is generally described as a space which has limited or restricted means for entry or exit, and it is not designed for continuous employee occupancy. Confined spaces include, but are not limited to underground vaults, tanks, storage bins, manholes, pits, silos, process vessels, and pipelines. OSHA regulated confined spaces typically have one or more of the following characteristics: contains or has the potential to contain a hazardous atmosphere; contains a material that has the potential to engulf an entrant; has walls that converge inward or floors that slope downward and taper into a smaller area which could trap or asphyxiate an entrant; or contains any other recognized safety or health hazard, such as unguarded machinery, exposed live wires, or heat stress. See United States Dept. of Labor, OSHA online, www.osha.gov/SLTC/confinedspaces/.

pg 74-25 500

reasonable and practicable and would meet the project purpose.[12] With Option 2, the primary objective is avoiding existing and future facilities.

Addressing first a buried Option 2, it would have several disadvantages. First, the soil conditions on Plum Island would be difficult to sustain installation of a force main due to poor bedding conditions. Option 2 would therefore need to be structurally supported within the soil which will widen it footprint increasing its conflict with existing facilities. Second, the underground Option 2 would create difficulties of inspection, repair and maintenance of the force main once installed. A force main functions differently than a gravity main. A force main is a pressurized pipeline, whereas a gravity line flows by gravity. There is an increased need to regularly inspect a pressurized pipeline so that minor leaks or corrosion can be addressed before they occur or become significant.

Furthermore, with any version of Option 2, the primary disadvantage is the inability to avoid affecting existing or future facilities. CWS was unable to find an option that met those assumptions and constraints. There are simply not many places to get around existing tankage, aeration basins, clarifiers, headworks facilities, and buildings. Option 2 would thus constrict CWS' ability to utilize the existing high ground footprint to replace the aging existing facilities. It would also limit CWS' ability to construct new facilities.

Plum Island can be expanded to meet the anticipated 42 MGD within its existing footprint. However, that footprint does not include either an above ground or below ground force main traversing the property. This conflict would be even further exacerbated if the on-island force main were a structural support platform. A structural support platform for the pipe would be much wider than 48 inches and would take up a considerable corridor of existing high

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[12] Since CWS was unable to find a viable route, the force main route presented as Option 2 was conceptual in nature. On the other hand, Petitioners' expert, Mr. Strickland, testified he believed Option 2 "can be accomplished" based upon existing conditions. However, the countering evidence in the record reflects this is not reasonable or practicable. Moreover, I gave Mr. Strickland's opinion little weight. He has no familiarity with the existing above-ground and below surface facilities on Plum Island, and therefore could not accurately opine as to whether this Option would be feasible. In fact, Mr. Strickland has never designed a publicly owned treatment works facility, nor has he designed a force main of this size. The wastewater collection systems and pump stations Mr. Strickland has designed are of a significantly smaller scale and different type than the CWS system at issue herein. Without an intimate working knowledge of the facility, he was merely relying on drawings depicting existing conditions that did not provide enough information to substantiate his opinions regarding the practicality of a proposed capital project on Plum Island.

pg 8 of 25 500

ground. In fact, both Ken Hill[13] and DHEC employee, David Thompson, explained that Option 2 would probably affect the utility's ability to build the structures that it needs get to 42 MPG.[14] Clearly, it would absolutely restrict CWS's ability to maintain a flow of 54 MPG. Therefore, if the force main is placed on-island, in order to expand the utility with the needed facilities, the Force Main would either have to be removed, or fill material would have to be placed in the critical area. To the contrary, if the Force Main is not placed on the existing footprint, a costly removal of the force main or additional fill of the marsh would not be necessary to compensate for the existing high ground lost due to the presence of the force main on-island.

Obviously, filling the marsh would have a much greater environmental impact than any other option. Furthermore, moving the Force Main and most likely placing it in the very position currently proposed in Option 3 would also have significant ramifications. Moving the force main would be very problematic because existing structures, including the force main, would have to remain operational during construction. This would create more logistical difficulties for the utility. In addition, location of the force main on-island would require CWS to expend significant funds and time to remove and relocate the force main in order to facilitate necessary expansion of the high ground footprint of Plum Island. The unreasonableness of the expenditure of those public funds is magnified by the fact that the need to move the Force Main appears inevitable.

Option 2 is therefore not reasonable or practicable and does not accomplish the project purpose as it is not consistent with CWS' existing and future operational requirements.

Option 3

Option 3, also referred to as the "boundary route," was ultimately chosen by CWS and approved by the Department. It consists of a near surface force main routed around the southern perimeter of the existing high ground of Plum Island but within property owned by CWS. The overall length of the pipeline would be 2,150' with approximately 140' buried in the marsh and

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[13] Mr. Hill is the Chief Executive Officer of CWS and is a licensed professional engineer. Mr. Hill also holds a wastewater collection systems operator's license, which he obtained in 1991. He was qualified as an expert in environmental engineering with an expertise in wastewater collection and conveyance, design, operation and management. I gave his opinions great weight.

[14] Petitioners assert that Mr. Hill was unable to offer any specific conflicts that will occur with the Plant's upgrade to 42 MGD. However, in responding whether Option 2 route conflicts with the Plant's upgrade to 42 MGD Mr. Hill explained that in all likelihood there would be a conflict and therefore the Force Main would have to be moved.

pg 9 of 25 SCA

another 710' elevated over the marsh.[15] The concept of boundary routing was employed "to develop a route that would avoid future plant expansion and existing buried conflicts without the construction and maintenance difficulty and high cost of tunneled construction."

Option 3 offers several distinct benefits. It obviously is technologically simpler than a tunneling option. More importantly, Option 3 would not conflict with any existing structures on Plum Island and would allow CWS to maximize use of its existing high ground when CWS increases its plant flow capacity. Furthermore, though a significant amount of the pipeline is to be buried by either open-cut installation or with structural support, the remaining 710' will be structurally elevated. The benefits of an aerially supported installation method include visibility for detection of leaks, ease of inspection, maintenance and repair, reduced construction time and reduced construction costs. Further, the aerially supported installation has fewer environmental impacts from construction than any buried alternative installation.

Option 3 has the lowest capital and design cost of all the options considered. It also has the shortest construction time of all the Options. This factor is very significant given the deteriorating state of the existing West Ashley Tunnel System. Finally, the boundary route would also allow for consistent operation of the utility facility during the construction of the force main.

Nevertheless, Option 3 does have feasibility disadvantages.

Environmental Impacts

Option 3 will have a greater environmental impact to the critical area than Option 1 and, in the short-term, would have a greater environmental impact than Option 2. Nevertheless, the environmental impacts of Option 3 would be very minimal. The square footage of the pilings to be located in the critical area for Option 3 would total only 140 square feet. Despite any temporary impacts to the marsh in installing those pilings, the marsh would restore itself within two to three years. The impacts from the pilings would be no more than the impacts from a residential private recreational dock and would have no long-term negative impact on the marsh. Likewise, the shading impacts from Option 3 and the Force Main would be insignificant.

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[15] Though trenching the entire length of the force main was considered, CWS concluded that trenching would be more disruptive from an environmental perspective, it would take a longer period of time to install, and maintenance, inspection and repair would be impaired due to the inability to visually inspect the force main in order to detect corrosion and small leaks before they occur or become severe.

pg 10 of 25 SCD

Petitioners also emphasized potential environmental impacts resulting from the rise of sea levels, wind damage[16] and the potential corrosion to a potential stainless steel pipeline. However, those concerns proved to be *de minimus*. For instance, Petitioners' expert, Dr. James T. Morris speculated that the sea level would be three feet higher in 100 years. That opinion was based upon his belief that various events which may or may not occur (or which may or may not occur to the degree he hypothesized) will indeed occur. Furthermore, there is no evidence that CWS could not simply raise the height of the elevated structure to offset the rise of sea level.

