

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APR 10 2017

SC Court of Appeals

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

Case No. 16-ALJ-07-0164-CC

Pickens County.....Appellant,

v.

South Carolina Department of Health
and Environmental Control and
MRR Pickens, LLC.....Respondents.

**RESPONDENTS MRR PICKENS, LLC AND SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL'S JOINT RESPONSE IN OPPOSITION
TO MOVANTS' MOTION TO BE INCLUDED AS APPELLANTS**

TO: GARY J. POLIAKOFF, ESQUIRE, AND AMY E. ARMSTRONG, ESQUIRE,
ATTORNEYS FOR APPELLANT PICKENS COUNTY AND
INTERVENORS/MOVANTS

NOW COMES Respondents MRR Pickens, LLC ("MRR Pickens"), and the South Carolina Department of Health and Environmental Control ("SC DHEC") (hereafter both referred to as "Respondents"), by and through their counsels, submit this Joint Response in Opposition to Robert L. Traber, Matthew W. Stone, Randolph E. Revis, Sr. by P.R. Randy Martin, Tony Charping and Randall King ("herein collectively referred to as the "Movants") Motion to be Included as Appellants ("Motion to be Included"). Although not cited by Movants, Respondents assume the alleged basis in law for the Motion to be Included as Appellants to be South Carolina Court of Appeals Rule 201(b). Rule 201(b) states "only a party aggrieved by an order, judgment, sentence or decision may appeal." SCCAPR 201(b).

The Court should deny Movants' request to be added as Appellants, on the following grounds:

- (1) Movants' Motion to Intervene in the underlying Administrative Law Case ("ALC") case was moot and did not give rise to party status for Movants; and
- (2) Movants' are not a party to the underlying ALC case because they did not properly seek nor were they entitled to party status.

PROCEDURAL HISTORY

Movants are adjoining landowners owning real property near MRR Pickens' property located at 2180 Greenville Highway, Liberty, South Carolina, Pickens County. In November of 2007, MRR Pickens applied for a permit to operate a Class 2 Landfill on the property ("Highway 93 Class 2 Landfill"). On September 19, 2008, DHEC issued a draft permit for the Highway 93 Class 2 Landfill. [**Respondents' Exhibit A**; Respondent MRR Pickens, LLC's Response in Opposition to Petitioner's Motion for Leave to Intervene (SCALC Docket No. 16-ALJ-07-0164-CC)(September 6, 2016), Exhibit A, Draft Permit (Sept. 19, 2008)]. On September 24, 2008, DHEC publicly noticed the draft permit in the Easley Progress and The Pickens Sentinel. [*Id.* at Exhibit B; Public Notice (Sept. 24, 2008)]. In addition to publishing the draft permit in the local newspapers, DHEC sent notice to Adjacent Landowners, Pickens County and others on its mailing list by memorandum dated September 19, 2008. [*Id.* at Exhibit C, Public Notice to Adjacent Landowners (Sept. 19, 2008)]. At the end of the public comment period, on November 3, 2008, DHEC staff issued Solid Waste Permit LF2-00003 to MRR Pickens for the Highway 93 Class 2 Landfill (the "Highway 93 Permit"). [*Id.* at Exhibit D, Permit LF2-00003 (Nov. 3, 2008)]. A property owner in the area, GB Enterprises, timely requested final review before the Board of Health and Environmental Control ("DHEC Board") on November 11, 2008. [GB

Enterprises Request for Final Review (Nov. 11, 2008)]. Neither the Movants nor Appellant filed a Request for Final Review (RFR) or asked to be notified of any future decisions relating to Highway 93 Permit. [Affidavits of Movants filed with Appellant's Memorandum in Opposition to MRR Pickens, LLC's Motion to Dismiss (Aug. 17, 2016)] [**Respondents' Exhibit B**; DHEC's Motion to Dismiss, *See* Ex. 2, Aff. of Joan Litton (April 15, 2016)¹]. Four months later, on March 10, 2009, GB Enterprises voluntarily dismissed its RFR with prejudice. [Respondents' Exhibit A; *see* Exhibit E, Notice of Dismissal (March 10, 2009).

On March 30, 2015, MRR Pickens applied for a minor modification to the Highway 93 Permit, requesting the option to install a liner and associated leachate collection system ("Minor Permit Modification"). On August 10, 2015, the DHEC staff issued the Minor Permit Modification by mailing the decision to MRR Pickens, allowing the liner option. Since the first public notice of the Highway 93 Permit in September of 2008 and prior to DHEC's issuance of the Minor Permit Modification in August of 2015, neither Appellant, nor the Movants ever requested in writing (via certified mail, electronic mail or by any other method) to be treated as an "affected person" and/or notified by the DHEC of any decisions relating to the permit.² Therefore, DHEC did not mail notice of the Minor Modification to Pickens County or Movants. The Minor Modification became the Final Agency Decision 15 days after mailing to the permittee, MRR Pickens, or on August 25, 2015.

¹Movants' Motion also fails to identify or meet requirements prescribed in Rule 24 of the South Carolina Rules of Civil Procedure (SCRCP).

² MRR Pickens contends affidavits of Movants should not be considered for purposes of this Motion to Intervene because they were not properly attached as exhibits. Instead, affidavits of Movants were filed by Appellant's counsel as an exhibit in Appellant's Memorandum in Opposition to MRR Pickens, LLC's Motion to Dismiss. Thus, referenced affidavits were filed separate and apart in an unrelated response.

According to representations made by Appellant and DHEC records, Appellant received actual notice of the Minor Permit Modification in December of 2015 and received a copy of the Minor Permit Modification no later than January 11, 2016. *See Respondents' Exhibit C*; MRR Pickens, LLC's Notice of Motion and Motion to Dismiss and Memorandum in Support Motion to Dismiss (July 29, 2016) ("Motion to Dismiss") and Respondents' Exhibit B; DHEC's Motion to Dismiss (July 18, 2016). Appellant Pickens County filed a RFR of the Minor Permit Modification on or about March 23, 2016. Movants were not named as parties, were not referenced or identified in Appellants' pleadings, or otherwise involved in Appellant's RFR to the DHEC Board. On April 21, 2016, the DHEC Board declined in writing to hold a final review conference thus constituting a final agency decision and giving rise procedurally to a right to request a contested case hearing with the Administrative Law Court (ALC). S.C. Code Ann. § 44-1-60(F). On May 19, 2016, Appellant mailed its Request for a Contested Case by Hearing to the ALC. On July 25, 2016, DHEC filed a Motion to Dismiss and on July 29, 2016, MRR Pickens filed a Motion to Dismiss for lack of subject matter jurisdiction as well as a Motion to Stay Discovery pending dispositive motions. On August 11, 2016, Appellant served its Memorandum in Opposition to DHEC's Motion to Dismiss. On August 18, 2016, Appellant filed its Amended Memorandum in Opposition to DHEC's Motion to Dismiss, MRR Pickens' Motion to Dismiss, Memorandum in Opposition to MRR Pickens' Motion to Stay Discovery, and filed this Motion to Intervene on behalf of Movants. The Motion to Intervene was filed in an attempt to "cure" the lateness of the Appellants' RFR to the DHEC Board.

On September 7, 2016, the lower court judge held a conference call with the parties whereby she listened to the bases of the pending motions and ruled via email the "Motion to Intervene be HELD IN ABEYANCE pending the Court's decision on the Motions to Dismiss."

[Respondents' Exhibit D; Email from T. Henderson for the Honorable Shirley Robinson to Prince et al. (Sept. 7, 2016)].

On December 2, 2016, a hearing on the Respondents' Motions to Dismiss was held at the ALC in Columbia, South Carolina. During the hearing, counsel for Appellants attempted to argue it's Motion to Intervene. The transcript reflects the arguments made during the hearing and the Court's position on the attempt to prematurely argue those motions during the Motions to Dismiss hearing:

“MS. LINEN: Your Honor, Mr. Poliakoff continues to reference adjoining landowners and that they weren't noticed about this decision, but he represents Pickens County.

THE COURT: Yes.

MS. LINEN: And I know he has a Motion to Intervene, but that had not been addressed and they have not intervened yet. So, I mean, I think that, you know, that he should contain his comments to his clients and not the clients that have not been brought into this case as of yet.

MR. POLIAKOFF: Your Honor ---

THE COURT: MR. Poliakoff, I do agree that, we're only -- the only parties to this action at this point is Pickens County and I have held your motion in abeyance on whether those adjoining landowners would be allowed to --

[Respondents' Exhibit E; Tr. Of Testimony of Hearing on Respondents MRR Pickens, LLC and SCDHEC's Motion to Dismiss, SC Admin. Law Judge Div., Docket No. 16-ALJ-07-0164-CC, p. 77, ll. 3-19 (Dec. 2, 2014)].

On December 12, 2016, the ALC issued an Order Granting MRR Pickens' Motion to Dismiss. Appellants did not file a Motion for Reconsideration of the ALC's Order requesting that the Court consider its Motion to Intervene that was filed on August 18, 2016.

[**Respondents' Exhibit F**; Order Granting Respondents' Motion to Dismiss (Dec. 12, 2016)].

On January 11, 2017, Appellant filed its Notice of Appeal to this Court the Court's Order Granting MRR Pickens' Motion to Dismiss. Movants were not named in the Notice because Movants were not parties to the lower case. On March 29, 2017, Movants served the Court with their Motion to be Included as Appellants.³

ARGUMENTS

(1) Movants' Motion to Intervene in the Underlying ALC Case was Moot and Did Not Give Rise to Party Status for Movants.

Movants argue because they filed a Motion to Intervene in the underlying ALC case, they were a party to the case and are now properly a party to this Appeal. Movants imply the ALC had a duty to rule on their Motion to Intervene, notwithstanding the pending Motion to Dismiss based on the ALC's lack of subject matter jurisdiction. However, South Carolina Courts have consistently held, where a Motion to Dismiss based on lack of subject matter jurisdiction was filed prior to a Motion to Intervene, such that granting the Motion to Dismiss would make the Motion to Intervene moot, the Motion to Dismiss should be considered first. *Western Carolina Regional Sewer Authority v. DHEC*, 96-ALJ-07-0547-CC, 1997 WL 435927 (April 10, 1997); *Thomas and Victoria Rogers v. DHEC*, 01-ALJ-07-0402-CC, 2001 WL 139745 (October 23, 2001); *Brenda Bryant v. DHEC*, 01-ALJ-07-0404-CC, 2001 WL 1326513 (October 9, 2001).

³ In their Motion, Movants, represented by Counsel for Pickens County, misrepresented to the Court that they had consulted the Counsel for Respondents for consent to the Motion but had not received a response on the date of filing. However, Respondent MRR Pickens in fact responded in less than one hour from receiving Movants request (via electronic mail), stating it opposed the Motion for the reasons stated herein. Within 24 hours, Respondent DHEC responded to Movants also objecting to the Motion. Further, upon knowledge and belief, the e-mail request was the only manner in which Movant contacted Respondents to consult regarding gaining consent to its Motion.

In *Western Carolina*, the ALC considered Western Carolina's motion to voluntarily dismiss a permit contest. 1997 WL 435927. Also before the ALC was a Motion to Intervene by Suitt Construction. Because dismissing the case would make the motion to intervene moot and because Suitt would have an opportunity to protect its rights on appeal, the ALC dismissed the case. *Id.* at *1. Likewise, in *Rogers* the ALC held, where three motions were pending, one of which was a motion to dismiss based on lack of jurisdiction, the jurisdictional motion would be heard first. *Rogers*, 2001 WL 139745, at *1. The Court reasoned, if it had no jurisdiction, the issues raised in the other two motions were moot. *Id.* Finally, in *Bryant* the ALC held where multiple motions to dismiss were pending along with a motion to intervene, "[s]ince this order is issued based on the two motions to dismiss made by the Respondents, there is no reason to reach the issues" raised in the motion to intervene. *Bryant*, 2001 WL 1326513, at *4 (emphasis added).

If in this scenario a Motion Dismiss was granted, there would no longer be any judicial "action" into which a moving party could intervene, and the Motion to Intervene should not be granted. *Ex Parte Reichlyn*, 310 S.C. 495, 427 S.E.2d 661 (1993). In *Reichlyn*, the South Carolina Supreme Court affirmed the denial of a motion for intervention filed after a consent order was entered in the case. The Court noted, because "Reichlyn's motion to intervene was filed after DHEC and COCC entered into a consent order . . . there is no ongoing judicial 'action' into which Reichlyn can intervene." 427 S.E.2d at 664 (1993).

Because Movants attempt to intervene in the underlying ALC case was mooted by the Court's grant of MRR Pickens' Motion to Dismiss, there was no judicial action into which Movants may have intervened and Movants were never a party to the case.

(2) Movants' are Not a Party to the Underlying ALC Case Because They Did Not Properly Seek Nor Were They Entitled to Party Status.

In their Motion, Movants cite ALC Rule 2(H), which 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). Movants rely on their filing of an untimely motion to intervene to support their argument they were “properly seeking and entitled to be admitted as a party.” *Id.* Movants were neither “properly seeking,” nor were they “entitled to be” a party to the ALC case and are therefore not entitled to be a party to this Appeal.

South Carolina courts have held, even where a party may have been “entitled to be” a party to the underlying case, where the potential party did not “properly seek” review, it should not be entitled to seek review on appeal. *Home Health Services, Inc. v. DHEC*, 298 S.C. 258, 379 S.E.2d 734 (1989). Movants were never a party to the underlying ALC case, nor were they “entitled to be.” There was no underlying judicial action into which Movants may have intervened, so intervention was never “properly” sought.

Furthermore, in order to become a party to this Appeal, Rule 201(b) requires Movants must be “a party aggrieved by an order, judgment ... or decision” SCCAPR 201(b). Movants were not “a party aggrieved by an order, . . . or decision . . .” because it was not a party to the ALC matter because Pickens County’s Motion on behalf of Intervenors to Intervene had been held in abeyance and not ruled upon. Moreover, after the Motion to Dismiss was issued by the ALC Pickens County did not move for reconsideration of the ALC’s Order Granting Respondents Motion to Dismiss, or requesting reconsideration of the ALC’s decision to hold the ruling on the Motion to Intervene in abeyance. This Court has held “the word ‘aggrieved’ refers to a substantial grievance, a denial of some personal or property right, or the imposition on a

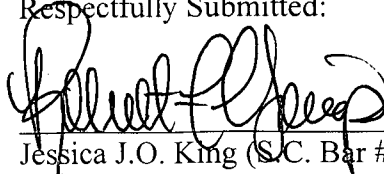
party of a burden or obligation.” *Powell ex rel. Kelley v. Bank of America*, 379 S.C. 437, 447, 665 S.E.2d 237, 243 (2008)(citing *Beaufort Realty Co. v. Beaufort County*, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct.App.2001). “A party is aggrieved by a judgment or decree when it operates on his or her rights of property or bears directly on his or her interest.” *Id.* In light of *Powell*, Movants may not properly claim that the ALC’s denial of subject matter jurisdiction to Appellants based on Appellants failure to timely file their appeal affects Movants property rights or otherwise bears on their interests.

WHEREFORE, Respondents request that this Court issue an order denying Robert L. Traber, Matthew S. Stone, Randolph E. Revis, Sr. by P.R. Randy Martin, Tony Charming and Randall King’s Motion to be added to the caption as Appellants and participate as parties to this appeal.

Respectfully submitted, this the 10th day of April, 2017.

[Signature Page to Follow]

Respectfully Submitted:



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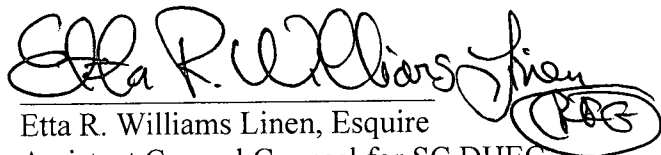
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**ATTORNEYS FOR RESPONDENT
MRR PICKENS, LLC**

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**ATTORNEYS FOR RESPONDENT SOUTH
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AND ENVIRONMENTAL CONTROL**

April 10, 2017
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case No. 2016-ALJ-07-0164-CC
Appellate Case No. 2017-000066

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APR 10 2017
SC Court of Appeals

Pickens County, ...Appellant,

v.

