

**Greene, Diane**

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**From:** Kitchings, Jenny  
**Sent:** Friday, March 31, 2017 4:35 PM  
**To:** Greene, Diane  
**Cc:** Amick - Cassidy, Monica  
**Subject:** FW: Pickens County v. SCDHEC & MRR, Appellate Case No. 2017-000066  
**Attachments:** 2017-03-29\_PICKENSCty\_MotToBeIncAsAppellants\_MAILEDToCoA.pdf  
  
**Importance:** High

RECEIVED

MAR 31 2017

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**From:** Williams Linen, Etta [mailto:WILLIAER@dhec.sc.gov]  
**Sent:** Friday, March 31, 2017 4:28 PM  
**To:** Kitchings, Jenny  
**Cc:** jking@williamsmullen.com; Robert F. Goings; amelia@scelp.org; McAlister, Kip; Prince, Claire  
**Subject:** Fw: Pickens County v. SCDHEC & MRR, Appellate Case No. 2017-000066  
**Importance:** High

SC Court of Appeals

3/31/2017

Ms. Kitchings,

Due to the short turnaround sometimes between the filing of a Motion and the granting or denial of a Motion in this Court, this is the Department's unofficial notification to the Court of Appeals that both DHEC and MRR Pickens **object** to the attached Intervenor's Motion to Be Included As Appellant's in the above-referenced matter. If you review this e-mail chain, you will see that Ms. Jessie King responded in the negative to Ms. Amelia Thompson's 4:04 PM e-mail request, sent on March 29th requesting consent to intervene, at 4:51 PM on that same day, which is the same day the Motion was filed. I also responded in the negative to the 4:04 PM e-mail sent on March 29th from Ms. Thompson, the next day (March 30th) at 10:32 AM. Both Ms. King and I did not consent to the request to intervene and our responses still stand. I am unsure how Ms. Thompson was unable to determine whether at least one Respondent (MRR) had consented to the Motion at the time of filing, when Ms. King responded on the same day the e-mail was sent to her with not much time between the request and response. Please note that as far as I know, the 4:04 PM e-mail that was sent to Ms. King and myself on March 29th was proposed intervenors only attempt to request Respondent's consent from Respondents.

I will place all of this information in the form of a letter or a Motion in Opposition, but wanted to make the Court aware of this situation as soon as possible since the granting (or denying) of Motions can sometimes occur rather quickly.

Thank you for your consideration.

Sincerely,

Etta R. Williams Linen, Esquire  
Assistant General Counsel

SC Department of Health and Environmental Control  
2600 Bull Street  
Columbia, SC 29201  
Office: 803-898-3350  
Fax: 803-898-3367

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**From:** Williams Linen, Etta  
**Sent:** Thursday, March 30, 2017 10:32 AM  
**To:** King, Jessica; Amelia Thompson; [rgoings@goingslawfirm.com](mailto:rgoings@goingslawfirm.com)  
**Cc:** McAlister, Kip  
**Subject:** Re: Pickens County v. SCDHEC & MRR, Appellate Case No. 2017-000066

DHEC agrees with MRR's response. DHEC does not consent. \_\_ ETTA

Etta R. Williams Linen, Esquire  
Assistant General Counsel  
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**From:** King, Jessica <[jking@williamsmullen.com](mailto:jking@williamsmullen.com)>  
**Sent:** Wednesday, March 29, 2017 4:51:12 PM  
**To:** Amelia Thompson; [rgoings@goingslawfirm.com](mailto:rgoings@goingslawfirm.com); Williams Linen, Etta  
**Cc:** McAlister, Kip  
**Subject:** RE: Pickens County v. SCDHEC & MRR, Appellate Case No. 2017-000066

Amelia - No, MRR will not consent. The Administrative Law Court was clear that it could not rule on the intervenors motion to intervene unless it found jurisdiction. Since there was no jurisdiction on a late appeal, there was no case for them to intervene

in. They are not parties and we will not consent to them joining in the appeal.

Thanks,  
Jessie King

-----Original Message-----

From: Amelia Thompson [<mailto:amelia@scelp.org>]

Sent: Wednesday, March 29, 2017 4:04 PM

To: King, Jessica <[jking@williamsmullen.com](mailto:jking@williamsmullen.com)>; [rgoings@goingslawfirm.com](mailto:rgoings@goingslawfirm.com); [WILLIAER@dhec.sc.gov](mailto:WILLIAER@dhec.sc.gov)

Subject: Pickens County v. SCDHEC & MRR, Appellate Case No. 2017-000066

Counsel,

Would DHEC and MRR consent to adding the proposed intervenors from the ALC case to the appeal?

Best,  
Amelia

--

Amelia A. Thompson  
Staff Attorney  
S.C. Environmental Law Project  
P.O. Box 1380  
Pawleys Island, SC 29585  
Phone: (843) 527-0078  
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**South Carolina Environmental Law Project**  
*Lawyers for the Wild Side of South Carolina*

a 501c3  
 non-profit organization

March 29, 2017

**Amy E. Armstrong**  
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**Michael G. Corley**  
 Staff Attorney  
**Amelia A. Thompson**  
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 Staff Attorney

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The Honorable Jenny Abbott Kitchings  
 Clerk of Court, SC Court of Appeals  
 P.O. Box 11629  
 Columbia, SC 29211

Re: Pickens County v. SCDHEC  
 Appellate Case No. 2017-000066

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MAR 31 2017

SC Court of Appeals

Dear Ms. Kitchings:

I am enclosing for filing Intervenors' Motion to be Included as Appellants, my certificate of service and the filing fee in the above-captioned case. I am also enclosing seven copies of the motion and request that you kindly return a clocked-in copy of the motion in the enclosed pre-paid envelope.