Dr. Morris expressed concern that chromium oxide could negatively affect the marsh environment from the potential use of a stainless steel pipeline.[17] Though CWS has not made a final decision on the materials to be used for the Force Main, both ductile iron and stainless steel were considered. CWS conducted a materials analysis for both of those potential pipeline materials. In particular, there are different grades of stainless steel and each has varying properties and react differently to environmental surrounding. After input from The Nickle Institute, CWS' engineer determined that if CWS uses a stainless steel pipeline it will use a 316L grade of stainless steel which is very suitable in a marsh environment.[18]

Dr. Morris also postulated that the proposed permit "will facilitate the expansion of the plant" into the salt marsh. As explained below, not only is that supposition dependant upon proper permitting, I find his assertion to be inaccurate. Placing the Force Main along the proposed boundary of the property does avoid an alignment that would interfere with a possible expansion of the facility that would indeed require filling a portion of the marsh. However, that expansion would specifically require an environmental permit authorizing such fill. Moreover, as explained above, if Option 2 is utilized as suggested by Petitioners, future expansion of the

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[16] Petitioners offered testimony about the possibility of a boat being driven into the pipeline by a hurricane. I found that evidence to be speculative and its probative value to be negligible. Furthermore, Petitioners offered no evidence that the pipeline could not withstand that conjectural event. To the contrary, the structure was designed beyond the standards of the South Carolina Building Code the 2006 International Building Code and the 2005 American Society of Civil Engineers Design of Buildings and Other Structures taking into account wind loading, seismic events, wave action, and poor soil conditions. More specifically, it was designed to withstand a wind force of beyond 135 miles per hour.

[17] Importantly, though I qualified Dr. Morris as an expert in biological and marine sciences, Dr. Morris does not possess any expertise in engineering, metallurgy, pipeline design, corrosion or materials science. Dr. Morris also does not have any expertise in design codes relevant to the permitted Force Main. In fact, he has never visited Plum Island or the project site.

[18] If ductile iron pipe is used, it would have an exterior coating, such as a bitumastic coating, which would also protect the pipe from corrosion.

pg 110825 SCD

facility to accommodate the expected increase in wastewater flow would either require the Force Main to be removed and placed in the proposed location or place the same if not a greater amount of fill material in the critical area in the future.

Accordingly, the environmental impacts of this project would be very minimal.

Impacts on Adjacent Property Owners

Another feasibility factor is social suitability. See 2 S.C. Code Ann. Regs. 30-1(D)(23) (2011). Petitioners are property owners in Harbor View Circle, which is a subdivision located on James Island and connected to Plum Island by a causeway owned by CWS. They contend that the pipeline will spoil their view of the marsh—transforming an unobstructed marsh view into an industrial-looking site. They also argue that that the pipeline will decrease their property values; embarrass them and decrease their enjoyment of their property[19], and cause stress over fears of a potential sewage leak.[20]

Although the Court acknowledges that Option 3 will have the most significant social impacts of the three options, it concludes that those societal impacts will be very small. As noted above, Petitioners' fundamental objection to the installation of the Force Main relates to view. This concern is raised despite clear evidence that the only Petitioners who will be able to noticeably see the Force Main from their property are Drs. Shatilla and Moustafa.[21] However, even Drs. Shatilla and Moustafa do not have an unobstructed view of the marsh adjacent to their property. Rather, their private recreational dock partially obstructs their view of Plum Island and the marsh.

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[19] For instance, Petitioner Rod Connell testified that the installation of the Force Main would affect every aspect of his life on Harborview Circle. Barbara Connell also testified that she would be so embarrassed by the look of the Force Main and that she would not want to entertain anymore.

[20] Dr. Maggie Shatilla testified via deposition in lieu of her live testimony. She objects to the Force Main in part based upon a fear of pipe failure. However, her fears were not substantiated by probative evidence. Therefore, this concern will not be addressed further.

[21] Petitioner Rod and Barbara Connell's property is located on the northern side of the causeway. Portions of Plum Island can be seen from the Connells' house, but the area surrounding his house is heavily vegetated. The photographs of the area in the record demonstrate that the majority of Plum Island is not immediately within his view corridor and the existing vegetation makes Plum Island less visible. Thus, if the Force Main is constructed as permitted, the Connells will not be able to discernibly see the Force Main from their house. Moreover, the Connells can clearly see the James Island connector from their home which they do not claim diminishes their view of the marsh or is "industrial-looking."

Similarly, Mr. Edward Steers view corridor does not include Plum Island, though Mr. Steers testified if he walks out into the marsh, it is visible. However, Mr. Steers can also see the Shatilla/Moustafa dock in addition to the treatment facility when he is out in the marsh and off of his high ground property.

pg 12 of 25 SD

The remaining Petitioners complaints about viewing the force main would occur from property owned by CWS and is adjacent to the causeway leading to Plum Island. Petitioners claim when they take walks or recreate on CWS' property, they will see an "industrial-looking" pipe in the marsh and this installation will impact their quality of life on Harborview Circle. For instance, Mr. Steers testified that he utilizes the CWS property directly adjacent to the causeway for recreational purposes. He testified he takes his grandchildren to play there on a regular basis. He stated that his view from that property would be diminished because the Force Main will "give [Plum Island] an industrial look that it doesn't have right now."

Significantly, the Petitioners viewing of the Force Main would occur from property owned by CWS. Moreover, the Force Main would be installed in the context of an existing wastewater treatment facility. All of the Petitioners purchased their property over two decades subsequent to the initial construction of Plum Island and with full knowledge of the existence of Plum Island. Plum Island is an industrial complex consisting of several large buildings between 35' and 50' in height. Furthermore, the ground level of Plum Island is approximately 12' above mean sea level. Notably, as constructed, the top of the Force Main would be approximately 12' above mean sea level—the same as the ground level. I therefore find that the location of the permitted Force Main will not materially alter the Petitioners' existing views of Plum Island.

Petitioner Rod Connell and Dr. Shatilla also testified that the value of their property would decrease as a result of the installation of the Force Main as permitted. Similarly, Edward Steers testified that he was fearful that his property value would decrease as a result of the installation of the Force Main. However, even if Petitioners' property values on a different island are pertinent to this determination, the evidence did not establish that their property would be diminished by the installation of the Force Main via Option 3. Other than Petitioners' concerns, there is no evidence in the record that proved that any of the Petitioners' property value will decrease due to the construction of the Force Main. These concerns are made even more conjectural in light of limited view of a Force Main located a significant distance from their homes.

Conclusion

Option 3 does not conflict with existing or future structures. Thus, should CWS seek approvals in the future to implement the Master Plan Update for expansion of Plum Island, the force main would not have to be relocated. Option 3 is also reasonable and practicable and

pg 13 of 25 SCD

meets the project purpose as identified by CWS. In sum, the definition of "feasibility" includes a wide variety of factors. As explained, by Jeff Thompson, DHEC Wetland Project Manager, "reasonableness" was considered to be a significant factor in this evaluation. I therefore find that Option 3 avoids the critical area to the maximum reasonable degree in keeping with Regulations 30-1 (23) and 30-12 (D)(2).

Cumulative Effects

As explained below, 2 S.C. Code Ann. Regs. 30-11(C)(1) (2011) requires DHEC to be guided by "[t]he extent to which long-range, cumulative effects of the project may result within the context of other possible development and the general character of the area." Here, Plum Island is a unique facility and is a uniquely located wastewater treatment facility. The area west of the Ashley River along Harborview Road is almost entirely developed. It is highly unlikely that as a result of this project, other wastewater treatment facilities or development will be brought to this area.