South Carolina Department of Health and Environmental Control and
MRR Pickens, LLC, ...Respondents,

PROOF OF SERVICE

I certify that I have served a copy of Respondent MRR Pickens, LLC and South Carolina Department of Health and Environmental Control's Joint Response in Opposition to Movants' Motion to be Included as Appellants by mailing a copy of the same, via United States Mail, on April 10, 2017, to the following:

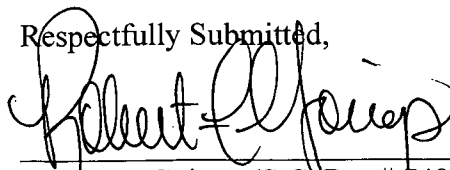
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[SIGNATURE PAGE TO FOLLOW]

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**ATTORNEYS FOR RESPONDENT
MRR PICKENS, LLC**

April 10, 2017
Columbia, South Carolina

Respondents' Exhibit A

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Pickens County,

Petitioner,

vs.

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

Respondents,

DOCKET NO. 16-ALJ-07-0164-CC

**RESPONDENT MRR PICKENS, LLC'S
RESPONSE IN OPPOSITION TO
PETITIONER'S MOTION FOR LEAVE
TO INTERVENE**

TO: GARY J. POLIAKOFF, ESQUIRE, ATTORNEY FOR PETITIONER PICKENS COUNTY, AND ETTA R. WILLIAMS LINEN, ESQUIRE, ATTORNEY FOR RESPONDENT SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOW COMES Respondent MRR Pickens, LLC ("MRR Pickens"), by and through counsel, and submits this response in opposition to Robert L. Traber, Matthew W. Stone, Randolph E. Revis, Sr. by P.R. Randy Martin, Tony Charping and Randall King's ("herein collectively referred to as the "Movants") Motion for Leave to Intervene or in the alternative have Petitioner Pickens County ("Petitioner" or "Pickens County") appear on their behalf ("Motion to Intervene"). Pursuant to Rule 20 of the South Carolina Administrative Law Court (ALC) Rules ("ALC Rules"), the Motion to Intervene should be dismissed with prejudice or, in the alternative, denied on the following grounds:

- (1) the Motion to Intervene is barred from consideration by this Court for lack of subject matter jurisdiction¹;

¹ MRR Pickens craves reference to its Motion to Dismiss filed July 29, 2016.

(2) the Motion to Intervene does not meet the requirements of Rule 20(C) of the ALC Rules²; and

(3) Movants do not submit sufficient evidence to establish “standing”.

BACKGROUND

In November of 2007, MRR Pickens applied for a permit to operate a Class 2 Landfill from the South Carolina Department of Health and Environmental Control (DHEC) on property located at 2180 Greenville Highway, Liberty, South Carolina, Pickens County (the “Highway 93 Class 2 Landfill”). On September 19, 2008, DHEC issued a draft permit for the Highway 93 Class 2 Landfill. [Exhibit A; Draft Permit (Sept. 19, 2008)]. On or about September 24, 2008, DHEC publicly noticed the draft permit in the Easley Progress and The Pickens Sentinel. [Exhibit B; Public Notice (Sept. 24, 2008)]. In addition to publishing the draft permit in the local newspapers, DHEC sent notice to Adjacent Landowners, Pickens County and others on its mailing list by memorandum dated September 19, 2008. [Exhibit C; Public Notice to Adjacent Landowners (Sept. 19, 2008)]. At the end of the public comment period, on November 3, 2008, DHEC staff issued Solid Waste Permit LF2-00003 to MRR Pickens for the Highway 93 Class 2 Landfill (the “Highway 93 Permit”). [Exhibit D; Permit LF2-00003 (Nov. 3, 2008)]. A property owner in the area, GB Enterprises, timely requested final review before the Board of Health and Environmental Control (“DHEC Board”) on November 11, 2008. GB Enterprises Request for Final Review (Nov. 11, 2008). Neither the Movants nor Petitioner filed a Request for Final Review (RFR) or asked to be notified of any future decisions relating to Highway 93 Permit. [Affidavits of Movants filed with Petitioners’ Memorandum in Opposition to MRR Pickens, LLC’s Motion to Dismiss (Aug. 17, 2016); DHEC’s Motion to Dismiss, Ex. 2, Aff. of

² Movants’ Motion also fails to identify or meet requirements prescribed in Rule 24 of the South Carolina Rules of Civil Procedure (SCRCP).

Joan Litton (April 15, 2016)]. Four months later, on March 10, 2009, GB Enterprises voluntarily dismissed its RFR with prejudice. [**Exhibit E**; Notice of Dismissal (March 10, 2009)].

On March 30, 2015, MRR Pickens applied for a minor modification to the Highway 93 Permit, requesting the option to install a liner and associated leachate collection system ("Minor Permit Modification"). On August 10, 2015, the DHEC staff issued the Minor Permit Modification by mailing the decision to MRR Pickens, allowing the liner option. Since the first public notice of the Highway 93 Permit in September of 2008 and prior to DHEC's issuance of the Minor Permit Modification in August of 2015, neither Petitioner, nor the Movants ever requested in writing (via certified mail, electronic mail or by any other method) to be treated as an "affected person" and/or notified by DHEC of any decisions relating to the permit. See Petitioner's Memorandum in Opposition to MRR Pickens, LLC's Motion to Dismiss, Ex. 15, Aff. of Chris Brink, ¶ 23 (Aug. 17, 2016); See also Affs. of Movants filed with Petitioner's Memorandum in Opposition to MRR Pickens, LLC's Motion to Dismiss, Exs. 16-20 (Aug. 17, 2016) (Fail to attest they requested to be an "affected person").³ Therefore, DHEC did not mail notice of the Minor Permit Modification to Petitioner or Movants. The Minor Permit Modification became the Final Agency Decision 15 days after mailing to the permittee, MRR Pickens, on August 25, 2015.

According to representations made by Petitioner and DHEC records, Petitioner received actual notice of the Minor Permit Modification in December of 2015 and received a copy of the Minor Permit Modification no later than January 11, 2016. See MRR Pickens, LLC's Notice of Motion and Motion to Dismiss and Memorandum in Support Motion to Dismiss (July 29, 2016)

³ MRR Pickens contends affidavits of Movants should not be considered for purposes of this Motion to Intervene because they were not properly attached as exhibits. Instead, affidavits of Movants were filed by Petitioner's counsel as an exhibit in Petitioner's Memorandum in Opposition to MRR Pickens, LLC's Motion to Dismiss. Thus, referenced affidavits were filed separate and apart in an unrelated response.

("Motion to Dismiss") and DHEC's Motion to Dismiss (July 18, 2016). Petitioner filed a RFR of the Minor Permit Modification on or about March 23, 2016. Movants were not named as parties, were not referenced or identified in Petitioners' pleadings, or otherwise involved in Petitioner's RFR to the DHEC Board. On April 21, 2016, the DHEC Board declined in writing to hold a final review conference, thus constituting a final agency decision and giving rise procedurally to a right to request a contested case⁴ hearing with the Administrative Law Court (ALC). S.C. Code Ann. § 44-1-60(F). On May 19, 2016, Petitioner mailed its Request for a Contested Case Hearing to the ALC. On July 25, 2016, DHEC filed a Motion to Dismiss, and on July 29, 2016, MRR Pickens filed a Motion to Dismiss for lack of subject matter jurisdiction as well as a Motion to Stay Discovery pending a ruling on the pending dispositive motions. On August 11, 2016, Petitioner served its Memorandum in Opposition to DHEC's Motion to Dismiss. On August 18, 2016, Petitioner filed its Amended Memorandum in Opposition to DHEC's Motion to Dismiss. On that same day, Petitioner served its Memorandum in Opposition to MRR Pickens' Motion to Dismiss, Memorandum in Opposition to MRR Pickens' Motion to Stay Discovery, and filed this Motion to Intervene on behalf of Movants.

ARGUMENT

Movants' Motion to Intervene is barred from consideration by this Court for lack of subject matter jurisdiction. In the alternative, if the ALC determines it must consider the Motion to Intervene, Movants' Motion to Intervene should be denied with prejudice for the following reasons:

- the Motion to Intervene fails to meet requirements of Rule 20 of the ALC Rules; and

⁴ Although Petitioner may procedurally request a contested case, MRR Pickens does not concede jurisdiction of this Court for Petitioner or Movants. No underlying contested case exists for which Movants may intervene because this Court lacks requisite subject matter jurisdiction due in part to Petitioner's untimeliness.

- Movants do not submit sufficient evidence to establish “standing”.

1. Intervention cannot be considered because this Court does not have jurisdiction in the underlying case.

No underlying contested case exists for which Movants may intervene because this Court lacks requisite subject matter jurisdiction. As stated in MRR Pickens’ Motion to Dismiss and Memorandum in Support thereof, Petitioner failed to timely file a RFR and failed to timely serve MRR Pickens.

A. Petitioner’s Request was Untimely after Receiving Actual Notice.

Petitioner had actual and constructive notice of the Minor Permit Modification on December 15, 2016. Petitioner delayed filing its RFR ninety-nine (99) days after it met with DHEC and discussed the modification, seventy-two (72) days after it received a copy of the modification and notified MRR Pickens of its knowledge of it, thirty-two (32) days after it entered an affidavit in the record of the Court of Common Pleas attesting under oath to its knowledge of, including the contents of the Minor Permit Modification, and thirty-three (33) days after it used a copy of the Minor Permit Modification as an Exhibit in a civil proceeding in South Carolina. *See* MRR Pickens’ Motion to Dismiss, p. 10 n. 2 (July 29, 2016). Therefore, this contested case must be dismissed for lack of subject matter jurisdiction, and the ALC has no jurisdiction to consider this Motion to Intervene.

To establish jurisdiction for a contested case hearing with the ALC, Petitioner must first exhaust its administrative remedies and timely file an RFR with the DHEC Board. The seminal case on notice and timeliness of RFRs is *S.C. Coastal Conservation League vs S.C. Dep’t of Health & Envtl. Control and S.C. State Ports Auth.*, 390 S.C. 418, 702 S.E.2d 246 (2010). In that case, the South Carolina Supreme Court held the fifteen day deadline to file an RFR begins to run on the day the notice is mailed to an “affected party” that has requested to be notified of

the staff decision. *Coastal Conservation*, 390 S.C. at 426. Here, Petitioner does not qualify as an "affected party"; however, even if the Court finds that it does, it exceeded the statutory filing deadline by waiting more than 15 days after receiving actual and constructive notice of the Minor Permit Modification before filing its RFR. Petitioner is time-barred from bringing its claims, thus removing the ALC's appellate and subject matter jurisdiction. *Grand Bees Dev., LLC v. S. C. Dep't of Health & Envtl. Control*, 2012 WL 10841840, at *1 (Ct. App. 2012); see also *Great Games, Inc. v. S.C. Dep't of Revenue*, 339 S.C. 79, 82 n. 5, 529 S.E.2d 6, 7 n. 5 (2000); *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188–89, 714 S.E.2d 547, 549–50 (2011) (noting it is a general rule "that an appellate body may not extend the time to appeal"). Therefore, this Court has no jurisdictional authority to consider Movants' Motion to Intervene, and it must be denied with prejudice.

B. Petitioner Failed to Serve MRR Pickens within 30 Days as Required.

Even if the Court were to find Petitioner timely filed its appeal (which MRR Pickens respectfully denies), Petitioner has admitted its failure to serve the Request for a Contested Case Hearing on MRR Pickens. Petitioner's Response in Opposition to MRR Pickens' Motion to Dismiss, Ex. 21, Affidavit of Gary Poliakoff ¶ 3(C)-(D), p. 3 (August 18, 2016).

S.C. Code Ann. §1-23-600(B) requires that a party that files a Request for a Contested Case Hearing simultaneously serve a copy of the request on the parties in accordance with the ALC Rules. Rule 11(B), ALC Rules, provides "[a] copy of the request must also be served on each party and on the affected agency . . . in accordance with Rule 5." Further, Rule 11(C), ALC Rules, requires, without exception, that a Petitioner serve its Request for a Contested Case Hearing on each party within 30 days of actual notice of the final agency decision. Proof of

service must be included with the request. Rule 11(B), ALC Rules. Rule 5, ALC Rules, also requires service upon all parties by delivery by mail to the last known address.

While MRR Pickens does not dispute that personal circumstances may have existed for Petitioner's counsel during the relevant time period, this Court has previously recognized it does not have the power to "fix" jurisdictional issues where jurisdiction does not exist – no matter the reason. *Delk v. S.C. Dep't of Motor Vehicles, et al.*, 13-ALJ-21-0234-AP, 2013 WL 3790642 (July 16, 2013). Where Petitioner fails to timely serve a party, the Court is without jurisdiction. *Id.* at 2. In fact, the Court is not permitted to delve into the reasons why a party fails to effect service or consider things like the prejudice to opposing parties as a result of the failure to serve. As stated by this Court in the *Delk* decision, "[t]he requirement that the Appellant file and serve the Notice of Appeal on all parties in accordance with the timeframes set forth in the ALC Rules of Procedure is an indispensable component of the appellate process." *Id.* (emphasis added). "Moreover, the Supreme Court of South Carolina has determined that filing and service of the Notice of Appeal upon the [parties] is a jurisdictional requirement. *Id.*; See *Thomas E. Skinner v. Westinghouse Electric Corp.*, 380 S.C. 91, 668 S.E.2d 795 (2008); See also *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004) ("[i]f a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice.")

Importantly, *Delk* is not a rare or unique holding. This Court has consistently taken this same position holding that the *Elam* case requires dismissal for lack of jurisdiction in the following cases: *Tapp v. Horry County*, 2009 WL 1319817, *1 (S.C.A.L.J. April, 21, 2009); *Wingard Towing Servs. v. S.C. Dep't of Public Safety*, 2015 WL 1966828, * 1 (S.C.A.L.J. April 28, 2015); *Felicia Blocker v. Richland County School Dist.*, 2010 WL 2604805 (S.C.A.L.J. May

25, 2010) (where the Respondent only became aware of the filing of the Request for a Contested Case Hearing through the ALJ's Notice of Assignment and was never served with the request, the Court had no choice but to dismiss the case for lack of jurisdiction).

In this case, Petitioner concedes it failed to serve MRR Pickens at its last known address within 30 days (or to date) but asks for forgiveness due to exigent personal circumstances experienced by one of three attorneys of record. See Petitioner's Memorandum in Opposition to MRR Pickens, LLC's Motion to Dismiss, Ex. 21, Aff. of Gary Poliakoff ¶ 3-4, pp. 2-3 (Aug. 18, 2016) (Also submitted by Raymond P. Mullman of Poliakoff & Associates, P.A. and Kenneth S. Roper of Roper Law Firm, LLC). Case law clearly and incontestably states service is an indispensable component of the appellate process and is necessary to establish jurisdiction. Because Petitioner did not file or serve the Notice of Appeal as legally required, this Court lacks jurisdiction over this appeal, and Movants' Motion to Intervene cannot be considered.

C. Where the Court does not have jurisdiction of the underlying case, intervention will not be considered.

If this Court determines that it does not have jurisdiction over Petitioner's Request for a Contested Case Hearing, it may not rule on Movants' Motion to Intervene.

The Court addressed this exact issue in *Thomas & Victoria Rogers v. S.C. Dep't of Health & Envtl. Control, et al.*, 01-ALJ-07-0402-CC, 2001 WL 1397451, at *1 (Oct. 23, 2001). In the *Rogers* case, the petitioners appealed a decision by DHEC's Office of Ocean and Coastal Resource Management (OCRM). The respondents filed a motion to dismiss arguing that the Court lacked subject matter jurisdiction because the staff decision at issue did not qualify as a "contested case" under the South Carolina Administrative Procedures Act (the "APA"). Third-parties moved to intervene prior to dismissal of the case but during the pendency of respondents' motion to dismiss for lack of subject matter jurisdiction. The Court properly held:

Given the decision reached here that the ALJD has no jurisdiction in this matter, the issues of whether the Rogers should be allowed to withdraw their challenge and whether Stelling should be allowed to intervene are not addressed. See *State v. Funderburk*, 259 S.C. 256, 261, 191 S.E.2d 520, 522 (1972) (“[t]he acts of a court with respect to a matter as to which it has no jurisdiction are void.”); also see, e.g., *First Palmetto Savings Bank, F.S.B. v. Patel*, 344 S.C. 179, 186, 543 S.E.2d 241, 244 (Ct. App. 2001) (“Because we reverse on this issue, we need not reach First Palmetto’s remaining arguments.”).

