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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

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APR 06 2017

Appellate Case No. 2017-000066

SC Court of Appeals

Pickens County,

Appellant,

vs.

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

Respondents.

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

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 Charming 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,



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PROJECT

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Attorneys for the Appellant

March 29, 2017

Georgetown, South Carolina

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Respondents.

CERTIFICATE OF SERVICE

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

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Amelia A. Thompson

March 29, 2017

Georgetown, SC



South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

a 501c3
non-profit organization

March 29, 2017

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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

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

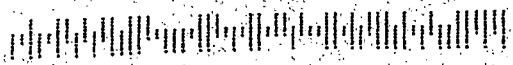
cc: Etta R. Linen, Esquire
Robert F. Goings, Esquire
Jessica J. O. King, Esquire
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SC Court of Appeals

S.C. 1



Pawleys Island, SC 29585



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

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