Petitioners allege that a cumulative effect of this project is the possibility of the CWS facility being expanded and thus the need to expand the high ground footprint of Plum Island by placing additional fill in the marsh. However, the Force Main is not directly associated with the future plans to place fill material in the critical area. Moreover, expansion of the footprint of Plum Island is not a foregone conclusion.[22] Though CWS had taken initial steps towards evaluating the practicality of applying for a permit to fill wetlands for future expansion of Plum Island based on the 2010 Master Plan Update, CWS has not made any final decisions about when or whether it will seek a permit to place fill material in the critical area for expansion of the high ground footprint of Plum Island. With the approval of Option 3, Plum Island has sufficient high ground to be able to handle flows up 42 MGD, an average flow which is currently projected not to occur until 2035—23 years from now. Moreover, as addressed above, if the force main is placed on-island pursuant Option 2, the Force Main would either have to be removed and placed in the proposed location, or a greater amount of fill material would have to be placed in the critical area. Therefore, the choice of Option 3 may have less cumulative impacts to the critical area.

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[22] Obviously, it would be premature to require CWS to submit an application or detailed information regarding speculative plans to expand the high ground footprint of Plum Island because the need for any potential fill for expansion of the high ground of Plum Island would not arise for 20 to 30 years.

pg 14 of 25 SCD

The evidence therefore did not establish that this project should not be approved because of potential "long-range, cumulative effects."

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, I conclude the following as a matter of law:

Jurisdiction and General Principles

This Court has subject matter jurisdiction in this case pursuant to S.C. Code Ann. § 1-23-600(A) (Supp. 2011) and S.C. Code Ann. § 44-1-60(F)(2) (Supp. 2011). The hearing before the ALC is a contested case hearing in which the Court serves as the finder of fact and makes a *de novo* determination regarding the matters in controversy. See S.C. Code Ann. § 1-23-600(B) (Supp. 2011); Brown v. S.C. Dep't of Health and Envtl. Control, 348 S.C. 507, 512, 560 S.E.2d 410, 413 (2002); see also Marlboro Park Hosp. v. S.C. Dep't of Health and Envtl. Control, 358 S.C. 573, 579, 595 S.E.2d 851, 854 (Ct. App. 2004). Nevertheless, while the ALC acts as the fact finder, it is required to give consideration to the provisions of S.C. Code Ann. § 1-23-330 (2005)[23] regarding the Department's specialized knowledge in environmental matters. See § 44-1-60(F)(2). Moreover, the ALC must give the same deference to the Department's interpretation of its statutes and regulations that a court in the judicial branch would. Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, No. 27065, 2011 WL 5840326, at *2 (S.C. Nov. 21, 2011), reh'g granted Feb. 3, 2012 (Shearouse Ad. Sh. No. 5 at 3).

The standard of proof in this proceeding is a preponderance of the evidence. See Anonymous (M-156-90) v. State Bd. of Med. Exam'rs, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1998) (stating that the standard of proof in administrative hearings is generally a preponderance of the evidence); see also National Health Corp. v. Dep't of Health and Envtl. Control, 298 S.C. 373, 380 S.E.2d 841 (Ct. App. 1989) (referencing the use of the preponderance of the evidence standard in contested case proceedings involving the Department). Furthermore, the burden of proof is upon the party asserting the affirmative of an issue and, therefore, Petitioners bear the burden in this case of proving that the Department's decision was in error under the statutory and regulatory standards. See Young v. S.C. Dep't of Health & Envtl. Control, 383 S.C. 452, 459, 680 S.E.2d 784, 788 (Ct. App. 2009) ("Young did not meet his burden to show OCRM

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[23] Section 1-23-330 provides that in contested cases, "[t]he agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence." S.C. Code Ann. § 1-23-330(4) (2005).

pg 15 of 25 SCD

disregarded the relevant statutory prerequisites when it considered the Millers' application."); Leventis v. Dep't of Health and Envtl. Control, 340 S.C. 118, 133, 530 S.E.2d 643, 651 (Ct. App. 2000) ("Both Laidlaw and Sierra Club petitioned for review and thus both bore a burden of proof."); see also Alex Sanders, et al., South Carolina Trial Handbook § 9:3 (1999) (holding that in civil cases, the burden of proof generally rests upon the party who asserts the affirmative on an issue).

Permits for construction in the coastal zone are governed by what is commonly referred to as the Coastal Zone Management Act, S.C. Code Ann. §§ 48-39-10 to -360 (2008 & Supp. 2011) (CZMA or the Act), and the regulations promulgated pursuant to the Act: 2 S.C. Code Ann. Regs. 30-1 to -21 (2011). Those regulations govern the management, development, and protection of the critical areas and coastal zone of this State. The Department's Office of Ocean and Coastal Resource Management is charged with carrying out South Carolina's coastal zone policies and issuing permits in the critical areas of the coastal tidelands and waters. See 2 S.C. Code Ann. Regs. 30-4(C) (2011); S.C. Coastal Conservation League v. S.C. Dep't of Health and Envtl. Control, 363 S.C. 67, 74, 610 S.E.2d 482, 485 (2005).

The CZMA requires a critical area permit prior to utilization of the "critical area." S.C. Code Ann. § 48-39-130(A) (2008). "Critical area" is defined as coastal waters, tidelands, beaches, and the beach/dune system. S.C. Code Ann. § 48-39-10(J) (2008). "Coastal waters" are defined as "the navigable waters of the United States subject to the ebb and flood of the tide and which are saline waters, shoreward to their mean high-water mark." S.C. Code Ann. § 48-39-10(F) (2008). "Tidelands" are defined to include "all areas at or below mean high tide . . . ." S.C. Code Ann. § 48-39-10(G) (2008). In the present case, 850 feet of the structure CWS is proposing to construct falls within critical area salt marsh.

In addition to setting forth critical area permit requirements, the CZMA requires the Department to certify all state and federal permits for consistency with the CMP. S.C. Code Ann. § 48-39-80(B)(11) (2008). Although the CMP has neither been codified nor made part of a DHEC regulation, it has been applied and enforced by this State's highest courts.[24] See, e.g.,

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[24] In Brown v. S.C. Dep't of Health & Envtl. Control, 348 S.C. 507, 560 S.E.2d 410 (2002), the South Carolina Supreme Court discussed the origin of the CMP, stating in part:

> Under the Coastal Zone Management Act, one of the South Carolina Coastal Council's (OCRM's predecessor) duties was to develop and administer a Coastal Management Program (CMP). . . . The CMP was published as a special edition of the State Register . . . and is reflected in the "CMP

pg 16 of 25 SCD

S.C. Wildlife Federation v. S.C. Coastal Council, 296 S.C. 187, 371 S.E.2d 521 (1988) (reversing a coastal zone consistency certification decision due to a violation of the CMP's wetland policies); DuRant v. S.C. Dep't of Health and Envtl. Control, 361 S.C. 416, 604 S.E.2d 704 (Ct. App. 2004) (affirming a denial of dock permit based in part on the CMP's designation of the site as a Geographic Area of Particular Concern).

Feasible Alternatives

Regulation 30-12(D) and the CMP

Petitioners contend that DHEC's decision is inconsistent with the standards contained in Regulation 30-12(D) and the CMP because Options 1 and 2 present feasible alternatives to Option 3 and, unlike Option 3, they avoid having the force main cross the critical area. I disagree.

Regulation 30-12(D) which governs the installation of cables, pipelines and transmission lines in critical areas provides that:

> In addition to the standards for dredging and filling, the following standards are applicable:
>
> (a) **To the maximum extent feasible, alignments must avoid crossing the critical areas;**
>
> * * *
>
> (d) Wherever feasible, all excavations in wetland areas must be backfilled with the excavated material after installation of the appropriate structure, while being careful to maintain the original marsh elevation. In addition, excavated material must be stockpiled on highground whenever feasible;
>
> * * *
>
> (f) Alignments of new projects should be designed to utilize existing rights-of-way and topographic features, wherever feasible. . . .