Rogers at 1.

Here, the Court cannot lawfully allow Petitioner to effectively resurrect its time-barred appeal by assuming the rights of non-party Movants in order to rehabilitate its late filing. Therefore, Petitioner’s appeal must be dismissed with prejudice, and the Court lack of jurisdiction precludes consideration of Movants’ Motion to Intervene.

D. Equitable tolling and want for due process are not appropriate in this case.

Although not raised with any particularity in the Movants’ Motion to Intervene, it is clear Petitioner attempts to incorporate equity and due process arguments also made in its Memorandum in Opposition to MRR Pickens, LLC’s Motion to Dismiss. In an attempt to circumvent statutory law and confuse substantive issues, Petitioner uses words like “toxic coal ash” and due process to justify the drastic remedy of equitable tolling. Such issues and terms are not supported by any facts and are irrelevant to this Motion to Intervene; however, MRR Pickens is compelled to briefly address any muddying of facts and issues for clarification of the record.⁵

First, the Minor Permit Modification became the final agency decision 15 days after DHEC mailed it to MRR Pickens on August 10, 2016 - thus making the final date August 25, 2015. Petitioner’s appeal was brought approximately 7 months after finalization. To allow an appeal of a permitting decision 7 months after it is rendered by an agency is prejudicial to MRR

⁵ MRR Pickens reserves the right to supplement its response, if necessary.

Pickens (and other members of the regulated community) and does not correspond to the intent of the APA:

The foregoing notwithstanding, in permitting cases, there needs to be some point in which an applicant for a permit can presume that the permitting process has concluded.

Amisub of S.C., Inc., d/b/a Piedmont Med. Ctr. Petitioners, 08-AIJ-07-0063-CC, 2008 WL 4879672, at *9 (Oct. 3, 2008); citing *Botany Bay Marina, Inc. v. Townsend*, 296 S.C. 330, 335 n.3, 372 S.E.2d 584, 586 n.3 (1988), *overruled in part on other grounds by Woodard v. Westvaco Corp.*, 460 S.E.2d 392, 319 S.C. 240 (1995) (noting the importance of “finality in administrative decision-making”). This is especially true where Petitioner has actual notice for so extensive period of time before filing its appeal.

Second, the Minor Permit Modification does not include the addition of any waste stream – including coal ash – to the 2008 permit. It is simply the option to install a liner, and according to DHEC, it does not impose any public health or the environmental concerns. [Exhibit F; K. Coleman Dep. 74:14-75:1]. In fact, the option to install a liner does not substantially change the Highway 93 Permit issued in 2008 – a permit that neither Petitioner nor Movants appealed or requested to be treated as an “affected person” concerning. Petitioner’s Memorandum in Opposition to MRR Pickens, LLC’s Motion to Dismiss, Ex. 15, Aff. of Chris Brink, ¶ 20 (Aug. 17, 2016); *See also* Affs. of Movants filed with Petitioners’ Memorandum in Opposition to MRR Pickens, LLC’s Motion to Dismiss, Exs. 16-20 (Aug. 17, 2016) (Fail to attest they requested to be an “affected person”). Therefore, there is no public interest that will be denied if the Minor Permit Modification as written is allowed to stand. Rather, a landfill that is more protective of public health and the environment will be allowed to be completed.

Furthermore, this Court has stated that: “[e]quitable tolling is a doctrine rarely applied in South Carolina to stop the running of the statute of limitations. The doctrine is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or in other words, if the relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine.” *Fabri et al. vs. S.C. Dep’t of Health & Envtl. Control and Nancy Union*, 08-ALJ-07-0336-CC, 2009 WL 332981, * 3 (January 13, 2009). The *Fabri* case is directly on point. In that case, the Court held that parties given actual notice when a permit was first issued, do not necessarily have the right to future notices related to that permit. *Id.* Here, Petitioner received notice of the Highway 93 Permit in 2009 but did not request in writing to be treated as an “affected person” or have any other right to notice of future decisions relating to the permit – including the Minor Permit Modification. Thus, equitable tolling is inapplicable.

If the Court disagrees and believes Petitioner was required to get notice, it in fact received actual notice over six months ago and still did not timely file its appeal. “One cannot complain of a due process violation if [he] has recourse to a constitutionally administrative procedure but merely declines or fails to take advantage of it. *Citizens for Sandy Flat vs. S.C. Dep’t of Health & Envtl. Control, et al.*, 01-ALJ-07-0009-CC, 2001 WL 1502396, *4 (Oct. 12, 2001). Therefore, like equitable tolling, lack of due process does not apply in this case.

2. Movants do not meet the requirements of Rule 20 of the ALC Rules.

Even if subject matter jurisdiction exists for the ALC (which MRR Pickens denies), Movants are barred from intervening because they failed to meet requirements for intervention set forth in Rule 20, ALC Rules.

“Intervention is a procedural device whereby a third party who is not a named party in an existing lawsuit, but who has an interest in its outcome, may become a party to the action.” *In re Horry County State Bank*, 361 S.C. 503, 507, 604 S.E.2d 723, 725 (Ct. App. 2004); *See Black’s Law Dictionary* 826 (7th ed. 1999). Rule 20, ALC Rules, sets forth the procedural requirements necessary to intervene at the ALC, which is directly aligned with Rule 24(a), SCRCP.⁶ *Sonoc v. S.C. Dep’t of Health & Envtl. Control*, 14-ALJ-07-0002-CC, *2 (July 17, 2014) (Order denying motion to intervene). In the ALC, a movant may be allowed to intervene only if it meets all of the following requirements:

- (1) The movant will be aggrieved or adversely affected by the final order;
- (2) The interests of the movant are not being adequately represented by existing parties or that it is otherwise entitled to intervene; and
- (3) The intervention will not unduly prolong the proceedings or otherwise prejudice the rights of existing parties.

Rule 20(B), ALC Rules.

A. Movants have not established that they will be aggrieved or adversely affected by a final order.

Movants must establish they are adversely affected. *Sonoc* at 3. In this case, Movants are barred from intervening because they have not pled how each will be aggrieved by a final order.

The affidavits of Movants are virtually identical. Each affidavit is vague and generally states the Movant: (1) owns land close to or adjacent to the Property; (2) did not receive formal and direct written notice from DHEC of the Minor Permit Modification; (3) is not aware of any

⁶ Pursuant to Rule 24(c), SCRCP, Movants must state the ground for intervention and the Motion to Intervene shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. Movants fail to attach a pleading to their Motion or identify the claim for which intervention is sought. Movants also fail to state with particularity the grounds therefor and relief sought in the Motion to Intervene. Rule 7(b), SCRCP.

Legal Notices of the Minor Permit Modification provided in the newspaper by DHEC; and (4) will allegedly be harmed by **transportation of disposal of coal ash** in the Highway 93 Landfill because of dust, contamination, and property value impacts. *See* Affs. of Movants, Exs. 16-20 of Petitioner's Memorandum in Opposition to MRR Pickens, LLC's Motion to Dismiss.⁷

While Movants allege harm from coal ash, they do not provide sworn testimony of alleged harm from the Minor Permit Modification. The Minor Permit Modification is the option to install a liner. A liner does not permit disposal of a particular waste stream – including but not limited to coal ash. Coleman Dep. 76:8-18. A liner simply serves as a barrier between the Class 2 Waste placed in the landfill and the underlying soils and groundwater. As DHEC confirms, a liner option is a protective barrier and it is more protective than what is generally required in a Class 2 landfill. Coleman Dep. 77:17-78:11.

Nevertheless, this Court may only hear those cases that present a legitimate justiciable controversy. The concerns raised in Movants' Motion to Intervene and affidavits are vague, general and speculative in nature. More importantly, Movants fail to allege any injury that will result from the installation of a liner.⁸

B. Movants Concede Petitioner Adequately Protects Movants' Interests

Even if the Court determines that Movants meet the initial requirement and have an interest in this case, intervention may be allowed only where movant's interest is not adequately represented by existing parties. *Ex Parte Reichlyn*, 310 S.C. 495, 427 S.E.2d 661 (1993); Rule 24(a)(2), SCRPC. South Carolina has adopted a three-part test for determining adequacy of representation:

⁷ MRR Pickens renews its objection to consideration of affidavits not properly attached.

⁸ In the event the Court does not dismiss this case for lack of subject matter jurisdiction and find Movants Motion to Intervene moot as a result, MRR Pickens reserves the right to request discovery on standing issues and to challenge each Movants standing prior to the Court ruling on their Motion to Intervene.

- (1) Whether Petitioner will make Movants' arguments;
- (2) Whether Petitioner is capable and willing to make such arguments; and
- (3) Whether Movants offer different knowledge or experience for the proceeding.

Berkeley Electric Co-op, Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 191, 394 S.E.2d 712, 715 (1990); *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525 (9th Cir. 1983). "The burden of demonstrating inadequacy of representation is on the applicant." *Horry County State Bank*, 361 S.C. at 508; *Berkeley Electric* at 191.

Movants' concede their interests are adequately represented by Petitioner by consenting to Petitioner appearing on "their behalf and represent[ing] and advance[ing] their interests in this matter". *Motion to Intervene* at 1. In fact, "Attorneys for Pickens County" filed this Motion to Intervene on behalf of Movants. *Id.* at 3. Movants also crave reference to an affidavit of Petitioner's staff member, Chris Brink, who further confirms: "[Petitioner] brings this action in the Administrative Law Court on behalf of the citizens and residents of Pickens County[,] property owners of Pickens County, on behalf of adjoining landowners[,] and "[i]n particular, [Petitioner] brings this action on behalf of members of the public residing in close proximity to the landfill. . . ." *Id.* at 2; *Citing* Petitioner's Memorandum in Opposition to MRR Pickens, LLC's Motion to Dismiss, Ex. 15, Aff. of Chris Brink, ¶ 23 (Aug. 17, 2016). Therefore, Movants confirm Petitioner will make their arguments. Petitioner confirms it is capable and willing to make Movants' arguments, and Movants offer no evidence that they have differing knowledge or experience from Petitioner.

Additionally, in Movants' affidavits attached to Petitioner's filing, Movants convey the same misplaced "interest" in the Minor Permit Modification as Petitioner – that the modification changes the 2008 permit to allow coal ash and that coal ash will affect their properties:

The rights and defenses of the [Movants] rise and fall with the acts and omissions of [Petitioner]. They share the same interest and objective.

In re Horry County State Bank, 361 S.C. at 510. Moreover, there is no way for this Court to discern from Movants' argument that its ultimate objective is different from Petitioner:

Regardless of how the parties' interests are characterized, the [Movants] and the [Petitioner] seek the same outcome in the case.

S.C. Tax Comm'n v. Union County Treasurer, 295 S.C. 257, 260-261, 368 S.E.2d 72, 74 (Ct. App. 1988).

Consequently, Movants have unequivocally demonstrated their interests are adequately represented by Petitioner. Movants also fail to distinguish their interests from Petitioner. Therefore, this Motion to Intervene must be denied.⁹

C. Intervention at this stage will unduly prolong the case and prejudice the rights of Respondents.

Rule 20(B)(3), ALC Rules, requires that intervention will not unduly prolong the proceedings or otherwise prejudice the rights of existing parties. Rule 20(C), ALC Rules, provides a motion for leave to intervene must be filed as early in the proceedings as possible to avoid adverse impacts on the disposition of the proceedings.

Here, Petitioner filed its RFR with the DHEC Board on March 23, 2016, over five (5) months ago. Upon denial of the RFR by the Board in late April, Petitioner filed its Request for a Contested Case Hearing with this Court on May 19, 2016 – almost four (4) months ago. Prehearing statements and dispositive motions have been filed and Petitioner has served discovery on Respondents DHEC and MRR Pickens. MRR Pickens filed its Motion to Dismiss on July 29, 2016. It appears Petitioner's counsel, recognizing its fatal flaws for timeliness,

⁹ Again, it is clear Petitioner only moves to add parties to this action in an effort to repair its failure to establish subject matter jurisdiction in this case. Thus, MRR Pickens requests this Court grant MRR Pickens its attorneys' fees, costs and expenses, and other just and proper relief in responding to this Motion to Intervene.

service, and other necessary requirements, now files this Motion to Intervene on behalf of Movants in a final effort to save or resurrect its pleading. By this filing, Petitioner effectively concedes its appeal is time-barred and acknowledges it failed to adhere to statutorily prescribed procedure as identified in detail herein and in MRR Pickens' Motion to Dismiss.

Moreover, if Petitioner is untimely, then Movants are also untimely. None of the Movants state or identify reasons why they have not been involved in these administrative proceedings prior to this Motion to Intervene or why they have not come forward on their own at any time since the Minor Permit Modification was issued - over a year ago. Upon review of Movants' affidavits, it is impossible to establish from the sworn testimony when Movants became aware of the Minor Permit Modification.

First, the public record shows that the Movants were given actual and constructive notice of the original Highway 93 Permit in 2008. In fact, it was Legally Noticed on three (3) separate occasions and a written notice was mailed to each of the Movants at that time. [Exhibits C and D] Finally, a resident of Pickens County, GB Enterprises, appealed the 2008 Permit and the case was dismissed in March of 2009. None of the Movants intervened or joined in that case or asked to be notified of the resolution of it or of any future decisions relating to the Highway 93 Permit.

Secondly, no Movant identifies when he or she received notice of the Minor Permit Modification. Constructive Notice is defined as "information or knowledge of a fact imputed by law to a person, because he could have discovered the fact by property diligence, and his situation was such as to cast upon him the duty of inquiring into it. *Concerned Citizens for Sandy Flat v. S.C. Dep't of Health & Envtl. Control, et al.*, 2001 WL 1502396, *3 (2001). Here, information relating to the permit at issue, including the modification to add the option of a liner, has been in the state and local newspapers since at least December of 2015. [Exhibit G;

Newspaper articles addressing the Highway 93 Landfill and the Minor Modification to add a Liner]. Therefore, Movants and the public in general have at the very least had constructive notice of the Minor Permit Modification since January of 2016.

Therefore, intervention will prolong these proceedings and prejudice MRR Pickens by requiring extensive discovery on whether the Movants have standing, and the alleged harm each Movant claims. To allow this over a year after the Minor Modification will serve no public purpose given the limited nature of the Minor Permit Modification.

3. Movants' have failed to establish standing to intervene:

Movants cannot stand on their own as a "parties" because they failed to exhaust administrative remedies as required by statute. No Movant has requested the DHEC Board for Final Review at any time after receiving actual or constructive notice of the Minor Permit Modification. Therefore, the Court should not allow Movants to "stand in the shoes" of the Petitioner in an attempt to repair Petitioner's untimely appeal and to repair Movants' failure to exhaust their own administrative remedies.

Under the APA, a party is defined as "each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party." S.C. Code Ann. § 1-23-505(5). Only a "party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review." S.C. Code Ann. § 1-23-380. Movants have the burden to show they have a right to intervene. *See In re Horry County State Bank*, 361 S.C. 503, 508, 604 S.E.2d 723, 725 (Ct. App. 2004). No Movant has made a RFR or requested be notified as an affected person.

In addition to the requirements set forth above, this Court has held that Rule 20(C), ALC Rules, implicitly requires the Movants to establish "standing" to appeal. Standing requires

“injury in fact” beyond injury to the general public. Movants have not established any such injury as a result of an optional liner. Furthermore, review of public GIS and tax records for Pickens County, indicates that only two of the Movants have property adjacent to the Highway 93 Class 2 Landfill and all the Movant’s properties are “vacant land”. Even if Movants had exhausted administrative remedies (which MRR Pickens respectfully denies), MRR Pickens suspects that some, if not all, the Movants would be unable to establish standing in this matter, if a justiciable case existed. Based on the pleadings, Movants failed to meet this burden. If the Court does not dismiss this case for lack of jurisdiction or deny the Motion to Intervene on the pleadings, MRR Pickens will respectfully request discovery on the issue of standing and reserves the right to file supplemental briefs on the issue before a final ruling is given.

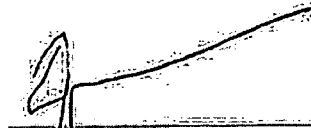
CONCLUSION

Respondent MRR Pickens respectfully requests this Court rule Movants’ Motion to Intervene is moot given the lack of subject matter jurisdiction in Petitioner Pickens County’s underlying case. In the alternative, MRR Pickens respectfully requests the Court deny Movants’ Motion to Intervene on the grounds that: Movants have failed to satisfy the requirements for intervention pursuant to Rule 20(C) of the ALC Rules; and Movants have failed to establish standing in this case. Furthermore, MRR Pickens requests Movants and/or Petitioner reimburse its attorneys’ fees, costs, and expenses in responding to this Motion to Intervene.

