

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge

RECEIVED

JAN 17 2017

SC Court of Appeals

Case No. 16-ALJ-07-0082-CC

A. O. Smith CorporationAppellant,

v.

South Carolina Department of Health and Environmental Control
and Town of McBee Respondents.

**APPELLANT’S REPLY TO TOWN OF MCBEE’S RESPONSE IN
OPPOSITION TO MOTION TO STRIKE PORTION OF RESPONDENT
TOWN OF MCBEE’S DESIGNATION OF MATTER**

Pursuant to Rules 240(f) of the South Carolina Appellate Court Rules, Appellant A. O. Smith Corporation (“A.O. Smith”) respectfully submits this reply to Town of McBee’s Response in Opposition to Motion to Strike Portion of Respondent Town of McBee’s Designation of Matter (“Town’s Response”).

The Town’s Response fails to address A.O. Smith’s argument that Order of the Town of McBee Municipal Election Commission dated September 20, 2016 (“Election Commission Order”) should be stricken from the Town’s Designation of Matter pursuant to Rules 209(b) and 210(c), SCACR. Instead, the Town argues that this Court should take judicial notice of the Election Commission Order under Rule 201(b), SCRE. As a preliminary matter, the Order on appeal from the Administrative Law Court (“ALC”) was a dismissal of A.O. Smith’s contested

case as a matter of law. Accordingly, there was no evidentiary hearing conducted by the ALC and therefore no basis for taking judicial notice of evidence arising after the order on appeal was issued. However, even if judicial notice could be applied to introduce additional evidence before this Court, which it should not, the Election Commission Order has no relevance to any issue on appeal and therefore should be stricken from the Town's Designation of Matter.

The Election Commission Order has no relevance to any issue before this Court. The sole issue before this Court is whether the final approvals to place into operation ("Final Approvals") issued to the Town by Respondent South Carolina Department of Health and Environmental Control ("SCDHEC") are appealable decisions under S.C. CODE ANN. § 44-1-60. "Evidence meets the test of relevance if it tends to establish or to make more or less probable some matter in issue upon which it directly or indirectly bears." *Judy v. Judy*, 682 S.E.2d 836, 839, 384 S.C. 634, 641 (Ct. App. 2009) (citation omitted). According to the Town's Response, the Election Commission Order purportedly addressed the conduct of Glenn Odom, a candidate for mayor and a principal of Alligator Rural Water and Sewer Company ("Alligator"). Neither Mr. Odom nor Alligator is a party to this contested case or this appeal. The mayor election in the Town of McBee is unrelated to any issue before this Court. This appeal involves a decision by SCDHEC, a state regulatory agency, and whether the Final Approvals issued to the Town by SCDHEC are subject to appeal under S.C. Code Ann. § 44-1-60—an issue which the ALC decided as a matter of law. The Election Commission Order has no bearing—direct, indirect or even remote—on this issue. Accordingly, A.O. Smith asks this Court to issue an order striking the Election Commission Order from the Town's Designation of Matter and awarding A.O. Smith fees and costs incurred in filing its Motion.

Respectfully submitted,

January 17, 2016



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Joan W. Hartley (SC Bar No. 72735)

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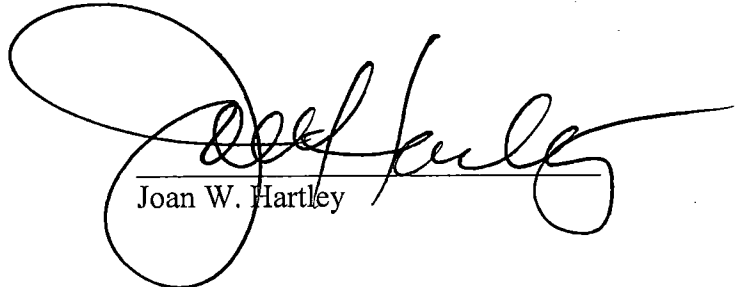
South Carolina Department of Health and Environmental Control
and Town of McBee..... Respondents.

PROOF OF SERVICE

I certify that I served Appellant's Reply to Town of McBee's Response in Opposition to Motion to Strike Portion of Respondent Town of McBee's Designation of Matter on counsel of record for Respondents by depositing a copy of them in the United States Mail, postage prepaid, on January 17, 2017, addressed to the following:

Stephen P. Hightower, Esquire
Office of General Counsel
South Carolina Department of Health and
Environmental Control
2600 Bull Street
Columbia, SC 29201

Belton T. Zeigler, Esquire
M. Todd Carroll, Esquire
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Womble Carlyle Sandridge & Rice, LLP
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Joan W. Hartley

NEXSEN | PRUET

Joan W. Hartley
Special Counsel
Admitted in SC, NC

January 17, 2017

HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

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JAN 17 2017
SC Court of Appeals

Re: *A.O. Smith Corporation v. South Carolina Department of Health and Environmental Control and Town of McBee*
Docket No. 16-ALJ-07-0082-CC
Appellate Case No. 2016-002108

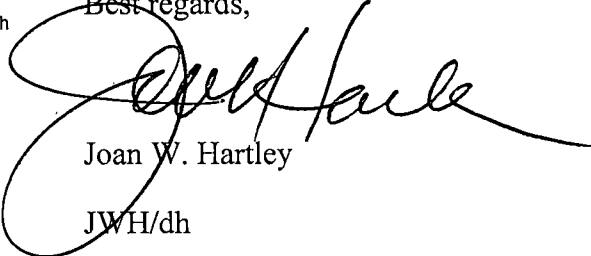
Dear Ms. Kitchings:

Enclosed for filing are the original and seven copies of Appellant's Reply to Town of McBee's Response in Opposition to Motion to Strike Portion of Respondent Town of McBee's Designation of Matter and the Proof of Service in the above-referenced matter. Please return a clocked-in copy of each via our courier.

A. O. Smith respectfully requests an expedited ruling on its Motion as the deadline to serve the Record on Appeal to the other parties in this matter is January 27, 2017.

By copy of this letter, we are serving same on counsel of record. Thank you for your assistance in this matter

Best regards,


Joan W. Hartley

JWH/dh

cc: Stephen P. Hightower, Esquire
Belton T. Zeigler, Esquire
M. Todd Carroll, Esquire
Kathryn Mansfield, Esquire

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