2 S.C. Code Ann. Regs. 30-12(D)(2)(a),(d) and (f) (2011) (emphasis added). Similarly, the CMP states that the construction of sewage treatment structures "in productive salt, brackish or freshwater wetlands will not be approved where feasible alternatives exist." CMP III-61 at (1)(c).

The term "feasible" is defined in the CZMA regulations as follows:

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document." "Refinements" to the CMP document appear in the State Register. These refinements were approved by the General Assembly and Governor.

Id. at 516-17; 560 S.E.2d at 415 (citations omitted).

pg 17 of 25 SCD

> Feasible (feasibility) – as used within these rules and regulations (e.g., "unless no feasible alternative exists,"), feasibility is determined by the Department with respect to individual project proposals. Feasibility in each case is based on the best available information, including, but not limited to, **technical input from relevant agencies with expertise in the subject area, and consideration of factors of environmental, economic, social, legal and technical suitability of the proposed activity and its alternatives. Use of this word includes, but is not limited to, the concept of reasonableness and likelihood of success in achieving the project goal or purpose.** "Feasible alternatives" applies both to locations or sites and to methods of design or construction, and includes a "no action" alternative.

2 S.C. Code Ann. Regs. 30-1(D)(23) (2011) (emphasis added).[25] Thus, in determining feasibility, this Court must consider the "technical input from relevant agencies with expertise in the subject area" as well as the "reasonableness" of proposed alternatives, including the reasonableness of taking no action. Regs. 30-1(D)(23). Moreover, the Court must weigh not only environmental factors, but also factors relating to the economic, social, legal and technical suitability of the proposed activity and its alternatives. Id.

Here, based upon the evidence presented at the hearing, I conclude there is no feasible alternative to Option 3. Given the vital need for the proposed project, taking no action is not a feasible option. As discussed above, the Tunnel System faces a real threat of failure, which could cause serious adverse effects to the environment.

Although two alternatives (Options 1 and 2) were presented that would avoid crossing the critical area, both have serious drawbacks. As discussed above, the disadvantages of Option 1 include: (1) difficulty in inspecting and maintaining a large portion of the force main, which would be buried 120' below Plum Island; (2) necessary relocation of certain existing facilities and planned replacement facilities; (3) millions of dollars in higher costs; and (4) a lengthier construction time and the resulting delay in the much needed replacement of the Tunnel System. In light of these substantial disadvantages, I conclude that Option 1 is not "feasible" within Regulation 30-1-(D)(23)'s definition of that term or the CMP's nearly identical definition.

Option 2 likewise has considerable drawbacks which effectively render it unfeasible. These disadvantages include: (1) difficulties in inspection, repair and maintenance of the force main if installed underground; (2) constrictions on CWS' ability to utilize the existing high

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[25] The Glossary of the CMP includes a virtually identical definition of "feasible."

pg 18 of 25 SCD

ground footprint to replace the aging existing facilities; and (3) limitations on CWS' ability to construct new facilities.

Although Petitioners' expert, Mr. Strickland, testified he believed Option 2 could be accomplished, I find Mr. Strickland's opinion is entitled to little weight. "Expert opinion testimony is ordinarily to be considered or weighed like other evidence, it falls on the trier of fact to decide whether to believe all, part, or none of an expert's testimony." 32A C.J.S. Evidence 966 (Westlaw May 2012). Although the trier of fact cannot arbitrarily disregard the testimony of experts or skilled witnesses, see id., the trier of fact may give an expert's testimony the weight he or she determines it deserves, Florence County Dep't of Soc. Servs. v. Ward, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992), and may accept the testimony of one expert over that of another, S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 221-22, 417 S.E.2d 586, 589 (1992). In weighing expert testimony, relevant considerations include the expert's experience, the expert's knowledge regarding the matter about which he testifies, the opportunity for observation or the degree of attention given to the matter, the expert's competency, and the reasoning with which the expert supports his opinion. 32A C.J.S. Evidence 969 (Westlaw May 2012). "An expert's opinion which is based on guess, surmise, or conjecture has little evidentiary value, and expert opinion evidence lacks probative force where the conclusions are contingent, speculative, or merely possible." Id.

In the present case, Mr. Strickland is not a tunnel engineer, and he has no personal working knowledge of the existing above-ground and below surface facilities on Plum Island. Moreover, Mr. Strickland has never designed a pipeline located within a tunnel, nor has he ever designed a publicly-owned treatment works facility or a force main of this size. Furthermore, in contrast to Mr. Strickland's testimony, Respondents presented expert testimony showing that Option 2 was not reasonable or practicable. Accordingly, I find that Mr. Strickland's opinion has little evidentiary value.

Furthermore, all conceptual on-island alignments of the Force Main which were identified by the parties under Option 2 were not feasible. Moreover, Petitioners' evidence suggesting Option 2 as a feasible alternative was lacking. In fact, the terms "rights-of-way" and "topographic" are mentioned only once in the record and that statement was a reference by Steve Strickland to the regulatory factors he considered in choosing the Force Main alignment in this case.

PG 190825 SCD

In their Motion for Reconsideration, Petitioners also asserted that the ALC's initial Final Decision did not address "whether the pipeline could be placed on the unoccupied outer edge of Plum Island or whether it could be placed just off the edge of Plum Island." In other words, Petitioners contend that placement of the Force Main in the critical area, though closer to the high ground perimeter of Plum Island, would be consistent with the Regulations. Interestingly, this claim is entirely inconsistent with Petitioners' case. Petitioners' case challenged whether either Option 1 or Option 2 was a feasible alternative to locating the Force Main in the critical area and, therefore, in order to be consistent with the applicable Regulations, the Force Main must avoid the critical area. Petitioners did not present any evidence that moving the permitted Force Main "closer" or to the "edge" of the island would be preferable. I therefore find that the evidence did not establish any need to locate the Force Main closer to the island. Moreover, a force main located within the critical area, whether 10 feet or 100 feet into the critical area, is subject to the identical regulatory analysis. Either the Force Main located within the critical area is consistent with the Regulations or it is not, and the evidence established that it was consistent with Regulation 30-12(D)(2).

Regulation 30-12(J)(2)(c)

Petitioners also contend that the permitted location of the Force Main is inconsistent with 2 S.C. Code Ann. Regs. 30-12(J)(2)(c) (2011). Petitioners aver that Regulation 30-12(J)(2)(c) mandates that siting of the Force Main structures "should avoid the critical area." Petitioners' contention, however, is without merit. Regulation 30-12(J)(2)(c) provides that:

> The siting of sewage treatment systems should avoid the critical areas. The location of structures other than actual pipelines, such as pump or lift stations, in critical areas will be prohibited unless no feasible alternatives exist.

In sum, Regulation 30-12(J)(2)(c) requires that the Department avoid locating sewage treatment systems in the critical area and that structures such as pump or lift stations should not be located in critical areas "unless no feasible alternatives exist."

Here, the permitted Force Main is clearly not a "waste treatment system." It also is not analogous to a pump or lift station. In fact, Petitioners offered no evidence establishing any such similarity. Rather, the Force Main is merely the "actual pipeline" that transports wastewater to

pg 20 of 25 SCD

the waste treatment system (Plum Island).[26] Regulation 30-12(J)(2)(c) excludes pipelines from its restrictions that the structure not be located in the critical area "unless no feasible alternatives exist." See Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000) ("The canon of construction *expressio unius est exclusio alterius'* or *'inclusio unius est exclusio alterius'* holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'"). Moreover, even if the terms of Regulation 30-12(J)(2)(c) applied to this pipeline, the evidence establishes that "no feasible alternatives exist" to the location of the Force Main.