Respectfully submitted, this the 6th day of September, 2016.

(SIGNATURE PAGE TO FOLLOW)

WILLIAMS MULLEN



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**ATTORNEYS FOR RESPONDENT
MRR PICKENS, LLC**

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Pickens County,

Petitioner,

vs.

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

Respondents:

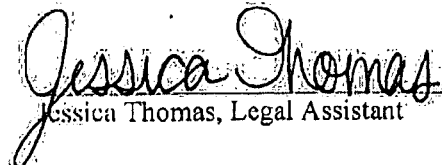
DOCKET NO. 16-ALJ-07-0164-CC

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of September, 2016, in Columbia, South Carolina, a copy of the foregoing **RESPONDENT MRR PICKENS, LLC'S RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FOR LEAVE TO INTERVENE** was served on all parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows:

Etta R. Williams Linen, Esquire
Office of the General Counsel
S.C. Department of Health and
Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Gary W. Poliakoff, Esquire
Poliakoff & Associates
P.O. Box 1571
Spartanburg, South Carolina 29304


Jessica Thomas, Legal Assistant

WILLIAMS MULLEN
1441 Main Street, Suite 1250
Columbia, SC 29201
Telephone: 803.567.4604
Facsimile: 803.567.4601

Respondent MRR Pickens, LLC
Exhibit A

021212

(14)



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

September 19, 2008

CERTIFIED MAIL

91 7108 2133 3932 9290 2453

Mr. Ronald C. Gilkerson, P.G.
MRR Pickens, LLC
11743 Trails End Lane
Charlotte, NC 28078

RE: Draft Permit for Class 2 Solid Waste Landfill
Proposed Highway 93 C & D Landfill
Location: 34° 47' 50" N, 82° 40' 30" W
Pickens County

Dear Mr. Gilkerson:

The Department has completed the review of your submittal dated November 2007, with the August 2008 revisions on the proposed Class 2 Landfill. Enclosed is a draft permit for the proposed Highway 93 Construction, Demolition and Land-Clearing Debris Landfill in Pickens County. This permit is drafted under Regulation 61-107.19, *Solid Waste Management: Solid Waste Landfills and Structural Fill*. If you have any comments regarding the permit conditions, please respond by October 20, 2008.

The Public Notice of the draft permit will be published in the *Easley Progress* and *The Pickens Sentinel* on September 19, 2008. (Copy Attached) If no comments are received the permit may be issued as written.

If you should have any questions, please contact Timothy M. Eleazer at (803) 896-4217.

Sincerely,

Joan F. Litton, Manager
Solid Waste Permitting Section
Division of Mining and Solid Waste Management
Bureau of Land and Waste Management

JFL/TME/tmc

Enclosures

cc: Bill Rampey, Region 2, Greenville EQC Office
Keith Collinsworth, P.G. Manager, Solid Waste Groundwater Section
Marty Lindler, Manager, Solid and Hazardous Waste Compliance
Donna Rowe, Upstate Regional Community Liaison (Region 1 & 2)
Jeff Herbig, P.E., B.P. Barber and Associates, Columbia, SC
BLWM File # 021212



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-###

Permit Issued Date: _____ Permit Effective Date: _____

Permission is hereby granted to:

Name of Facility: Highway 93 C & D Landfill
Permittee: MRR Pickens, LLC
Address: 11743 Trails End Lane
Charlotte, NC 28078
Contact: Mr. Ronald C. Gilkerson
Phone: (704) 947-6652

for the operation of a Class 2 landfill at 2180 Greenville Highway, Liberty, South Carolina, 29657 in Pickens County located off Highway 93 at Clardy Road approximately 2,000 feet NE of the City of Liberty, SC.

This permit is issued pursuant to Sections 44-96-10 *et seq.* (Supp. 2007) and 25A S.C. Code of Regulations Section 61-107-19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.

Kent M. Coleman, P.G., Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-###
September 19, 2008
Page 1 of 4

MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-###

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the design specifications and construction plans received November 30, 2007; and last revised August 26, 2008, unless permit conditions state otherwise.
2. This permit is limited solely to the disposal of items listed in Appendix I of R.61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (75,500) tons per fiscal year (July 1 to June 30). Information concerning the facility's previous Fiscal Year's waste receipts is due in the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV. Subpart C.16 to the attention of:

**Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201**

4. All Appendix-I acceptable wastes must be covered at least every thirty (30) days with a minimum of six (6) inches of clean soil; except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to twelve (12) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than twelve (12) acres (at the time of the certification). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (38,720 yd³ of soil for 12 acres with 2' thickness). The certification shall have been completed within the last 60 days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.
2. Within ninety (90) days of the effective date of this permit, the Permittee shall submit a detailed Compliance Plan that describes steps to be taken in order to fully comply with all regulatory requirements of R.61-107.19 that relate to Class 2 landfills. This Compliance Plan shall include, but not limited to, the following: a groundwater monitoring design workplan, a landfill post-closure care plan, and a landfill post-closure care cost estimate. Upon the Department's approval of said Compliance Plan, the Permittee will have six (6) months to implement the plan and will have a deadline for full compliance with R.61-107.19 of November 19, 2009.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. SPECIAL ENVIRONMENTAL PERMIT CONDITIONS

Within ninety (90) days of the effective date of this permit, the Permittee shall submit to the Department for review, a Groundwater Monitoring Design Workplan in accordance with R.61-107.19, Part IV, Section E (Groundwater Monitoring and Corrective Action). In addition, an approved groundwater monitoring system must be installed and operating prior to November 19, 2009 pursuant to R.61-107.19, Part I, Section A.6.c. Upon the Department's approval of the Groundwater Monitoring Design Workplan, permit conditions C.2, C.3 and C.4 will become effective.

2. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit.

The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.

- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- e) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

3. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine monitoring at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Part IV, Subpart E.

4. REPORTING

- a) The Permittee shall submit to the Department the results of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following sampling schedule:

<u>Sampling Schedule</u>	<u>Results Due</u>
November/December	January 15 (Semi-Annual)
May/June	July 15 (Annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.2.A.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Groundwater Section, and to the Solid Waste Consultant in Region 2 EQC (Greenville).

5. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required comply with R.61-107.19, Part IV, Section C.21.



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

13

MEMORANDUM

TO: Bill Rampey
Region 2 EQC Office
Greenville EQC Office

FROM: Timothy M. Eleazer *TME.*
Solid Waste Permitting Section

DATE: September 19, 2008

RE: Public Notice of the Draft Highway 93 C&D, LCD Landfill
(Pickens County)

Enclosed is a copy of the revised application for the proposed construction, demolition and land-clearing debris landfill. Please make it available for public inspection, until the end of the public review period on October 20, 2008. A public notice is to be printed in *Easley Progress* and *The Pickens Sentinel* on September 19, 2008.

Your cooperation in this matter is appreciated and if you have any questions, please contact me at (803) 896-4217.

TME/tme

Respondent MRR Pickens, LLC
Exhibit B

SC DEPARTMENT OF LAND AND ENVIRONMENTAL CONTROL
PUBLIC SC #0002

Public Proposed Highway 33 Construction Extension and Land-Use Control DeCade Landfill Permit

Location: 2186 W. Oceanview Highway
WV, 29677-0387 Highway 33-A in Charleston, in Pickens County, approximately one mile NE of the City of Anderson, SC.

The South Carolina Department of Health and Natural Resources' (SCDHNR) Solid Waste Permitting Section has received a permit application from MRB Pickens, LLC for Class 2 Landfills. The proposed site will be located within a 109-acre parcel property located off Highway 33, in the Road approximately 2,000 feet northwest of city limits of Liberty, SC. The proposed DR is estimated to have a design life time more than fifty (50) years.

SCDHNR requires that a permit to expand Class 2 Landfills pursuant to SC Code A Sectors 44-96-10 et. seq. (Statute 2007) 25A SC Code Reg. 61-107-19; *Solid Waste Management: Solid Waste Landfills and Sanitary Fill*. The types of wastes that can be accepted in the MRB Pickens, LLC CAD (in fill are described in Appendix I) of the aforementioned regulation. Acceptable waste fluids but are not limited to: tire-bearing liquids, brines, brooks, oil/gases, fungus, and w/wastes listed in Appendix I. Wastes that are not acceptable at Class 2 landfills include household garbage, tobacco, paints, and flammable waste. For a more detailed description of Appendix I-acceptable wastes, please contact one of the persons below to view application or to request a Class 2 Landfill sheet. A copy of the regulation may also be viewed at the following web page:
<http://www.scdheer.com/scdhnr/landfills/AppendixI.htm>

On this date, the Solid Waste Permitting Section has completed its review of the permit application and found that the application is in technical compliance. Solid Waste Permitting has completed a draft permit and is giving notice to the public. During the "de cades" period, the Department will accept comments from the public concerning the draft permit, which is subject to the permittee's determinations as outlined in 107-19 Part L.D.2 under the permit provision. The comments period will remain open until December 31, 2009.

Who to Contact? Copies of the permit application are available by appointment for viewing during business meeting hours at the following location:

Bureau of Land and Waste Management
SC Department of Health and Environmental Control
5911 Farrow Road
Columbia, SC 29222
Contact: Timothy M. Klecker (803) 417-4117
Email: t.klecker@scdhnr.com
or
timothy.m.klecker@scdhnr.com

Respondent MRR Pickens, LLC
Exhibit C



C. Lael Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

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MEMORANDUM

TO: Adjacent Landowners

FROM: Timothy M. Eleazer *ghe*
Solid Waste Permitting Section
Division of Mining and Solid Waste Management
Bureau of Land and Waste Management

DATE: September 19, 2008

Re: Proposed Class 2 Landfill
Highway 93 C&D, LCD Landfill
Pickens County

The South Carolina Department of Health and Environmental Control's (SCDHEC) Solid Waste Permitting Section has received a permit application from MRR Pickens LLC for a Class 2 Landfill. The Department has completed a technical review of the application. At this time, the Department's Solid Waste Permitting Section has issued a draft permit for this Class 2 Landfill and will be taking comments from the public before a final permit decision is made.

Please see the attached Public Notice for additional information on the proposed project. A Copy of the regulation may also be viewed at the following website:
http://www.scdhec.gov/environment/lwm/html/solidwaste_new_regulation.htm

If you have any questions regarding the proposed landfill or wish to view the permit application, please contact me at (803) 896-4217.

TME/tme

Enclosure

SC DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL PUBLIC NOTICE

Topic: Proposed Highway 93 Construction, Demolition and Land-Clearing Debris (C&D) Landfill Permit

Location: 2180 Greenville Highway, Liberty, SC 29657
Off Highway 93 at Clardy Road in Pickens County;
Approximately 2,000 feet NE of the City of Liberty, SC.

The South Carolina Department of Health and Environmental Control's (SCDHEC) Solid Waste Permitting Section has received a permit application from MRR Pickens, LLC for a new Class 2 Landfill. The proposed landfill will be located within a 149-acre parcel of property located off Highway 93 at Clardy Road approximately 2,000 feet northeast of the city limits of Liberty, SC. The proposed landfill is estimated to have a disposal lifetime of more than fifty (50) years.

SCDHEC requires that a permit be issued for Class 2 Landfills pursuant to SC Code Ann. Sections 44-96-10 et. Seq. (Supp. 2007) and 25A SC Code Reg. 61-107.19, *Solid Waste Management: Solid Waste Landfills and Structural Fill*. The types of wastes that can be accepted at the MRR Pickens, LLC C&D Landfill are described in Appendix I of the above-mentioned regulation. Acceptable wastes include, but are not limited to, land-clearing debris, bricks, blocks, shingles, lumber, and other wastes listed in Appendix I. Wastes that are not acceptable at Class 2 landfills include household garbage, hazardous waste, and infectious waste. For a more detailed description of Appendix I acceptable wastes, please contact one of the persons below to view the application or to request a Class 2 Landfill fact sheet. A copy of the regulation may also be viewed at the following website: <http://www.scdhec.gov/environmental/wnw/regulatory.htm>.

At this time, the Solid Waste Permitting Section has completed its review of the permit application and found that the application meets all technical requirements. Solid Waste Permitting has completed a draft permit and hereby gives notice to the public. During the public comment period, the Department will be taking comments from the public concerning the draft permit, which is inclusive of the Department's determinations as outlined in R. 61-107.19 Part 1.D.2.b and/or the permit application. The comment period will remain open until October 20, 2008.

Who to contact? Copies of the permit application are available by appointment for public viewing during normal working hours at the following locations:

Bureau of Land and Waste Management
SC Department of Health and Environmental Control
8911 Farrow Road
Columbia, SC 29223

Contact: Timothy M. Eleazer, (803) 896-4217
E-mail: eleazetm@dhec.sc.gov

Environmental Quality Control Regional Office,
SC Department of Health and Environmental Control
Region 2 - Greenville
301 University Ridge, Suite 5800
Greenville, SC 29601-3677

Contact: Bill Rampey, (864) 241-1090
E-mail: rampeybj@dhec.sc.gov

Any interested person(s) may submit written comments concerning the proposed landfill permit application to this mailing address: Mr. Timothy M. Eleazer, SCDHEC BLWM, 2600 Bull Street, Columbia, SC 29201. To be considered, all comments or requests must be received by October 20, 2008, at which time the public comment will end.

Any individuals with disabilities or special needs who want to review the permit application should contact the Department to discuss any special services needed. A minimum of one (1) week's prior notice is requested to allow the Department to make any necessary arrangements.

**Mailing list for the proposed MRR Pickens LLC
Highway 93 C&D Landfill,
Pickens County.**

This mailing list for draft permit dated September 19, 2008.