Thank you very much for your kind cooperation and assistance.

Yours very truly,

  
 Amelia A. Thompson

cc: Etta R. Linen, Esquire  
 Robert F. Goings, Esquire  
 Jessica J. O. King, Esquire  
 Gary Poliakoff, Esquire

**RECEIVED**

MAR 31 2017

DHEC  
 OFFICE OF GENERAL COUNSEL

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

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Appellate Case No. 2017-000066

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Pickens County,

vs.

Appellant,

South Carolina Department of Health and Environmental and  
MRR Pickens, LLC,

Respondents.

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**CERTIFICATE OF SERVICE**

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I hereby certify that on this date I served the foregoing Motion to be Incuded as Appellants on Respondents SCDHEC and MRR Pickens, LLC, by placing copies of same in the U.S. Mail addressed to:

Jessica J. O. King  
P.O. Box 8116  
Columbia, SC 29202

Etta Linen  
SCDHEC, Legal Office  
2600 Bull Street  
Columbia, SC 29201

Robert F. Goings  
914 Richland St #A101  
Columbia, SC 29201



Amelia A. Thompson

March 29, 2017

Georgetown, SC

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

---

Appellate Case No. 2017-000066

---

Pickens County,

Appellant,

vs.

South Carolina Department of Health and Environmental and  
MRR Pickens, LLC,

Respondents.

---

**INTERVENORS' MOTION  
TO BE INCLUDED AS APPELLANTS**

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TO: THE COURT OF APPEALS AND ALL PARTIES AND THEIR ATTORNEYS

YOU WILL PLEASE TAKE NOTICE that the Intervenors Robert L. Traber, Matthew S. Stone, Randolph E. Revis, Sr., by P.R. Randy Martin, Tony Charping and Randall King hereby move the Court for an Order including them as Appellants in this case. The basis of this motion is as follows:

Intervenors are adjoining landowners and members of the public owning real property in extremely close proximity to the landfill in question. On August 18, 2016, Intervenors filed a motion to intervene in the Administrative Law Court ("ALC"). (Attached as Exhibit A.) On September 7, 2016, Judge Robinson held a conference call with the parties and decided, among other things, to hold the motion to intervene in abeyance pending the court's decision on the motions to dismiss. Judge

Robinson's law clerk sent an email summary of the conference call that day to the parties. (Attached as Exhibit B.) On December 12, 2016, the ALC issued an order dismissing the case. (Attached as Exhibit C.) That order did not explicitly address the motion to intervene.

ALC Rule 2(H) defines a party to a case as "each person or agency named or admitted as a party or properly seeking and entitled to be admitted as a party, including a license or permit applicant." S.C.A.L.C.R. 2(H). Intervenors, by filing a motion to intervene and demonstrating their real property interests implicated in the outcome of this case, meet that definition because they were "properly seeking and entitled to be admitted as a party." Id. Thus, they were parties to the ALC case that should now be included as Appellants in the appeal before this Court. Dismissal of the case in the ALC for failure to exhaust administrative remedies dismissed the Intervenors' case against the Defendants as well, and the ALC's failure to rule on the Intervenors' motion should not be allowed to subjugate that fact.

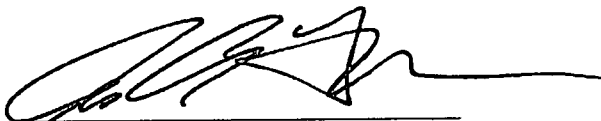
In their briefs, Pickens County argued on behalf of the Intervenors, including their affidavits attesting to their interests and imminent injuries stemming from land ownership in close proximity to the landfill at issue. (Affidavits of Intervenors attached as Exhibit D.) As landowners next to the landfill, some Intervenors received notice from DHEC of the original permit application in 2008. (Attached as Exhibit E.) However, Intervenors have received no notice of the permit modification application or decision in 2015. (See Exhibit D.) Thus, Intervenors were left out of the modification process instead of receiving notice as required by the statute and regulations. See S.C. Code § 44-1-60(E); S.C. Reg. 61-107.19.

Counsel for Pickens County represented Intervenors before the ALC and can continue that group representation for all Appellants if this motion is granted.

Counsel for the Appellant has attempted to consult with counsel for DHEC and for MRR Pickens, LLC, but was been unable to determine whether Respondents consent to this motion at the time of filing.

WHEREFORE, Intervenors request that this Court issue an order allowing Robert L. Traber, Matthew S. Stone, Randolph E. Revis, Sr. by P.R. Randy Martin, Tony Charping and Randall King to be added to the caption as Appellants and participate as parties to this appeal. Intervenors further request that the briefing deadline be held in abeyance pending a decision on this motion.

Respectfully submitted,



Amy E. Armstrong  
Amelia A. Thompson  
Michael G. Corley  
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PROJECT

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*Attorneys for the Appellant*

March 29, 2017

Georgetown, South Carolina