Conclusion

For these reasons, I conclude that Option 2, like Option 1, is not feasible. Rather, of the three alternatives presented, Option 3 is the only one that is feasible. Therefore, I conclude that DHEC's decision does not violate Regulation 30-12(D)(2), Regulation 30-12(J)(2)(c) or the CMP.

Feasible Safeguards

Next, Petitioners argue that DHEC failed to appropriately evaluate the extent to which all feasible safeguards were taken to avoid adverse environmental impacts in accordance with Regulation 30-11(B)(9). I disagree.

Regulation 30-11(B)(9) provides that, in assessing the potential impacts of projects in critical areas, the Department will be guided by, among other things, "[t]he extent to which all feasible safeguards are taken to avoid adverse environmental impact resulting from a project." 2 S.C. Code Ann. Regs. 30-11(B)(9) (2011) (emphasis added).

Here, the evidence establishes that CWS designed the Force Main in a manner which avoids to the maximum extent feasible adverse environmental impacts. CWS employed safeguards through not only the location of the Force Main and its aerially supported installation but its design, including the construction method, the elevation of the Force Main to minimize

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[26] In a reply to CWS's Reply to the Motion for Reconsideration, Petitioners argue that the plain meaning of Regulation 30-12.J(2)(c) is that the first sentence excludes all portions of a sewage treatment facility from the critical areas, and that the second sentence provides a feasibility analysis applicable to a narrower class of structures. Quizzically, Petitioners then contend that the "specific exclusion of pipelines from the second component of J(2)(c) directly implies its inclusion in the first" and that "pipelines are explicitly excluded from this ["feasibility"] component." Thus, under Petitioners' theory, a mechanically-operated pump station which operates under pressure with numerous moving parts could potentially be located in the critical area but the pipe that is merely the conduit for the substance pumped could not be located in the critical area. This argument further begs the question: what would the purpose of a pump station be without pipelines to carry material to and from the station? Plainly put, I defenestrate Petitioners' argument.

pg 21 of 25 SCD

shading impacts, the environmental conditions which may affect the pipeline and an extensive analysis of the pipeline materials. I conclude CWS employed all feasible safeguards to minimize environmental impacts for the permitted Force Main. Though Dr. Morris testified as to the corrosive nature of the environment, his concerns about the materials proposed for the Force Main, and his concerns about the potential for sea level rise, I conclude these speculative concerns do not outweigh the testimony of CWS' engineers, who are uniquely qualified in wastewater treatment and pipeline design.

Cumulative Effects

Next, Petitioners contend that DHEC failed to appropriately evaluate the cumulative effects of the project in accordance with Regulation 30-11(C)(1) and the CMP. I disagree. Regulation 30-11(C)(1) provides:

> In the fulfilling of its responsibility under Section 48-39-150, the Department must in part base its decisions regarding permit applications on the policies specified in Sections 48-39-20 and 48-39-30, and thus, be guided by the following: . . . **[t]he extent to which long-range, cumulative effects of the project may result within the context of other possible development and the general character of the area.**

2 S.C. Code Ann. Regs. 30-11(C)(1) (2011) (emphasis added). The CMP contains a similar provision, which states that, in reviewing and certifying permit applications, consideration must be given to, *inter alia*, "[t]he possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area." CMP III-14(I)(7).

Here, as discussed in the Findings of Fact, it is very unlikely that as a result of this project, other wastewater treatment facilities or development will be brought to this area. While Petitioners argue that a potential cumulative effect of this project is the expansion of the CWS facility, which would result in the placement of additional fill in the marsh, the Force Main is not directly connected with the future plans to place fill material in the critical area. Additionally, it is not certain that the footprint of Plum Island will be expanded. CWS has not made any final decisions regarding this matter, and with the implementation of Option 3, Plum Island will have sufficient high ground to be able to handle flows up 42 MGD, an average flow which is currently projected not to occur for another 23 years. Furthermore, while Option 3 is more facilitative of a future expansion of the CWS facility than the other two options, it will not itself be the impetus for such an expansion. Rather, any future expansion of the facility will be driven by the growing

pg 22 of 25 SCD

wastewater treatment needs of the surrounding community. Accordingly, I conclude that the proposed project should not be rejected under Regulation 30-11(C)(1) or the CMP based upon potential "long-range, cumulative effects."

Piecemeal Fashion

Next, Petitioners contend that DHEC violated Regulation 30-11(C)(2) by failing to evaluate the project to determine whether the plans proposed were submitted in a piecemeal fashion. I disagree.

Regulation 30-11(C)(2) provides that the Department, in making permit application decisions, must consider "[w]here applicable, the extent to which the overall plans and designs of a project can be submitted together and evaluated as a whole, rather than submitted piecemeal and in a fragmented fashion which limits comprehensive evaluation." 2 S.C. Code Ann. Regs. 30-11(C)(2) (2011).

Here, Petitioners allege that the Department, by failing to require additional detailed information about the potential for the placement of fill material in the critical area, allowed CWS to submit a piecemeal and fragmented application. However, as noted above, expansion of the high ground footprint of Plum Island is neither inevitable nor a foregone conclusion. Therefore, I conclude the overall plans and designs of the project were submitted together and evaluated as a whole, and I find no violation of Regulation 30-11(C)(2).

Impacts on Adjacent Property Owners

Finally, Petitioners contend that the Department's decision violates Regulation 30-11(B)(10) because the permitted project affects the value and enjoyment of adjacent property owners. I disagree.

Regulation 30-11(B)(10) provides:

> In assessing the potential impacts of projects in critical areas, the Department will be guided by the policy statements in Sections 48-39-20 and 48-39-30 and the following ten considerations in Section 48-39-150: . . . **[t]he extent to which the proposed use could affect the value and enjoyment of adjacent owners.**

2 S.C. Code Ann. Regs. 30-11(B)(10) (2011) (emphasis added).

Here, Petitioners complain that the visual impacts from the Force Main will significantly impact their quality of life on Harbor View Circle. However, "interests in view alone are limited under South Carolina law." Young v. S.C. Dep't of Health & Envtl. Control, 383 S.C. 452, 461, 680 S.E.2d 784, 789 (Ct. App. 2009); see also Hill v. Beach Co., 279 S.C. 313, 315, 306 S.E.2d

pg 23 of 25 SCD

604, 605 (1983) (noting prescriptive rights to ocean views, breezes, light, and air do not exist in South Carolina). Moreover, as set forth in the Findings of Fact, the only Petitioners who will be able to actually view the Force Main from their property are Dr. Shatilla and her husband, Dr. Moustafa. Importantly, the evidence in the record shows the elevation of the Force Main, when measured against the elevations of the existing Plum Island facilities, will not significantly impact their views.

I also conclude that the remaining Petitioners' ability to see the Force Main from other areas on Harbor View Circle, such as when they recreate on CWS' property, will not impact their view. All of the Petitioners purchased their property over two decades after the initial construction of Plum Island and with full knowledge of the existence of Plum Island. As discussed above, Plum Island is an industrial complex with several large buildings between 35' and 50' in height and with a ground level 12' above mean sea level. Notably, as constructed, the top of the Force Main would be approximately 12' above mean sea level: the same as the ground level. I therefore find that the location of the permitted Force Main will not materially alter the Petitioners' existing views.

As to the impact of the proposed project on Petitioners' property values, Petitioners did not present any real estate appraisals or expert testimony to show that their property values would decrease as a result of the installation of the Force Main. Rather, Petitioners offered only their own opinions on the matter. In light of the fact that the Force Main is located a significant distance from their homes and has an insignificant impact on their views, I conclude the project will not materially impact the property values of adjacent property owners.