PETER H SMITH
PO BOX 467279
ATLANTA GA 31146

VUCAN LANDS, LLC
PO BOX 80730
ATLANTA GA 30366

METROMONT MATERIALS
C/O CEMEX
PO BOX 1500
HOUSTON TX 77251-1500

JAMES D MOORE
PO BOX 4
LIBERTY SC 29657-0004

MARGRET WELBORN
LIFE ESTATE
107 DANA DR
OAKRIDGE TN 37830

KING ASPHALT INC
PO BOX 179
LIBERTY SC 29657-0179

LAURA W FOWLER TRUSTEE
210 ORANGE ST
SATELLITE BCH FL 32937-3013

TONY CHARPING
PO BOX 677
LIBERTY SC 29657

RANDOLPH E REVIS SR
2026 GREENVILLE HWY
LIBERTY SC 29657

GB ENTERPRISES LTD
PO BOX 486
EASLEY SC 29640-0486

MARGARET WELBORN
LIFE ESTATE
610 CAROLINA DR
LIBERTY SC 29657-1551

PHILIP J KALCHTHALER
108 CORAL BEDS WAY
SUNSET SC 29685

MAYOR CITY OF LIBERTY
CITY HALL
LIBERTY SC 29657

ROBERT L TRABER
2041 GREENVILLE HWY
LIBERTY SC 29657-8920

WILLIAM R MCBRIDE TRUSTEE
933 JESSICA ST
RIDGECREST CA 93555-3002

COUNTY ADMINISTRATOR
PICKENS COUNTY
222 MCDANIEL AVE STE B1
PICKENS SC 29671-2556

NEW HORIZON-ELECTRIC
COOPRATIVE INC
PO BOX 1169
LAURENS SC 29360-1169

DUKE ENERGY CORP
PO BOX 1007
CHARLOTTE NC 28201

SAMMY SMITH
206 LAKESIDE LN
LIBERTY SC 29657-3810

UNA W HUGHES
540 AMSTERDAM RD
LIBERTY SC 29657-9373

ERIC M LILJESTEDT
143 BUD SMITH RD
LIBERTY SC 29657-9335

CALVIN L. SCHOULTIES
1630 DAVIS CREEK RD
SENECA SC 29678

JAMES S COX
1639 EARLS BRIDGE RD
EASLEY SC 29640-6307

MICHAEL DAVID THOMPSON
348 COBB RD
PELZER SC 29669

GREGORY A CRUMP
208 WELBY WAY
LIBERTY SC 29657

ROBERT EDWARD KELLEY
211 GILSTRAP RD
LIBERTY SC 29657

JAMES RAY CHANDLER
118 CLOVER ST
LIBERTY SC 29657

BRIAN PAUL WASTON
115 CLOVER ST
LIBERTY SC 29657

SHELBA C PORTER
634 AMBERWOOS RD
PICKENS SC 29671

CRYSTAL D HOLLIDAY
114 CLOVER ST
LIBERTY SC 29657

JR BUILDERS OF PICKENS INC
1712 GENTRY MEMORIAL HWY
EASLEY SC 29640

PETER H SMITH
1810 N POTTER PL
TUCSON AZ 85719-3833

EASLEY BUILDERS SUPPLY
INC
PO BOX 1016
EASLEY SC 29641-1016

SAMUEL J VIDAL
175 ORCHARD DR
LIBERTY SC 29657-9317

EDITH M HEAD
172 ORCHARD DR
LIBERTY SC 29657-9317

DIANE H HUTTON
110 POPLAR POINTE
SUNSET SC 29685

BETTY C DUNCAN
18 N PALMETTO ST
LIBERTY SC 29657-1026

ROSA LEE JAMES
2011 GREENVILLE HWY
LIBERTY SC 29657-8920

BARBARA HEAD ROGERS
2001 GREENVILLE HWY
LIBERTY SC 29657-8920

CYNTHIA D YOUNG
PO BOX 36
LIBERTY SC 29657

CITY OF LIBERTY
FIRE DEPARMENT
206 W FRONT ST
LIBERTY SC 29357

PICKENS COUNTY SCHOOL
SUPERINTENDENT
1348 GRIFFIN MILL RD
EASLEY SC 29640-8885

EASLEY CENTRAL WATER
DISTRICT
PO BOX C
NORRIS SC 29667-0050

VIRGINIA JUMPER
1307 ANDERSON HWY
EASLEY SC 29642

WATKINS BUILDERS INC
TROY WATKINS
405 WEXFORD WAY
EASLEY SC 29642

FURMAN RICHARD STATON
360 SPRINGDALE AVE
LIBERTY SC 29657

THOMAS K NIX
356 SPRINGDALE AVE
LIBERTY SC 29657-3807

WILLIAM W GARRISON
352 SPRINGDALE AVE
LIBERTY SC 29657-3807

JASON LEE WADE
348 SPRINGDALE AVE
LIBERTY SC 29657-3807

TIMOTHY RAY RIDDLE
344 SPRINGDALE AVE
LIBERTY SC 29657-3807

KALOUTIE RANDASS
340 SPRINGDALE AVE
LIBERTY SC 29657-3807

ANGELA MARIE CHADWICK
336 SPRINGDALE AVE
LIBERTY SC 29657-3807

JAMES N YOUNG JR
332 SPRINGDALE AVE
LIBERTY SC 29657-3807

KEVIN R JONES
326 SPRINGDALE AVE
LIBERTY SC 29657-3807

Respondent MRR Pickens, LLC
Exhibit D



C. Earl Hunter, Commissioner

Protecting and preserving the health of the people of South Carolina

02/2/2

(19)

Bureau of Land and Waste Management
MEMORANDUM

DATE: November 3, 2008
TO: Concerned Citizens
FROM: Kent M. Coleman, P.G. Director
Division of Mining and Solid Waste Management
Bureau of Land and Waste Management
SUBJECT: **Class 2 Solid Waste Landfill Permit**
Permit Issuance for Highway 93 C&D Landfill
Permit No. LF2-00003
Pickens County

After careful review of information submitted by MRR Pickens, LLC (the Applicant), the South Carolina Department of Health and Environmental Control (the Department) has approved the application for a new Class 2 landfill (previously Construction, Demolition and Land-Clearing Debris (C&D) landfill). The landfill is located off Highway 93 near Liberty, South Carolina, Pickens County, SC. The approved Permit and a Staff Decision Summary Report have been enclosed for your information. The Summary Report addresses comments received during the public comment period for the proposed landfill.

This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person. This decision may be appealed by complying with the requirements described in the attached *Notice of Appeal Procedure*, provided as a courtesy by the Department.

If you have any questions regarding the solid waste permit, you may call Joan F. Litton at (803) 896-4264.

KMC/TME/tme

Enclosures



C. Earl Hunter, Commissioner

Protecting and promoting the health of the people of the State of South Carolina

Notice of Appeal Procedure

The following procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person.
2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393:

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201
3. The request for final review should include the following:
 - a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
 - b. a statement of any significant issues or factors the Board should consider in deciding how to handle the matter
 - c. a copy of the Department's decision or action under review
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the Department decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

October 31, 2006

STAFF DECISION SUMMARY REPORT

October 30, 2008

Approval of Class 2 Solid Waste Landfill (previously C&D) Application Issuance of Permit for the Highway 93 C&D Landfill

This summary report addresses the South Carolina Department of Health and Environmental Control's (the Department's) decision to issue a Class 2 Landfill permit for the proposed Highway 93 C&D Landfill owned and operated by MRR Pickens, LLC (Applicant). The site is located at 2180 Greenville Highway, Highway 93, near Liberty, South Carolina in Pickens County. This summary report provides responses to comments received throughout the public comment period.

SOLID WASTE MANAGEMENT

The principal law governing solid waste management in this state is the South Carolina Solid Waste Policy and Management Act of 1991 (Act) [44-96-10]. One of the main purposes of the Act is to ensure those activities associated with solid waste management are executed in a manner adequate to protect human health, safety and welfare of the environment.

The passage of the Act acknowledged a growing statewide concern about the generation, management, and disposal of solid waste. DHEC was given the responsibility to develop regulations establishing minimum standards for solid waste management facilities. Regulation 61-107.11, Solid Waste Management: *Construction, Demolition and Land-Clearing Debris Landfills* became effective on April 24, 1998, and was the applicable regulation when the Department on June 27, 2006 received the permit application. Regulation 61-107.11 was replaced by Regulation 61-107.19, *Solid Waste Management: Solid Waste Landfills & Structural Fill*, on May 23, 2008. This regulation outlines the requirements for permitting the design, construction, operation, maintenance, and closure of landfills. Please see the following web page http://www.scdhec.gov/environment/lwm/html/solidwaste_new_regulation.htm for a more complete description and for a copy of the new regulation.

In reaching its decision on the permit application, the Solid Waste Permitting Section reviewed all information submitted in the application, supplemental information submitted, and public comments. The Department has reviewed the application with respect to the requirements of the Act and Regulation 61-107.19. The applicant has met the applicable requirements and a permit is being issued.

PUBLIC PARTICIPATION AND NOTICE

The following is a summary of public involvement that occurred during the Department's consideration of this application:

- On January 16, 2008, the original application package was advertised to the public in *The Pickens Sentinel* newspaper of Pickens County.

- On September 19, 2008, notice was advertised to the public in *The Easley Progress* and *The Pickens Sentinel*.
- On September 19, 2008, the public notice of the draft permit was mailed to adjacent landowners.

TRAFFIC CONCERNS

The current solid waste law and regulations do not grant the Department the authority to regulate traffic on public roads. Jurisdictional authority over the setting and enforcement of weight limits, speed limits, traffic patterns, encroachments, etc. is the responsibility of other state and local entities.

BUFFERS

Regulation 61-107.19, Part IV B.1 a. & g. requires that the boundary of the fill area not be located within 1,000 feet of any residence, school, day-care center, church, hospital, or publicly owned recreational park area and not be located within 100 feet of any drinking water well. The Applicant's submittal for the landfill meets all regulatory requirements for buffers.

GROUNDWATER QUALITY

Class 2 Landfills are required to meet all the design and operational requirements set forth in Regulation 61-107.19 - Part IV. The landfill regulations were promulgated as a means of providing environmentally sound disposal options for those inert construction wastes and demolition wastes listed in Appendix I of R.61-107.19. As such, these landfills are required to monitor groundwater, and are required to design the landfill to achieve a required two (2) feet separation from the seasonal high groundwater table (Regulation 61-107.19 - Part IV.D.1). The permit will have groundwater monitoring and reporting requirements. The monitoring wells will be monitored semiannually for the constituents in Appendix III of the Regulation R.61-107.19 with the results reported to the Department.



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

November 3, 2008

CERTIFIED MAIL

Mr. Ronald C. Gilkerson, P.G.
MRR Pickens, LLC
11743 Trails End Lane
Charlotte, NC 28078

**RE: Class 2 Solid Waste Landfill Permit for
Highway 93 C&D Landfill
Permit No. LF2-00003
Location: 34° 47' 50" N, 82° 40' 30" W
Pickens County**

Dear Mr. Gilkerson:

Enclosed is a Class 2 Solid Waste Landfill Permit for the Highway 93 Construction and Demolition Landfill in Pickens County. This permit is issued under Regulation 61-107.19 *Solid Waste Management: Solid Waste Landfills and Structural Fill*. Also, enclosed is the approved landfill Engineering Report and Engineering Drawings, to be kept at the facility at all times.

The financial assurance for closure of this facility is established at three hundred thousand dollars (\$300,000) at this time. A mechanism that is acceptable to the Department must be established in the amount previously specified prior to the facility accepting waste. Please contact Pete Stevens of my staff at (803) 896-4149 for help in establishing a financial assurance mechanism that is acceptable to the Department.

This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person. This decision may be appealed by complying with the requirements described in the attached *Notice of Appeal Procedure*, provided as a courtesy by the Department.

MRR Pickens, LLC is responsible for complying with all of the conditions in the attached permit and should review each condition carefully.

November 3, 2008 letter
MRR Pickens Class 2 Landfill
Page 2 of 2

If you should have any questions, please contact Joan F. Litton of my staff at (803) 896-4264. All other questions should be directed to Bill Rampey in the Region 2 – Greenville EQC Office at (864) 241-1090.

Sincerely,



Kent M. Coleman, P.G. Director
Division of Mining and Solid Waste Management
Bureau of Land and Waste Management

KMC/TME/tmc

Enclosures

cc: Bill Rampey, Region 2, Greenville EQC Office
Keith Collinsworth, P.G. Manager, Solid Waste Groundwater Section
Marty Lindler, Manager, Solid and Hazardous Waste Compliance
Jeff Herbig, P.E., B.P. Barber and Associates, Columbia, SC
BLWM File # 021212

Notice of Appeal Procedure

The following procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person.
2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393:

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201
3. The request for final review should include the following:
 - a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
 - b. a statement of any significant issues or factors the Board should consider in deciding how to handle the matter
 - c. a copy of the Department's decision or action under review
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the Department decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

October 31, 2006



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003

Permit Issued Date: November 3, 2008 Permit Effective Date: November 18, 2008

Permission is hereby granted to:

Name of Facility: Highway 93 C & D Landfill
Permittee: MRR Pickens, LLC
Address: 11743 Trails End Lane
Charlotte, NC 28078
Contact: Mr. Ronald C. Gilkerson
Phone: (704) 947-6652

for the operation of a Class 2 landfill at 2180 Greenville Highway, Liberty, South Carolina, 29657 in Pickens County located off Highway 93 at Clardy Road approximately 2,000 feet NE of the City of Liberty, SC.

This permit is issued pursuant to Sections 44-96-10 *et seq.* (Supp. 2007) and 25A S.C. Code of Regulations Section 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, P.G., Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the design specifications and construction plans received November 30, 2007; and last revised August 26, 2008, unless permit conditions state otherwise.
2. This permit is limited solely to the disposal of items listed in Appendix I of R.61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to June 30). Information concerning the facility's previous Fiscal Year's waste receipts is due in the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV. Subpart C.16, to the attention of:

**Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201**

4. All Appendix-I acceptable wastes must be covered at least every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to twelve (12) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5. (above) is equal to or less than twelve (12) acres (at the time of the certification). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (38,720 yd³ of soil for 12 acres with 2' thickness). The certification shall have been completed within the last 60 days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.
2. Within ninety (90) days of the effective date of this permit, the Permittee shall submit a detailed Compliance Plan that describes steps to be taken in order to fully comply with all regulatory requirements of R.61-107.19 that relate to Class 2 Landfills. This Compliance Plan shall include, but not limited to, the following: a groundwater monitoring design workplan, a landfill post-closure care plan, and a landfill post-closure care cost estimate. Upon the Department's approval of said Compliance Plan, the Permittee will have six (6) months to implement the plan and will have a deadline for full compliance with R.61-107.19 of November 19, 2009.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. SPECIAL ENVIRONMENTAL PERMIT CONDITIONS

Within ninety (90) days of the effective date of this permit, the Permittee shall submit to the Department for review, a Groundwater Monitoring Design Workplan in accordance with R.61-107.19, Part IV, Section E (Groundwater Monitoring and Corrective Action). In addition, an approved groundwater monitoring system must be installed and operating prior to November 19, 2009, pursuant to R.61-107.19, Part I, Section A.6.c. Upon the Department's approval of the Groundwater Monitoring Design Workplan, permit conditions C.2, C.3 and C.4 will become effective.

2. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit.

The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.

- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- e) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

3. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine monitoring at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Part IV Subpart E.3.

4. REPORTING

- a) The Permittee shall submit to the Department the results of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following sampling schedule:

<u>Sampling Schedule</u>	<u>Results Due</u>
November/December	January 15 (Semi-Annual)
May/June	July 15 (Annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.2.A.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Groundwater Section, and to the Solid Waste Consultant in Region 2 EQC (Greenville).

5. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required comply with R.61-107.19, Part IV, Section C.21.

Respondent MRR Pickens, LLC
Exhibit E

BEFORE THE BOARD OF HEALTH AND
ENVIRONMENTAL CONTROL
COLUMBIA, SOUTH CAROLINA

GB Enterprises,

Petitioner,

vs.

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

Respondents.

Docket No.: 08-RFR

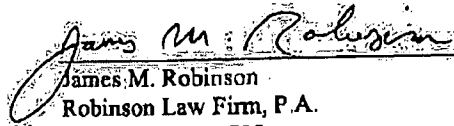
NOTICE OF DISMISSAL

RECEIVED
S.C. DEPT OF HEALTH
& ENVIRONMENTAL CONTROL
2009 MAR 25 PM 4:37
OFFICE OF THE COMMISSIONER
CHIEF OF STAFF
CLERK OF SCDHEC BOARD

Petitioner GB Enterprises, also known as G&B Enterprises, Ltd. and GB Enterprises, Ltd. ("Petitioner"), by and through its attorney, voluntarily dismisses with prejudice its request for Board review of Class 2 Solid Waste Landfill Permit LF2-0003 ("Permit") issued to Respondent MRR Pickens, LLC ("MRR") on November 3, 2008 by Respondent South Carolina Department of Health and Environmental Control ("Department").

On November 11, 2008, Petitioner filed a Notice of Appeal of the Permit with the Board. By letter dated December 15, 2008, the Clerk of the Board notified Petitioner that the Board had decided on December 11, 2008, not to conduct a final review conference in this matter.

Petitioner and MRR have reached a resolution of the issues raised by Petitioner in its request for a final review conference. Petitioner now acknowledges that these proceedings are dismissed with prejudice, and Petitioner hereby waives its right to further appeal of the issuance of the Permit, including any right to a contested case hearing.


James M. Robinson

Robinson Law Firm, P.A.
Post Office Box 738
Easley, SC 29641-0738
(864) 859-7501

Attorney for Petitioner GB Enterprises

March
~~February~~ 10, 2009
Columbia, South Carolina

Respondent MRR Pickens, LLC
Exhibit F

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C/A NO.: 2016-CP-39-100

MRR PICKENS, LLC,

PLAINTIFF,

vs.

DEPOSITION TRANSCRIPT

KENT M. COLEMAN

COUNTY OF PICKENS AND WILLIAM CATO,
WELDON CLARK, ROBERT BALLENTIN, JO
JOHNSON, DENNIS REINERT, and BOB
YOUNG, individually and in their
official capacity as appointed
members of the PICKENS COUNTY
PLANNING COMMISSION,
DEFENDANTS.

MARCH 8, 2016

DEPOSITION ON THE ORAL EXAMINATION OF KENT M. COLEMAN
REPORTED BY KRISTA GIBSON, COURT REPORTER AND NOTARY PUBLIC IN AND
FOR THE STATE OF SOUTH CAROLINA; SAID DEPOSITION TAKEN PURSUANT TO
NOTICE AND IN ACCORDANCE WITH THE SOUTH CAROLINA RULES OF CIVIL
PROCEDURE AT THE LAW OFFICE OF WILLIAMS MULLEN, 1441 MAIN STREET,
SUITE 1250, COLUMBIA, SOUTH CAROLINA ON TUESDAY, MARCH 8, 2016,
SCHEDULED FOR 10:00 A.M. AND COMMENCING AT 10:08 A.M.



A P P E A R A N C E S

REPRESENTING THE PLAINTIFF: *MRR Pickens, LLC*

JESSICA J.O. KING, ESQUIRE

A. KEITH MCALISTER, JR., ESQUIRE

WILLIAM MULLEN

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REPRESENTING THE WITNESS: *Kent Coleman and The South Carolina
Department of Health and Environmental Control*

ETTA R. LINEN, ESQUIRE

S.C. DEPARTMENT OF HEALTH

AND ENVIRONMENTAL CONTROL

2600 BULL STREET

COLUMBIA, SOUTH CAROLINA 29201

EMAIL: williaer@dhec.sc.gov

A P P E A R A N C E S

REPRESENTING THE DEFENDANTS: --

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REPRESENTING THE DEFENDANT: *The County of Pickens*

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 POLIAKOFF & ASSOCIATES, PA
 PO BOX 1571
 SPARTANBURG, SOUTH CAROLINA 29304
 EMAIL: atty@gpoliakoff.com

REPRESENTING THE DEFENDANT: *Pickens County Planning Commission*

MATTHEW K. JOHNSON, ESQUIRE
 CAMDEN D. NAVARRO, ESQUIRE
 OGLETREE DEAKINS NASH SMOAK & STEWART, PC
 106 DOMINICK COURT
 GREENVILLE, SOUTH CAROLINA 29602
 EMAIL: matthew.johnson@ogletreedeakins.com
 EMAIL: camden.navarro@ogletreedeakins.com

ALSO PRESENT: SHELLEY ROBBINS, CHRIS ROOF, AND DONALD
 GRAVES (VIDEOGRAPHER)

C O N T E N T S

(Deposition of Kent M. Coleman)

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L E G E N D

— INDICATES INTERRUPTION; INCOMPLETE PHRASES;
UNFINISHED SENTENCES AND/OR TRAILING OFF.

[sic] WRITTEN AS SAID.

[ph] WRITTEN PHONETICALLY.

1 permit were modified to include it.

2 Q. Okay. I asked you before whether the Class Two
3 landfill in South Carolina could take coal combustion
4 residuals if they meet the threshold less than ten times
5 the MCL. And your answer was, "Yes, if they meet the
6 criteria." Notwithstanding the new regulator -- I mean,
7 the new law.

8 A. Right.

9 Q. Would MRR's 2008 permit allow them to accept
10 coal combustion residuals if they met the threshold and
11 notwithstanding the new law?

12 A. Yes.

13 Q. This 2008 permit, would it have gone out for
14 public notice?

15 A. When it was originally issued in '08? Yes.

16 Q. Okay. And what's the process for that?

17 A. Well it's laid out in the regulation in Part I,
18 but basically just -- if I can generalize it a little
19 bit. The requirement is that it be public noticed to
20 adjacent landowners and in the newspaper. And then we
21 would -- as a common practice, we would add others who
22 have expressed an interest, and also probably local
23 governments in the area, the County, maybe a nearby city
24 or town if it's close. That type of thing.

25 Q. Okay. So anyone receiving that, such as a

1 county --

2 A. Uh-huh.

3 Q. -- would have the opportunity to ask questions
4 if it was not clear to them what the permit allows.

5 A. We, we issued a public notice so that people
6 will be aware and they ask questions or make comments.

7 Q. Do you hold public hearings on permits?

8 A. Yes. If requested, we do -- or meetings or
9 hearings, whatever --

10 Q. Okay.

11 A. -- you know, folks would like to do, we
12 accommodate that.

13 Q. Do you recall on this particular permit
14 whether a public hearing was requested by any party?

15 A. No. I don't recall.

16 (PLAINTIFF'S EXHIBIT NO. 6; MARKED FOR IDENTIFICATION)

17 Q. Okay. I'm going to hand you another document
18 which will be Plaintiff's Exhibit 6. And this is dated
19 August 10, 2015. This is again, dated August 10, 2015,
20 and it's regarding issuance of a modified Class Two
21 Landfill Permit, Highway 93 Landfill, Permit No. LF2-
22 00003, Pickens County. Have you seen this document
23 before?

24 A. Yes.

25 Q. Is that your signature on the cover page and

1 the first page of the permit?

2 A. Yes.

3 Q. What is this document?

4 A. This was a -- when we issued a modified -- we
5 modified this Class Two permit.

6 Q. So you modified, just for clarification -- you
7 modified MRR Pickens Highway 93 landfill in 2015?

8 A. That's correct.

9 Q. And when you say you -- DHEC modified it.

10 A. Yes.

11 Q. And do you recall what modifications were made
12 to the permit?

13 A. I do remember, I think, the primary reason for
14 the modification was the addition of a synthetic liner,
15 designed with leachate collection. Basically a new
16 design for the landfill.

17 Q. Okay. And were you a part of -- were you
18 involved in this modification?

19 A. Yes.

20 Q. Okay. And I think the liner that you're
21 referring to is in section A-8 of the special conditions.
22 And you can clarify me if that's not what you were
23 referring to. But it's on Page 3 of the permit.

24 And it states, "60 days prior to starting
25 construction of the Class Two landfill, the permittee

1 shall notify the department of their selection between
2 option one, traditional Class Two, landfill design; and
3 option two, alternate liner design. And then it
4 discusses the financial assurance mechanism.

5 A. Uh-huh.

6 Q. So did this modification require MRR to
7 install a liner?

8 A. No.

9 Q. So it gives them the option. Is that correct?

10 A. That's correct.

11 Q. And the alternate liner design was, I expect,
12 described in the application for the permit
13 modification. Is that correct?

14 A. Yes.

15 Q. And what type of liner is this?

16 A. Well, I -- I do know that the liner design
17 included a synthetic component which generally is what we
18 refer to at least, as a subtitle D-type liner design.

19 Q. Okay. And are those the types of liners that
20 you often see in a Class Three landfill?

21 A. Yes.

22 Q. Or always see in a Class Three landfill?

23 A. Yes. That's the type of liner that would be
24 required in a Class Three, yes.

25 Q. But not required in a Class Two?

1 A. Correct.

2 Q. And is it safe to say that a subtitle D liner
3 provides added protection to the environment in a
4 landfill of any kind?

5 A. As compared to what -- no liners?

6 Q. An unlined landfill.

7 A. Yes, certainly.

8 Q. Okay. Are Class Two landfills required to have
9 any type of liner?

10 A. Class Two?

11 Q. Yeah.

12 A. No.

13 Q. And in your opinion, if a permittee, came to
14 DHEC and asked to install a liner that is not required in
15 the regulations --

16 A. Uh-huh.

17 Q. -- would there be any reason for DHEC to deny
18 that request?

19 MR. POLIAKOFF: Objection, form.

20 Leading.

21 A. I -- I can't think of a reason why we would
22 deny a liner request, if it were not required.

23 Q. And I guess what I'm asking, is there any
24 negative impacts to the presence of a liner in a solid
25 waste landfill, to your knowledge?

1 A. Not for the department or the environment. No.

2 Q. Does the addition -- let's look at one other
3 portion of the permit. And you may need to have the '08
4 permit in front of you as well --

5 A. Okay.

6 Q. -- with the '15, so that we can compare. I'm
7 not sure which Exhibit the '08 permit is.

8 MR. POLIAKOFF: Five.

9 Q. Five. Thank you. So if you look at the '08
10 permit, well Plaintiff's Exhibit 5, and this 2015
11 modification, condition -- special condition A-2 states,
12 in '15 states, this permit is limited to the disposal of
13 the items listed in Appendix I of Regulation 61-107.19,
14 and any other waste approved by the department for
15 disposal in a Class Two landfill pursuant to Regulation
16 61-107.19, Part IV, Section C-2.

17 And if you look at the '08 permit under that
18 same section, A-2, it says the permit is limited solely
19 to the disposal of items listed in Appendix I of
20 Regulation 61-107.19. All other wastes, including
21 animal carcasses, are prohibited from disposal in this
22 landfill.

23 So the language is a little different.

24 Correct?

25 A. Yes.

1 Q. And can you, in your -- in reading that
2 language, does the new language under A-2 alter the waste
3 stream that MRR Pickens would be allowed to take,
4 subsequent to this modification?

5 A. Does the -- which permit?

6 Q. Does the new --

7 A. 2015?

8 Q. Does the modification alter the waste stream
9 that MRR Pickens would be allowed to take under its '08
10 permit.

11 A. No. I mean, the regs were the same under both
12 permits.

13 Q. So what would be the purpose of the change in
14 the language?

15 A. Just, I think clarity. As we've evolved, we've
16 had to be a little more clear with that language than we
17 did in the previous permit.

18 Q. So since 2008, DHEC made the determination
19 that it would be smart to clarify that language?

20 MR. POLIAKOFF: Objection, form. Leading.

21 A. I think any time we -- it comes to our
22 attention that something is not completely clear, we try
23 to improve it. So that's what we did.

24 Q. Okay. So based on what you just said, that
25 this would not change -- does not change the waste stream

1 that MRR would be allowed to take under the '08 or the
2 modified permit. Under the modified permit --

3 A. Uh-huh.

4 Q. -- would MRR be able to go through the process
5 you discussed to add a new waste, so long as it meets the
6 waste characterization requirements?

7 A. Yes.

8 Q. Okay. And notwithstanding the new state law --

9 A. Uh-huh.

10 Q. -- governing coal combustion residuals and
11 disposal in South Carolina, under 107.19, if MRR
12 submitted a waste characterization for coal ash, showing
13 it less than ten times the MCL, would DHEC potentially
14 allow it to dispose of coal ash in the Pickens 2
15 landfill?

16 A. Yes.

17 Q. Okay. So let's talk about the modification
18 itself. It appears -- it states this is an issuance of a
19 modified Class Two landfill permit. Was this a minor or
20 a major modification?

21 A. We issued this modification as a minor
22 modification.

23 Q. Okay. Can you tell me why?

24 A. Yes. I can. I've had to recall those
25 conversations a few times lately. But the -- basically,

1 we looked at it, and since there were no new waste
2 streams involved, and it was an optional upgrade so to
3 speak -- it was only basically, you know, making the
4 facility more environmentally protective than we had
5 already issued.

6 We felt like it was -- you know, we felt like
7 we could do it as a minor because any, you know, any
8 impact would just be positive, if they decided to install
9 the liner. And since we didn't improve any new waste
10 streams or increase in volume or anything like that, we
11 felt like an upgrade was with a minor modification.

12 Q. Okay. So since no new waste streams were added

13

14 A. Uh-huh.

15 Q. -- the liner itself does not automatically
16 modify the permit to allow a new waste stream. Is that
17 correct?

18 A. Correct.

19 MR. POLIAKOFF: Object to form, leading.

20 Q. And you said this is an upgrade because it's
21 more protective.

22 A. It's my term, but yes I considered it an
23 upgrade because it's more protective. Yes, that's fair.

24 Q. Okay. If MRR decides to install the liner in
25 its Pickens Class Two landfill --

1 Q. Okay. I'm going to hand you Plaintiff's
2 Exhibit 8, which is a December 11, 2015 letter from
3 Justin Kuhn (ph) --

4 A. Uh-huh.

5 Q. -- to MRR. Is that the request letter you were
6 just referring to from DHEC?

7 A. Yes.

8 Q. I'm sorry -- and again, you have not received a
9 response to this to date --

10 A. Not, not that I know of.

11 Q. -- to your knowledge?

12 A. Uh-uh.

13 Q. Okay. So would it be safe to say that DHEC has
14 made no determination, at this time, as to whether MRR
15 will be allowed a variance in its annual tonnage rate?

16 A. That's correct. We have made no
17 determination.

18 Q. Have you to date received a waste
19 characterization for coal combustion residuals from MRR
20 Pickens?

21 A. Not to my knowledge.

22 Q. Would it -- would you expect to know if that
23 had been received in your position?

24 A. I, I would most likely be aware of it, yes.

25 Q. So for MRR Pickens to take coal combustion in

1 residuals --

2 A. Uh-huh.

3 Q. -- at its Pickens County Class Two landfill,
4 there is still a regulatory process that is not complete
5 at this time. Is that true?

6 A. Yes.

7 Q. You mentioned earlier, legislation that has
8 been passed in South Carolina recently in March --

9 A. Yes.

10 Q. -- that deals with disposal of coal combustion
11 residuals. Is that correct?

12 A. Yes. I can't remember whether it uses the
13 term, coal combustion residuals or coal ash, but
14 something along that line.

15 Q. And it's your understanding that that is --
16 that legislation is final?

17 A. Yes.

18 Q. Okay. And have you been asked questions about
19 that legislation from any -- by anyone from Pickens
20 County?

21 A. Pickens County, define like -- do you mean, do
22 they live there? Do they work for the county? Or what
23 are you asking exactly?

24 Q. Well, I guess --

25 A. Any?

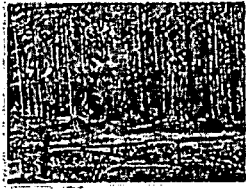
Respondent MRR Pickens, LLC
Exhibit G

Pickens County officials distressed about plan for coal ash landfill



Kenn Barnett, kbarnett@greenvillenews.com

12:57 p.m. EST December 28, 2015



(Photo: Paul Brown)

A private company has entered into a preliminary agreement to undertake "a large disposal project" that could dump hundreds of thousands of tons of coal ash in Pickens County, according to the state Department of Health and Environmental Control, which has approved landfill construction plans.

The magnitude of the project would require "a significant increase" in the 70,500 tons per year the company was permitted to handle when it received approval for an unlined landfill eight years ago, a DHEC spokesman said.

DHEC has asked for more information from the company and doesn't know where the coal ash would be coming from or how much would be coming.

An attorney for the landfill property owner, MRR Pickens, LLC, declined to comment.

But county officials who have fielded calls from concerned people who live and work nearby, are distressed about the possibility of contamination from toxic heavy metals found in coal ash, a byproduct of coal-fired power plants.

Coal ash contains contaminants such as arsenic, lead, mercury, selenium, cadmium, and chromium, and has been linked to increased risk of cancer, according to the Environmental Protection Agency.

"The acceptance of coal ash in our county is just not acceptable," said County Councilman Neil Smith, who represents the area where the landfill is to be located. "And potential health problems can't be offset by the influence and the money of that industry."

"I'm upset about the state even allowing it."

The 4.61-million cubic yard landfill is under construction at the intersection of State 93 and Cartee Road between Liberty and Easley and borders the Pickens County Commerce Park.

County officials said they had no idea that the company, which had entered into a development agreement with the county in 2007 to build a landfill for construction and demolition waste, was planning to accept coal ash until they started hearing complaints from residents.

"The question I have is why wasn't there a public comment period on that that we had to go through," Smith said.

DHEC spokesman Jim Beasley said public notice will be given prior to the agency making a final decision on MRR's request to increase the volume of waste it can take.

But DHEC already approved the company's request to install a synthetic liner, which would allow it to take in coal ash, as long as its level of toxicity doesn't exceed certain parameters, he said.

At the time of the 2007 agreement, the county's landfill was nearing capacity, and the idea was for the private landfill to take over handling nontoxic waste such as wood and concrete scrap. The company was to begin construction within 30 days of receiving approval from DHEC.

But in a meeting with the Pickens County Planning Commission in January of this year, representatives of the company said they had held off developing the landfill because of the recession and now felt the time was right to move ahead with it.

They said "nothing had changed" about their plans since the 2007 agreement and that the company had donated 160 acres of the 443-acre tract to the county for use as a recreational area, under the terms of the agreement, according to minutes of the meeting.

There was no mention of coal ash in the minutes, although one commission member asked if asbestos would be allowed in the landfill and was told it could be placed in a part of the facility dedicated for that purpose.

Weldon Clark, vice chairman of the Planning Commission, said the commission gave the OK for the landfill project to proceed because it was within the county's guidelines for development.

"Basically the only thing we're charged with is enforcing the development standard ordinance," he said. "So we didn't find anything they were doing that was opposed to the development standard ordinance."

"As far as coal ash goes, depending on what goes in it, it can be a very benign substance," he added. "If you have some heavy metals in it, it can be a problem."