Given the project's minimal impact on the value and enjoyment of adjacent property owners, I find no violation of Regulation 30-11(B)(10). As our Court of Appeals has noted, "the extent to which the proposed use could affect the value and enjoyment of the adjacent landowners is but one of many factors to consider." Jones v. S.C. Dep't of Health & Envtl. Control, 384 S.C. 295, 315, 682 S.E.2d 282, 293 (Ct. App. 2009). Here, there is a pressing need for the permitted project. The Tunnel System is deteriorating and threatens to fail. Without action, untreated wastewater could potentially spill into the surrounding soil. The project is thus necessary to "protect the quality of the coastal environment." See S.C. Code Ann. § 48-39-30(A) (2008) (setting forth basic state policy); see also Regs. 30-11(B) (requiring the Department to consider the policy statements in Section 48-39-30). Furthermore, as discussed above, there

pg 240825 SCD

are no feasible alternatives to the project. In view of the foregoing, I conclude that the Department's decision did not violate Regulation 30-11(B)(10). Cf. Jones, 384 S.C. at 315, 682 S.E.2d at 293 (finding DHEC's grant of a dock permit did not violate Regulation 30-11(B)(10) where the project's impact on adjoining property owners was outweighed by the justification for granting the permit).

ORDER

For the reasons discussed above,

IT IS HEREBY ORDERED that the issuance of the Permit and Certification to CWS for the construction of the Force Main is **GRANTED**.

Ralph K. Anderson, III
Chief Administrative Law Judge

July 23, 2012
Columbia, South Carolina

EXHIBIT 2

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Rodney Connell, Barbara Connell, Edward Steers, Sally Steers, Moustafa Moustafa and Maggie Shatilla, Petitioners, vs. Charleston Water System and South Carolina Department of Health and Environmental Control, Respondents.	)	Docket No. 11-ALJ-07-0367-CC **ORDER DENYING PETITIONER'S MOTION FOR STAY**

This matter comes before the Administrative Law Court (ALC or Court) pursuant to a Motion for Stay of Amended Order and Decision filed by the Petitioners on July 30, 2012 in response to the Amended Final Order and Decision issued by this Court on the July 23, 2012. In its Final Order and Decision, this Court agreed with the decision of the South Carolina Department of Health and Environmental Control (Department or DHEC) to issue a critical area permit, Permit No. OCRM-10-169-D (Permit), and a coastal zone consistency certification (Certification) to Charleston Water System (CWS) for the construction of the Force Main, the pipeline that transports wastewater to the waste treatment system on Plum Island. For the reasons set forth herein below, this Court denies Petitioner's Motion for Stay of Amended Order and Decision.[1]

DISCUSSION

Potential Mootness of Appeal

Petitioners argue that a stay from this Court's July 23, 2012 Amended Final Order and Decision is necessary because otherwise, their case would be rendered moot, and they would be denied their procedural due process right to a "meaning judicial review of this important matter."

According to Rule 241(a), SCACR, the general rule is that "the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree

[1] Petitioners filed a Reply to Respondent CWS's Return to Motion for Stay. However, this document is improperly before the Court and, as such, will be neither considered nor addressed in this Court's decision.

or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision." As an initial matter, Rule 241(a) does not apply in this case because Petitioners have not filed a notice of appeal, which would generally be required for an automatic stay. Even if that rule were applicable, an exceptions to the general rule regarding automatic stays is "[a]ppeals from administrative tribunals as provided in S.C. Code Ann. § 1-23-380(A)(2) and § 1-23-600[(H)](5)".[2] Rule 241(b)(11), SCACR; see also S.C. Code Ann. § 1-23-610(A)(2) (2012) ("Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the administrative law judge's decision."). "An order that is not automatically stayed remains enforceable while pending appeal unless the party seeks a stay." Bakala v. Bakala, 352 S.C. 612, 631, 576 S.E.2d 156, 166 (2003). Nevertheless, the ALC has the authority to stay its final decision in a contested case. See S.C. Code Ann. § 1-23-600(H)(5) ("A final decision issued by the Administrative Law Court in a contested case may not be stayed except by order of the Administrative Law Court or the court of appeals."). Pursuant to Rule 29(E), SCALCR, the ALC may, "at any time prior to the filing of a petition for judicial review, and upon the motion of any party, with notice to all parties, . . . stay the final order upon appropriate terms."

Though Rule 241(c)(2), SCACR, would not require this matter be stayed if appealed, the language of Rule 241(c)(2) reasonably suggest that the determination of whether to grant a stay under ALC Rule 29(E) in this matter should be based upon whether "such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Indeed, "[t]he purpose of a supersedeas is to stay proceedings in order to preserve the status quo pending the determination of the appeal and to preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him." Graham v. Graham, 301 S.C. 128, 130, 390, 470 S.E.2d 469 (Ct. App. 1990) (ellipses and internal citation omitted); see also 4 C.J.S. Appeal and Error § 528 (2012) ("[I]t is an abuse of discretion to deny supersedeas where a refusal to supersede the judgment would deny the right to any appeal.").

In this case, there is no indication that Petitioners' appeal would be rendered moot in the absence of a stay. Petitioners argue that CWS has estimated that the planning and construction

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[2] S.C. Code Ann. § 1-23-600(H)(5) (2012) was formerly Section 1-23-600(G)(5). Rule 241(b)(11), SCACR, still refers to this statute using the old designation.

pg 2 of 6 SCD

of the proposed pipeline would take approximately 22 months,[3] and that the pipeline will likely be completed by the time the court of appeals decides this case.[4] Thus, Petitioners argue that they will have no remedy, their appeal will be moot, and the court of appeals will be "effectively divested of jurisdiction."[5] The blatant flaw in Petitioners contention is that the Court of Appeals would find that their contentions are meritorious, yet allow the pipeline to remain in the critical area. CWS has averred that based on the evaluations by its engineers and consultants, that if a reviewing court requires removal of the Force Main from the critical area it can remove of the Force Main and restoration of the marsh within the critical area to its original condition. Therefore, should a reviewing court ultimately conclude that the permit for the Force Main was issued in error, Petitioners will have a remedy.

Furthermore, as to Petitioners' argument concerning a lack of financial remedy for their diminished property values, this Court, in its Amended Final Order and Decision, made extensive factual findings, and concluded that this project will not materially impact the property values or enjoyment of adjacent property owners. Indeed, Petitioners presented no real estate appraisals or expert testimony of diminished property values but instead relied upon their own surmising and conjecture. Therefore, no financial remedy will be necessary to compensate Petitioners for diminished property values or enjoyment of their properties.

In short, there has not been, nor will be, any deprivation of Petitioners' due process rights, and denial of a stay will not render their appeal moot.

Undue Prejudice

Petitioners contend that since they only request that "the actual physical construction of the disputed pipeline be stayed," a stay will not unduly prejudice CWS.

"An equitable stay may be invoked if justified by circumstances which outweigh any potential harm to the party against whom it is operative. In making this determination, the court

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[3] CWS, in its Return to Motion for Stay of Amended Order and Decision, does state that "installation of the Force Main will take close to 22 months actual construction time."

[4] CWS, in its Return to Motion for Stay of Amended Order and Decision, states that "[b]ased on [its] review of recent decisions of the Court of Appeals, it takes on average approximately 30 months from the decision of the lower court to have a case decided by the Court of Appeals.