Last December, the EPA issued a ruling on coal ash that stopped short of labeling it as a hazardous material and left it up to states to enforce the new regulations.

Coal ash could be disposed of in an unlined, or Class 2, landfill under DHEC regulations that went into effect in 1996, according to agency documents, but the state now requires linings, Beasley said.

Some coal ash can meet the less toxic Class 2 requirements "but must be demonstrated to do so prior to disposal in this or any Class 2 landfill," he said.

The state environmental agency received a request from MRR on March 31 to modify its 2007 permit which had never been used, by adding a synthetic liner system "so the facility could potentially receive (less toxic) Class 2 coal ash from power generating utilities," Beasley said.

"Any waste received by the facility must meet Class 2 specifications even with the liner installed," he said. "Installation of the liner does not allow the facility to take (more toxic) Class 3 solid waste."

He didn't know how it would be determined whether the coal ash that would go into this landfill meets the Class 2 standard.

Frank Holleman, a senior attorney for the Southern Environmental Law Center who has been active in battling the power industry over coal ash in the Carolinas, said the toxicity of coal ash can be determined in a lab, but it's questionable how the public could be assured that what goes into the landfill meets that lower toxicity standard.

"Even though it's scientifically possible to do it, the question is are they doing it adequately," he said. "It's almost always done by paid consultant rather than independent scientists."

Holleman said he didn't know anything about the Pickens landfill, but experience with others around the Southeast gives evidence that the public has reason to be concerned.

"These facilities can be done well and they can be done badly," he said.

SCE&G, for example, has a coal ash landfill outside Columbia and there have been no complaints or problems.

But a TVA landfill in Alabama "has been a source of constant problems."

And in some cases the state and local governments "get left holding the bag," he said.

"Water contaminated with coal ash pollutants has been known to move more than a mile from coal ash dump sites," according to the Southern Alliance for Clean Energy's Southeast Coal Ash website. "Dry landfills also pose dangers to drinking water and aquatic life, and damage air quality when the fine dust from these containment facilities is blown into surrounding neighborhoods."

Amy Armstrong, an attorney for the South Carolina Environmental Law Project, said MRR, which stands for Materials Recovery and Recycling, tried to open landfills in Laurens and Marlboro counties but couldn't get permits approved. MRR Pickens is a division of MRR Southern, LLC, based in Raleigh.

The one in Marlboro County would have had capacity to take in a quarter million tons of waste annually.

In that county, residents waged a public campaign against the plan and MRR sued them for defamation. A federal judge threw out the lawsuit, saying the company hadn't given evidence that the citizens group knowingly made false statements and did so out of malice.

Armstrong cited a DHEC report that showed that South Carolina has more than enough capacity to handle all its own waste.

No coal ash from Duke Energy is destined for any landfill in Pickens County, according to company spokeswoman Danielle Peoples.

Duke, which has two retired coal-fired plants in the state, sends some ash to a site in Homer, Ga., and announced plans last week to store 2.2 million tons of coal ash in a lined landfill that would be on site at the W.S. Lee Station in Anderson County.



THE GREENVILLE NEWS

Opposition grows to proposed coal ash dump in Pickens County

(<http://www.greenvilleonline.com/story/news/local/pickens-county/2015/12/28/pickens-county-council-consider-resolution-proposed-coal-ash-dump/779705920>)

Read or Share this story: <http://grnol.co/1YIML2I>

BACON LABOR DAY

SEPT 4-5

SIMPSONVILLE CITY PARK

FOOD VENDORS ★ CRAFT BEER ★ CAR SHOW

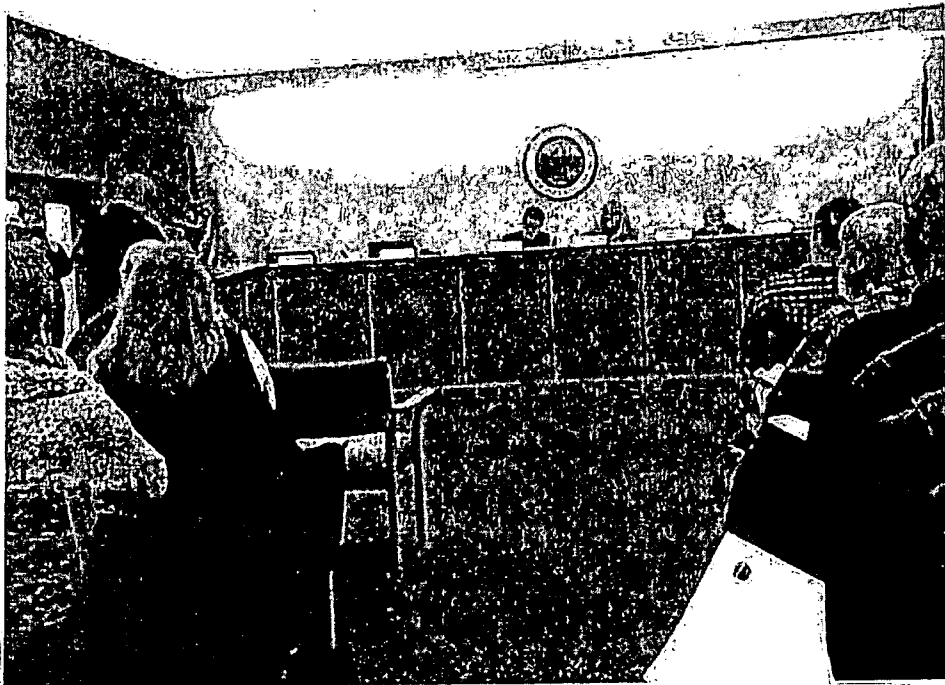
ARTISANS & CRAFTERS ★ ENTERTAINMENT ★ KIDS AREA

MORE INFO & TICKETS

Pickens County Council approves resolution opposing coal ash landfill



By Ron Barnett, rbarnett@greenvillenews.com 8:44 p.m. EST January 4, 2016



(Photo: Ron Barnett)

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PICKENS -- Pickens County Council told an overflow crowd Monday that it will fight a company's plans to bring thousands of tons of coal ash to a landfill near Liberty and will go to court if necessary to stop it.

"We are prepared to defend you," Council Chairman Jennifer Wills declared, drawing applause from the audience of more than 100, many of whom came to urge the council to take action.

The council gave unanimous approval to a resolution urging the state Department of Health and Environmental Control to reject a variance requested by Raleigh-based MRR Pickens, LLC that would allow it to undertake a major coal ash disposal project.

The company has not responded to questions from *The Greenville News*.

Council members asked the county attorney to brief them in closed session on legal options to stop the project.

In a public session portion of the meeting, 10 people spoke against allowing coal ash disposal here.

"My opinion on it is if the folks in North Carolina want a Class 3 landfill to dump coal ash in, they can dig a hole up there and dump it in. We don't want it here," Eric Boughman, mayor of Liberty, said as the crowd cheered.

"I'm gonna holler as loud as I need to to stop this," he said. "We don't need to be a dumping ground for anybody."

Pree Hamilton, who lives across the road from the landfill site on land that has been in her family for five generations, said she feels like "the wolves are at the back door."

"I will protect it with my life, she said. "I don't want to see it changed."

A manufacturers group in Pickens County also went on record opposing the landfill, citing environmental and economic concerns.

Manufactures Caring for Pickens County, a nonprofit organization that works to improve education, social responsibility and economic development in the county, issued a statement in advance of the meeting.

"MCPC (Manufactures Caring for Pickens County) is opposed to this landfill proposal due to the lack of any published study on the environmental impact, the economic impact, or the suitability of the current site to contain the toxins," the statement says. "The transport method of coal ash to the site, the remoteness of this site to the power generation plants responsible are also concerns and unknown at this time."

The state Department of Health and Environmental Control has approved the company's plan to install a synthetic liner in the landfill it has been approved to build along State 93 and Cartee Road.

Such a lining would allow it to deposit a type of coal ash that is considered less toxic than the type most dangerous because of heavy metals.

But DHEC is awaiting more information from the company on how much coal ash it would put in the landfill, where it would be coming from, and how it would ensure that it meets the less toxic standards.

The manufacturers group said it is "deeply concerned" in part because the proposed site is near many of their facilities at the Pickens County Commerce Park and along State 93.

"It is inconceivable that such a project would be approved without considering the impact on the health and well-being of those most directly affected, not to mention the potential business and financial damage to companies located in the Commerce Park and other nearby areas."

MRR received approval to build a landfill there in 2007, which was to be designed for construction and demolition debris. But the landfill was never built because of the recession that followed, company officials told the county Planning Commission last year.

The company submitted a request to DHEC a few months ago, saying it had made tentative arrangements to undertake "a large disposal project" involving coal ash.

It told DHEC it needed "a significant increase" in the amount of material it would be allowed to dispose of, which was limited to 70,500 tons per year.

Respondents' Exhibit B

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Pickens County,	)	DOCKET NO. 16-ALJ-07-0164-CC
	)	
Petitioner,	)	
	)	
vs.	)	NOTICE AND MOTION TO DISMISS
	)	
South Carolina Department of Health and Environmental Control and MRR Pickens, LLC,	)	
	)	
Respondents.	)	
	)	

TO: GARY J. POLIAKOFF, ESQUIRE, ATTORNEY FOR PETITIONER, PICKENS COUNTY, AND JESSICA J.O. KING, ESQUIRE, ATTORNEY FOR RESPONDENT, MRR PICKENS, LLC

YOU WILL PLEASE TAKE NOTICE that Respondent South Carolina Department of Health and Environmental Control ("DHEC" or "the Department"), through its undersigned counsel, will move before the Administrative Law Court ("ALC" or "Court") as soon after service hereof as counsel may be heard, for an Order dismissing the Request for a Contested Case Hearing filed with the ALC by Respondent Pickens County ("Petitioner" or "County"), on May 19, 2016. This Motion to Dismiss ("Motion") is being filed pursuant to South Carolina Rules of Civil Procedure ("SCRCP"), Rule 12(b)(1), and Administrative Law Court Rule 38; and S.C. CODE ANN. §§ 44-1-60(E)(2) (Supp. 2007). The grounds for dismissal are set forth below.

I. BACKGROUND

The Highway 93 Class 2 Landfill ("Landfill"), owned by MRR Pickens, LLC ("MRR"), is located at 2180 Greenville Highway, Liberty, South Carolina, in an unincorporated area of

Pickens County. On November 3, 2008, the Department issued Permit No. LF2-00003 to MRR for the operation of a Class 2 landfill.

On March 30, 2015, the Department received an application from MRR for a minor permit modification to allow the installation of a liner and associated leachate collection system for a portion of the existing permitted landfill area. On August 6, 2015, the Department received from MRR a revised copy of the application. Because the Department determined that the application met the regulatory definition of a minor permit modification, the Department was not required to have a public notice and comment period prior to the issuance of the permit. (R.61-107.19 Part I, B.48.a). The Solid Waste regulations require public notice of all applications for new construction and *major* modifications of Class 2 landfills, but does not require public notice of applications for minor permit modifications. (See R.61-107.19 Part I D.2.c.(1); Part IV I.2.). On August 10, 2015, the Department issued its staff decision ("Department Decision") (**Exhibit 1**), approving the application from MRR for a minor permit modification to modify its Landfill by adding a liner system and associated leachate collection system to a portion of the existing and permitted Landfill.

The Department's Decision became the Final Agency Decision 15 days after the decision was mailed to MRR. County did not request to be notified of any department decisions as an affected person in relation to the Landfill, and did not file a timely request for review to the DHEC Board ("Board") prior to the expiration of the 15-day statutory period. Further, during a meeting with the Department on December 15, 2015, the Department informed County of the issuance of the permit modification to MRR. Even after receiving actual notice on December 15, 2015 of the Department's issuance of the permit modification, County waited until March 23, 2016 to file a *Request for Review* with the Board. On April 21, 2016, the Board declined to hear

the *Request for Review*. Thereafter, on May 19, 2016, County filed a Request for a Contested Case Hearing with this Court, which is now the above-captioned matter.

II. GROUNDS FOR DISMISSAL

Dismissal of County's Request for a Contested Case Hearing is warranted, both for lack of jurisdiction and because County failed to exhaust its administrative remedies.

A. ~~The ALC Lacks Subject Matter Jurisdiction over County's Request for a Contested Case Hearing.~~

1. **County failed to follow the appeal procedure outlined in Section 44-1-60(E)(2).**

Section 44-1-60(E)(2) of the South Carolina Code provides:

The staff decision becomes the final agency decision fifteen calendar days after notice of the staff decision has been mailed to the applicant, unless a written request for final review accompanied by a filing fee is filed with the department by the applicant, permittee, licensee, or affected person.

According to the Supreme Court of South Carolina, this "clear and unambiguous language . . . provides that the Department's staff decision becomes final 'fifteen days after notice of the department decision has been mailed.'" S.C. Coastal Conservation League v. S.C. Dept. of Health and Envtl. Control, 390 S.C. 418, 426, 702 S.E. 2d 246, 251 (2010). As such, a decision for which the DHEC Board review is sought more than 15 days after mailing is not subject to review before either the DHEC Board or the ALC. As the South Carolina Court of Appeals has stated:

The DHEC Board ha[s] no authority to extend or expand the period in which appeals requests could be timely filed and was limited to the fifteen-day filing window enacted by the General Assembly, ... [In the event of a] failure to comply with the mandatory appeals term, the DHEC Board lack[s] jurisdiction and could not validly exercise dominion over the matter without erroneously extending the span in which appeals could be filed. Because the appeal was untimely and the DHEC Board lacked jurisdiction, the ALC could not invoke jurisdiction to hear the matter.

S.C. Coastal Conservation League v. S.C. Dep't. of Health and Envtl. Control, 380 S.C. 349, 377, 669 S.E.2d 914 (Cl. App. 2008), rev'd on other grounds, 390 SC. 418, 702 S.E.2d 246.

Here, the Department Decision was issued on August 10, 2015, in accordance with the requirements of 8 S.C. Code Regs. 61-107.19, *SWM: Solid Waste Landfills and Structural Fills*, Parts I and IV, and became the Final Agency Decision 15 days after the decision was mailed to MRR. Notice of a Department Decision is required to be sent to the "... affected persons who have requested in writing to be notified," S.C. Code Ann. Section 44-1-60(E)(1). Pickens County did not request to be notified of Department decisions as an affected person regarding the Landfill and did not file a timely request for review to the DHEC Board prior to the expiration of the statutory 15-day period. County did not file its *Request for Review* with the Board until March 23, 2016, well beyond the statutory 15-day time period.

Notwithstanding the failure of County to request notification or to timely file a *Request for Review* with the DHEC Board, County was given actual notice of the Department Decision pertaining to the MRR Landfill when it attended a meeting on December 15, 2015 at the DHEC main office located at 2600 Bull Street in Columbia, South Carolina, to discuss the Decision with the Department. (See Affidavit of Joan Litton, attached as **Exhibit 2**). "Actual notice means all the facts are disclosed and there is nothing left to investigate." Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 504 S.E.2d 117 (1998) *citing*, Government Employees Ins. Co. v. Chavis, 254 S.C. 507, 176 S.E.2d 131 (1970). "Actual notice may be shown by direct evidence or inferred from factual circumstances." *Ibid.* *citing* Southern Railway Carolina Division v. Horne Investment Co., 223 S.C. 440, 105 S.E.2d (1958). The meeting on December 15, 2015 had been precipitated

by the County's desire to discuss with the Department the decision regarding the Landfill that was issued on August 10, 2015. Even after receiving actual notice of the Department Decision, County waited until March 23, 2016 to file its *Request for Review* with the Board. Statutorily, pursuant to Section 44-1-60(E)(2), County was required to file its *Request for Review* within 15 days after the Department Decision was mailed (August 10, 2015) to the applicant, MRR. However, this did not occur. Moreover, even after County received actual notice of the Department Decision during the December 15, 2015 meeting with DHEC, it waited approximately 99 days after December 15, 2015 to file its *Request for Review* with the Board, and did not file its Request until March 23, 2016. In any event, the date that County filed the *Request for Review* in this matter, March 23, 2016, was indisputably well past the statutory deadline, and County further failed to comply with the statutory requirement for appeals by unduly delaying the filing of its Request even after gaining actual notice of the Department Decision pertaining to the MRR Landfill. Because the *Request for Review* was not filed timely with the Board, the Department's issuance of the minor permit modification to MRR is final, as this Court lacks subject matter jurisdiction to hear this matter, and therefore, any attempt to appeal the Department Decision should be denied.