[5] It is interesting to note that Petitioners have no faith in CWS's ability to complete the West Ashley Tunnel within the 30 months estimated for its completion, yet they believe so strongly in CWS's ability to complete the pipeline within the estimated 22 months, even though both the Tunnel and the pipeline must be constructed for the system to become operational.

pg 3 of 8 BOD

'must weigh competing interests and maintain an even balance.'" Merritt Bros., Inc. v. Marine Midland Realty Credit Corp., 307 S.C. 213, 213, 414 S.E.2d 167, 169 (1992). Also, "[a] party requesting a stay pending appeal must show [not only] that a stay will not substantially harm other interested parties [but also that a stay will not substantially harm] the public interest." 4 C.J.S. Appeal and Error § 528. Therefore, in evaluating whether to impose an equitable stay of the its order, this Court must weigh the potential prejudice of imposing the stay, including the potential for prejudice to CWS as well as to the general public, against the potential prejudice to the Petitioners if the stay is denied.

In this case, the Court concluded that CWS used all feasible safeguards to minimize environmental impacts for the permitted Force Main. This Court also concluded that the Force Main would not materially alter or impact the views of the Petitioners or the enjoyment of their property.[6] In addition, as mentioned earlier, Petitioners clearly did not establish that their property values would be diminished by the installation of the Force Main. Also as previously discussed, the Force Main can be removed and the marsh within the critical area restored to its original condition, should a reviewing court require it. Thus, any prejudice to Petitioners resulting from a stay of this Court's Amended Order and Decision would be minimal.

On the other hand, any prejudice to Petitioners is greatly outweighed by the risk of harm to the public vis-à-vis a potential spill of untreated wastewater into the surrounding soil that would result if the deteriorating Tunnel System fails. Petitioners argue that the Tunnel System's deterioration has been recognized since 1987, and that CWS has delayed in fixing the problem and has not given it priority.[7] However, even if this were true, it is not for this Court to substitute its judgment for the judgment of CWS as to how it prioritizes its construction projects and allocates its resources. In fact, the evidence in this case reflected that replacement of the existing Tunnel System has been immense in scope and magnitude, and has been part of the greater project of revising the transportation of sewage to the CWS facility.

---

[6] The top of the Force Main will be level with the ground level of Plum Island, which already is an industrial complex with several large buildings between 35' and 50,' a fact of which Petitioners were aware when they purchased their properties.

[7] Petitioners seem to be of the belief that if a condition has been deteriorating for a long period of time, it will not hurt to allow the deterioration to continue a little bit longer. The Court rejects this logic, believing instead that the longer a condition deteriorates, the closer it draws to destruction, which is all the more reason why such prolonged deterioration should be remedied as soon as possible.

Finally, Petitioners point out that CWS never stated that the pipeline must be constructed concurrent with the Tunnel or that the pipeline must be installed prior to the Tunnel's construction (Petitioners do not challenge the construction of the actual Tunnel). They also point out that the Tunnel will take approximately thirty months to complete, and construction thereof has not yet begun. However, as Petitioners admit, CWS stated that the Tunnel and pipeline must **both** be constructed before the system will become operational. Thus, if a stay is granted, even if construction of the Tunnel finished by the time the court of appeals rendered a decision (assuming it was in favor of CWS), the delay in the system would be substantial. Instead of approximately thirty months that it would take for the system to become operational if construction of the Tunnel and pipeline is allowed to proceed concurrently, there could be a delay of at least twenty-two months – the time necessary to construct and install the Force Main – **beyond** the thirty months spent appealing to, and awaiting a decision from, the court of appeals.[8] More importantly, if a stay is granted, the aforementioned risk of harm to the coastal environment and public would necessarily be prolonged (beyond thirty months) by at least twenty-two months. In short, to allow the deterioration of the West Ashley Tunnel System to continue for an additional twenty-two months without the possibility of a replacing it with a new operational system would pose a risk of harm that greatly outweighs any harm caused by denying a stay in this case.

Irreparable Harm

Petitioners argue that if this Court denies a stay of the Order, it will cause them harm in the form of diminished property values and loss of enjoyment of their properties, and that they will be without any monetary or alternative remedy.

A party seeking a stay pending appeal must also demonstrate "irreparable injury in the absence of a stay." 4 C.J.S. Appeal and Error § 528. Little need be said on this issue, as it has already been discussed at length. In its Amended Order and Decision, this Court concluded that any harm to the Petitioners in this case was minimal. But even if, arguendo, Petitioners had demonstrated appreciable harm, this harm would not be irreparable. As discussed earlier, CWS

[8] CWS argues that it would take 52 months to bring the Force Main online if the stay is granted But if, as Petitioners point out, the Tunnel has not undergone construction yet, and that will take an estimated 30 months to build, then presuming construction of the Tunnel commenced immediately, its completion would nearly coincide with Petitioners projected time for the Court of Appeals to complete its decision. The extra delay under this assumed scenario would thus be would be 22 months beyond the 30 months. Of course, this scenario presumes a decision with 30 months and that there be no motions for reconsideration or request for certiorari.

has the ability and the financial wherewithal to remove the Force Main from the critical area and restore of the marsh within the critical area to its original condition, should a reviewing court require it. Therefore, Petitioners have failed to establish any irreparable harm that would result from a denial of a stay of the Order.

Likelihood of Prevailing on the Merits

If all of the other factors of a case "strongly favor[] interim relief, a court may exercise its discretion to grant the stay if the movant has made a substantial case on the merits. The movant need not always establish a high probability of success on the merits, but is always required to demonstrate more than a mere possibility of success. 4 C.J.S. Appeal and Error § 528. In this case, for the reasons discussed above, this Court finds that all of the other factors do not strongly favor interim relief, and indeed reflect that such relief should be denied. This Court also finds that Petitioners have failed to demonstrate more than a mere possibility of success on the merits.

ORDER

IT IS THEREFORE ORDERED that the Appellant's Motion for Stay is **DENIED**.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

August 21, 2012
Columbia, South Carolina

EXHIBIT 3

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

Case No. 11-ALJ-07-0367-CC

Rodney Connell, Barbara Connell, Edward Steers, Sally Steers, Moustafa Moustafa and Maggie Shatilla ..... Petitioners,

vs.

Charleston Water System and South Carolina Department of Health and Environmental Control ..... Respondents.

Of Whom

Rodney Connell, Barbara Connell, Moustafa Moustafa and Maggie Shatilla, are ... Appellants.

NOTICE OF APPEAL

Rodney Connell, Barbara Connell, Moustafa Moustafa and Maggie Shatilla hereby appeal the Amended Final Order and Decision issued by the Honorable Ralph King Anderson, III, Chief Administrative Law Judge, dated and filed July 23, 2012, and received by the Appellants on that same day.

Michael G. Corley
Amy E. Armstrong
SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT

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August 22, 2012

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

Case No. 11-ALJ-07-0367-CC

Rodney Connell, Barbara Connell, Edward Steers, Sally Steers, Moustafa Moustafa and Maggie Shatilla ..... Petitioners,

vs.

Charleston Water System and South Carolina Department of Health and Environmental Control ..... Respondents,

Of Whom

Rodney Connell, Barbara Connell, Moustafa Moustafa and Maggie Shatilla, are ... Appellants.

CERTIFICATE OF SERVICE

I hereby certify that on this date I served the foregoing Notice of Appeal upon counsel for the Respondents, by placing copies of same in the United State Mail, addressed to:

Honorable Jana Shealy, Clerk
S.C. Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29211

Leslie Riley
McNair Law Firm
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Michael Corley

Georgetown, South Carolina
August 22, 2012

EXHIBIT 4

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

Case No. 11-ALJ-07-0367-CC

Rodney Connell, Barbara Connell, Edward Steers, Sally Steers, Moustafa Moustafa and Maggie Shatilla. . . . . Petitioners,

vs.

Charleston Water System and South Carolina Department of Health and Environmental Control. . . . . Respondents.

Of Whom

Rodney Connell, Barbara Connell, Moustafa Moustafa and Maggie Shatilla, are. . . . Appellants.

VERIFICATION

I am familiar with the Petition for Order of Supersedeas filed on my behalf in the above-captioned appeal. I approve of the filing of this Petition, and I verify that the matters contained in the Petition are true and correct to the best of my knowledge, information and belief. We are seeking an Order of Supersedeas staying the decision of the Administrative Law Court until a decision is rendered in the pending appeal.

--Signatures on following page--

Rodney Connell

Barbara Connell

Moustafa Moustafa

Maggie Shatilla

SWORN TO before me this

24 day of September, 2012

(SEAL)

Notary Public for South Carolina

My commission expires: 3-14-2022

EXHIBIT 5

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 11-ALJ-07-0367-CC

Rodney Connell, Barbara Connell, Edward Steers, Sally Steers, Moustafa Moustafa and Maggie Shatilla,	)
Petitioners,	)
v.	)
Charleston Water System and South Carolina Department of Health and Environmental Control,	)
Respondents.	)

ADMINISTRATIVE HEARING

****

DAY TWO

Wednesday, February 22, 2012
9:35 a.m. - 4:49 p.m.

The hearing before the Honorable Ralph King Anderson, III was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 22nd of February, 2012 before Carla S. Dominick, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES:

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of Health and Environmental Control

INDEX

MS. RILEY: Well, Your Honor, I believe Mr. Churdar examined his witness I guess in cross and so unless you have anybody?

MR. CHURDAR: It was just Mr. Thompson.

THE COURT: Oh, okay. Well, that took care of that issue.

MR. CHURDAR: Yes, sir.

THE COURT: There you go.

MS. RILEY: Right. So the Respondents would call Kin Hill.

FLOYD K. HILL, JR. having been duly sworn, testified and deposed as follows:

MR. HILL - DIRECT EXAMINATION BY MS. RILEY:

Q: Good afternoon Mr. Hill.

A: Good afternoon.

Q: Where do you live?

A: I live in Hollywood, South Carolina. Just south of Charleston.

Q: And I would like to start with talking about your educational background. Where did you go to college?

A: Clemson University.

Q: And when did you graduate and what degree did you receive?

A: 1978 in green agricultural engineering.

page TM 1-7 and TM 1-8, which would require relocation of existing facilities.

Q: Okay. And what about the construction time. How did that compare?

A: Construction time was the longest I believe of the three options. Which to us was a huge consideration given the nature of what our project goal is here. Which is to parallel the existing West Ashley tunnel and do so before there's a catastrophic failure.

Q: Okay. And does TM 1-7 also contain a table relative to the cost associated with this option one?

A: Yes, it does.

Q: And how does the cost compare to option three for example?

A: Option one in the technical memo and table two is listed as 6.4 million dollars. And option three is 3.8 million dollars. So that's a difference of about 2.6 million dollars. Its higher for option one.

Q: Okay. And as CEO, do you feel its your responsibility to properly manage the public funds that are being utilized for these projects?

A: Absolutely. Its one of my prime responsibilities.
Q: And is that why you evaluated the cost associated with these projects?
A: Cost was one element. Yes. It was not the only element, but it was one element.
Q: Okay. All right. In your opinion, is option one technologically suitable?
A: No.
Q: Is it a reasonable option given the purpose of the project?
A: No.
Q: Well, what is the purpose of the project?
A: The purpose of the project is to transport waste water from the West Ashley area through a new tunnel to the new influent pump station here on Plum Island from -- to the headworks of the existing waste water treatment facility in a manner that's consistent with our operational needs and our long -- short term and long term strategic -- or capital plans.
Q: And in your opinion is option one a practicable alternative?
A: No, it's not.
Q: All right. Let's move on. Talk option number

Q: How long would it take to actually construct just the force main portion of this project?

A: I don't have that exact figure at my fingertips. I believe it would be somewhere in the neighborhood of 12 to 15 months. I can refer to my engineers, but its not a short period of time but it's somewhere around a year.

Q: And the overall project time is 30 months to -- to completion correct?

A: Correct. That's the full project.

Q: So even if you finished this option three route in a shorter period of time of 15 months, you'd still have about 15 months you have to go before you can actually put it into service when the whole West Ashley tunnel project is complete right?

A: Theoretically that's possible. If I'm correct on my 15 months.

Q: And you're not actually ready to start any construction today are you?

A: We would be prepared, if we were to prevail in this case, to proceed very quickly. We have every permit we need at this point.

Q: Okay. And you understand that you've got the

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 11-ALJ-07-0367-CC

Rodney Connell, Barbara Connell, Edward Steers, Sally Steers, Moustafa Moustafa and Maggie Shatilla,	)
Petitioners,	)
v.	)
Charleston Water System and South Carolina Department of Health and Environmental Control,	)
Respondents.	)

ADMINISTRATIVE HEARING

****

DAY THREE

Thursday, February 23, 2012
10:42 a.m. - 12:38 p.m.

The hearing before the Honorable Ralph King Anderson, III was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 23rd of February, 2012 before Carla S. Dominick, Court Reporter and Notary Public in and for the State of South Carolina.

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INDEX

EXHIBITS

(There were no exhibits for day three.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.

THE COURT: On the record.

MS. RILEY: Your Honor, at this time we call Josh Farmer.

JOSHUA PRESTON FARMER, having been duly sworn, testified and deposed as follows:

MS. FARMER - EXAMINATION BY MS. RILEY:

Q: Good morning, Mr. Farmer. Just before we get started I just want to make sure that you speak clearly and loudly so the court reporter can hear you and address your testimony to the Judge as much as possible. Where do you reside?

A: 104 Clouter Creek in Charleston, South Carolina.

Q: Okay. And where did you go to college?

A: I went to North Carolina State University.

Q: And what was your -- what did you obtain your degree in?

A: I have a Bachelor of Science degree in Civil Engineering with a double concentration in water resources and environmental engineering.

Q: Okay. And would you please describe your engineering area of concentration?

A: I'm a pipeline design engineer. I'm a buried infrastructure specialist.

Q: Okay. Did you -- what are the financial down sides to option one?

A: Significantly expensive. Option one I believe is believe six, we estimated 6.4 million dollars which was at two and a half, 2.6 million dollars more than our other options that we are -- we had evaluated.

Q: Okay. Are there any other down sides, disadvantages to option one that you haven't already discussed?

A: I believe that there is also an impact, I mean, it's not, option one is not completely just a tunnel option. Option one is a tunnel option 900 feet to one of the future PTF facilities would be --

Q: What mean -- when you say PTF, what do --

A: This preliminary treatment facility right here, this box, is, you know, that's one of the phases of Plum Island is to install the preliminary treatment facility which will replace the failing existing networks. The existing networks is not in good shape. Structurally speaking it's already been rehabilitated with steel panels and the steel coatings that are peeling off and so it's in

Q: Do you have any information that construction of option one would delay the overall completion date of the West Ashley Tunnel Project?

A: I believe it would, compared to, I mean, we're ready to go. We would have to redesign the force main and then additionally, whatever additional construction time that might be associated with that option, would also have to be taken into account. But, I mean, the biggest item is that we'd have to start over their design.

Q: What -- has construction of the West Ashley Tunnel begun at this point?

A: I don't believe so.

Q: And how long would that take to complete?

A: The tunnel portion is somewhere between 26 and 30 months, is my understanding, the schedules that I've seen.

Q: And so, do you know that if you started option one now that it would take more than 30 months? That's what you're saying?

A: I think I may actually mention in my tech memo a design, a time to redesign for option one. Let me see if I can put my finger on that. We