2. **Pursuant to Administrative Law Court Rule 38, this case should be dismissed because County failed to comply with the rules of procedure for appeals in Section 44-1-60(E)(2).**

Rule 38 of the Administrative Law Court Rules states that "upon motion of any party, or on its own motion, an administrative law judge may dismiss an appeal for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits provided by this section."

Petitioner County has failed to comply with the rules of procedure for appeals that are set forth in S.C. CODE ANN. §§ 44-1-60(E)(2). This rule of procedure for appeals clearly states when an affected party must file an appeal with the Board, which is 15 days after notice of the decision has been mailed to the applicant. (See 44-1-60(E)(2)). Since County failed to file its appeal timely, this contested case should be dismissed pursuant to Administrative Law Court Rule 38.

B. County Failed to Exhaust its Administrative Remedies.

This matter is also subject to dismissal because County failed to exhaust its administrative remedies. It is fundamental that "an appellant is required to exhaust administrative remedies prior to filing an appeal" in the ALC. Hill v. S.C. Dep't of Health and Envtl. Control et al., Docket No. 08-ALK-07-0353-CC, at 2 (Admin. Law Ct. Sept. 15, 2009) (citing Howard v. Mui, 315 S.C. 356, 434 S.E.2d 254 (1993); see also Chris's Dry Cleaning and Shirt Service v. S.C. Dep't of Health and Envtl. Control, Docket No. 15-ALJ-07-0368-CC, at 2 (Admin. Law Ct. Nov. 6, 2015) (dismissing case for failure to exhaust administrative remedies where the appellant did not submit a timely request for review to the SCDHEC Board). South Carolina law expressly requires exhaustion of remedies before an aggrieved party may seek review to the ALC. See S.C. Code Ann. § 44-1-60 (mandating compliance with specified procedures before a party may seek ALC review of a Department decision); S.C. Code Ann. § 1-23-380 (authorizing judicial review for "[a] party who has exhausted all administrative remedies within the agency"). Pursuant to Section 44-1-60, the Board only has authority to review a Department Decision if the request is submitted to the Department during the clearly-defined 15-day statutory time frame, which is within 15 days after a Department Decision is mailed to an applicant.

In this case, County waited beyond the statutory appeal period to file its *Request for Review* with the Board. Although County had actual notice (on December 15, 2015) of the Department Decision regarding the minor modification for MRR's Landfill, it waited to file its *Request for Review* of the Decision 99 days after receiving actual notice of the Decision and 226 days after the Decision was mailed to the applicant, MRR, thus failing to complete a requisite step in the appellate process. Having failed to exhaust an adequate administrative remedy provided by statute, County is precluded from seeking further review before the ALC or elsewhere. See e.g., Hyde v. S.C. Dept. of Mental Health, 314 S.C. 207, 208, 442 S.E.2d 582, 583 (1994).

III. CONCLUSION

WHEREFORE, pursuant to the above-stated grounds for complete dismissal of DOCKET NO. 16-ALJ-07-0164-CC, Respondent DHEC respectfully requests that this matter be dismissed with prejudice.

Respectfully submitted,


Etta R. Williams Linen, Esquire
Assistant General Counsel for SC DHEC
Claire Prince, Esquire
Special Counsel for SC DHEC

South Carolina Department of Health
and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201-1708
Tel: 803/898-3350
Fax: 803/898-3367

July 27th, 2016
Columbia, South Carolina

PICKENS COUNTY
DHEC File No.: 22666
DHEC's Notice and Motion to Dismiss
July 2016

EXHIBIT 1



Catherine B. Heigel, Director

Promoting and protecting the health of the public and the environment

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003

Date of Issuance: November 3, 2008

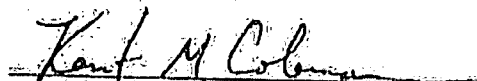
Date of
Modification: August 10, 2015

Permission is hereby granted to:

Name of Facility: Highway 93 Class 2 Landfill
Permittee: MRR Pickens, LLC
Address: 5842 Faringdon Place, Suite 1
Raleigh, NC 27609
Supervisor: Mr. Christopher T. Roof
Phone: (919) 436-3570

for the operation of a Class 2 landfill at 2180 Greenville Highway, in Pickens County located off Highway 93 near the City of Liberty, SC 29657.

This permit is issued pursuant to Sections 44-96-10 et seq., and 25A S.C. Code Regulation 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
August 10, 2015
Page 1 of 4

MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the approved design specifications, and construction plans received November 30, 2007; revised August 26, 2008, and last revised August 5, 2015, unless permit conditions state otherwise.
2. This permit is limited to the disposal of the items listed in Appendix I of R.61-107.19 and any other waste approved by the Department for disposal in a Class Two Landfill pursuant to R.61-107.19, Part IV, Section C.2.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to Jun30). Information concerning the facility's previous Fiscal Year's waste receipts is due on the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV, Subpart C.16, to the attention of:

Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

4. All Appendix-I acceptable wastes must be covered at least once every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to five (5) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than five (5) acres (at the time of the certification). The certification shall be completed within sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (16,133 yd³ of soil for 5 acres with 2' thickness). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.
8. Sixty (60) days prior to starting construction of the Class Two landfill, the Permittee shall notify the Department of their selection between Option 1 (traditional Class Two landfill design), or Option 2 (alternate liner design). If the financial assurance mechanism needs to be increased, this shall be done prior to the acceptance of waste into the landfill.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit. The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.
- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- d) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

2. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Subpart E.3.

3. REPORTING

- a) The permittee shall submit to the Department the result of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following schedule:

Sampling Schedule	Results Due
November/December	January 15 (Semi-Annual)
May/June	July 15 (annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.1.a.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Groundwater Section, and to the Solid Waste Consultant in Upstate Region BEHS Greenville.

4. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required to comply with R.61-107.19, Part IV, Section C.21.



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

**OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003**

Permit Issued Date: November 3, 2008 Permit Effective Date: November 18, 2008

Permission is hereby granted to:

Name of Facility: Highway 93 C & D Landfill
Permittee: MRR Pickens, LLC
Address: 11743 Trails End Lane
Charlotte, NC 28078
Contact: Mr. Ronald C. Gillemon
Phone: (704) 947-6652

for the operation of a Class 2 landfill at 2180 Greenville Highway, Liberty, South Carolina, 29657 in Pickens County located off Highway 93 at Clardy Road approximately 2,000 feet NE of the City of Liberty, SC.

This permit is issued pursuant to Sections 44-96-10 *et seq.* (Supp. 2007) and 25A S.C. Code of Regulations Section 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, P.G., Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
November 3, 2008
Page 1 of 4

**MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003**

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the design specifications and construction plans received November 30, 2007, and last revised August 26, 2008, unless permit conditions state otherwise.
2. This permit is limited solely to the disposal of items listed in Appendix I of R.61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to June 30). Information concerning the facility's previous Fiscal Year's waste receipts is due in the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV, Subpart C.16, to the attention of:

Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

4. All Appendix-I acceptable wastes must be covered at least every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to twelve (12) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than twelve (12) acres (at the time of the certification). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (38,720 yd³ of soil for 12 acres with 2' thickness). The certification shall have been completed within the last 60 days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.
2. Within ninety (90) days of the effective date of this permit, the Permittee shall submit a detailed Compliance Plan that describes steps to be taken in order to fully comply with all regulatory requirements of R.61-107.19 that relate to Class 2 Landfills. This Compliance Plan shall include, but not limited to, the following: a groundwater monitoring design workplan, a landfill post-closure care plan, and a landfill post-closure care cost estimate. Upon the Department's approval of said Compliance Plan, the Permittee will have six (6) months to implement the plan and will have a deadline for full compliance with R.61-107.19 of November 19, 2009.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. SPECIAL ENVIRONMENTAL PERMIT CONDITIONS

Within ninety (90) days of the effective date of this permit, the Permittee shall submit to the Department for review, a Groundwater Monitoring Design Workplan in accordance with R.61-107.19, Part IV, Section E (Groundwater Monitoring and Corrective Action). In addition, an approved groundwater monitoring system must be installed and operating prior to November 19, 2009, pursuant to R.61-107.19, Part I, Section A.6.c. Upon the Department's approval of the Groundwater Monitoring Design Workplan, permit conditions C.2, C.3 and C.4 will become effective.

2. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit.

The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.

- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- e) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

3. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine monitoring at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Part IV Subpart B.3.

4. REPORTING

- a) The Permittee shall submit to the Department the results of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following sampling schedule:

<u>Sampling Schedule</u>	<u>Results Due</u>
November/December	January 15 (Semi-Annual)
May/June	July 15 (Annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.2.A.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Groundwater Section, and to the Solid Waste Consultant in Region 2 BQC (Greenville).

5. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required comply with R.61-107.19, Part IV, Section C.21.

EXHIBIT 2

AFFIDAVIT OF JOAN FARVER LITTON
Docket No. 16-RFR-15; Office of General Counsel # 22666

PERSONALLY appeared before me, Joan Farver Litton, who being duly sworn, deposes and says:

1. I have been employed by the South Carolina Department of Health and Environmental Control ("DHEC" or "the Department") since February 4, 1999.
2. I am currently the Manager for the Mining and Solid Waste Permitting Section in the Division of Mining and Solid Waste Management at DHEC.
3. I am submitting this affidavit as supplemental information for the Request for Review Staff Summary Response in the matter of Pickens County's request for the DHEC Board to review the department's decision to issue an approval of the addition of a liner system to the MRR Pickens Highway 93 Class Two Landfill ("MRR Pickens"), which the Department issued to MRR Pickens on August 10, 2015.
4. I hereby affirm that Pickens County did not request to be notified of permitting decisions related to MRR Pickens, LLC's Highway 93 Class 2 Landfill, identified as Permit Number LF2-00003, prior to the Department's decision of August 10, 2015, to issue a modification for the addition of a liner system.
5. A meeting was held at 2600 Bull Street in Room 1425 on December 15, 2015, to discuss the Department's decision to issue the approval for the liner system (a minor modification) with representatives of Pickens County and their solid waste consultant. Those present on the County's behalf were Gerald Wilson, Director of Public Works for Pickens County; Ralph Guarino, Jr., who at the time was the acting Interim Administrator for Pickens County; and Wesley Hulse, PG, President of Pickens County's solid waste consulting firm

Hulsey, McCormick & Wallace. Those in attendance for the Department were Justin Koon, Permitting Project Manager; Andrea Skinner, Permitting Project Manager; David Oberly II, Groundwater Project Manager; and myself, Joan Farver Litton, Manager of the Mining and Solid Waste Permitting Section. During the meeting, the Department confirmed that it had issued the decision to MRR Pickens for approval of the addition of a liner system as a minor modification to the MRR Pickens Highway 93 Class 2 Landfill; and, that decision was discussed at length during the meeting with the representatives of Pickens County.

I, Joan Farver Litton, hereby certify, under penalty of perjury, that the above-stated facts are true and correct to the best of my knowledge.


Joan Farver Litton

SUBSCRIBED AND sworn to before
me this 15th day of April, 2016.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 01/22/2018

Respondents' Exhibit C

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Pickens County,	)	
	)	Docket No. 16-ALJ-07-0164-CC
Petitioner,	)	
	)	
vs.	)	RESPONDENT MRR PICKENS, LLC'S
	)	NOTICE OF MOTION AND MOTION
South Carolina Department of Health	)	TO DISMISS
and Environmental Control and MRR	)	
Pickens, LLC,	)	RULES 11, 19 & 38 SCALCR and RULE
	)	12(b)(1) SCRCP
Respondents.	)	

TO: GARY J. POLIAKOFF, ESQUIRE, ATTORNEY FOR PETITIONER PICKENS COUNTY, AND ETTA R. WILLIAMS LINEN, ESQUIRE, ATTORNEY FOR RESPONDENT SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

YOU WILL PLEASE TAKE NOTICE that Respondent MRR Pickens, LLC ("MRR Pickens"), by counsel and pursuant to South Carolina Administrative Law Court Rules 19 and 38, Rule 12(b)(1) of the South Carolina Rules of Civil Procedure ("SCRCP"), and S.C. Code Ann. §§ 44-1-60(A)-(E) (Supp. 2015), and, will move before the Administrative Law Court ("ALC" or "Court") as soon after service hereof as counsel may be heard, for an Order dismissing with prejudice the Request for a Contested Case Hearing filed in this matter on May 19, 2016, by Petitioner Pickens County ("Petitioner" or "Pickens County"). The grounds for dismissal are as follows: (1) the Court lacks subject matter jurisdiction because the Petitioner did not file its Request for Final Review to the Board of the South Carolina Department of Health and Environmental Control ("DHEC Board") within the statutorily required fifteen day time frame; and (2) the Court lacks subject matter jurisdiction because the Petitioner failed to serve its Request for a Contested Case Hearing on Respondent MRR Pickens within thirty days of actual or constructive notice as required by Rule 11 of the SCALCR. In support of its Motion

to Dismiss, Respondent MRR Pickens respectfully refers the Court to MRR Pickens, LLC's Memorandum in Support of Motion to Dismiss filed contemporaneously herewith.

WHEREFORE, Respondent MRR Pickens respectfully requests that the Court enter an Order dismissing Petitioner Pickens County's Request for a Contested Case Hearing with prejudice, thereby upholding the modification issued by the Department to MRR Pickens for its Class 2 Solid Waste Permit ("DHEC Permit LF2-00003") on August 10, 2015. Furthermore, MRR Pickens requests this Court stay all discovery until a decision on this Motion can be issued.

Respectfully submitted, this the 29 day of July, 2016.



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Attorneys for Respondent MRR Pickens, LLC

Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Pickens County,	)	
	)	
Petitioner,	)	Docket No. 16-ALJ-07-0164-CC
	)	
vs.	)	RESPONDENT MRR PICKENS, LLC'S
	)	MEMORANDUM IN SUPPORT OF
South Carolina Department of Health	)	MOTION TO DISMISS
and Environmental Control and MRR	)	
Pickens, LLC,	)	
	)	
Respondents.	)	
	)	

Respondent MRR Pickens, LLC ("MRR Pickens") by counsel, and pursuant to Rules 11, 19, and 38 and of the Administrative Law Court Rules (SCALCR), Rule 12(b)(1) of the South Carolina Rules of Civil Procedure ("SCRCP"), and S.C. Code Ann. §§44-1-60(A)-(E), moves for dismissal with prejudice of Petitioner Pickens County's Request for a Contested Case Hearing on the grounds the Court lacks subject matter jurisdiction because: (1) the Petitioner did not file its Request for Final Review to the Board of the South Carolina Department of Health and Environmental Control ("DHEC" or the "Department") within the statutorily required fifteen day time frame; and (2) the Petitioner failed to serve MRR Pickens with its Request for a Contested Case Hearing within thirty days of actual or constructive notice of the DHEC Board's Final Agency Decision as required by Rule 11 of the SCALCR.

FACTS

A. Class 2 Solid Waste Permit LF2-00003

On November 3, 2008, the Department issued Solid Waste Permit LF2-00003 to MRR Pickens to construct and operate a Class 2 Landfill on property located at 2180 Greenville

Highway, Liberty, South Carolina, Pickens County (the "Highway 93 Landfill"). On March 30, 2015, MRR Pickens applied for a modification to Permit LF2-00003 for the option to install a liner and associated leachate collection system. [Exhibit A; Highway 93 Landfill Application for Minor Permit Modification (March 30, 2015)]. On August 10, 2015, the Department staff issued a "Minor Modification" to Permit LF2-00003, allowing MRR Pickens the option to install a liner and associated leachate collection system in the Highway 93 Landfill (the "Minor Permit Modification Decision"). [Exhibit B; Minor Permit Modification (August 10, 2015)].

Prior to issuing the Minor Permit Modification Decision, the Department did not provide for public notice or a comment period on its decision because DHEC determined that the requested modification qualified as "minor"; public notice and comment are only required for "Major" modifications per Reg. 61-107.19, Part I, B. 48a. [Exhibit C; Initial Staff Response to Request for Review, p. 1 (April 16, 2015)]. DHEC mailed the Minor Permit Modification Decision to MRR Pickens as the applicant on August 10, 2015. *Id.* DHEC staff did not mail the Minor Permit Modification Decision to Petitioner on August 10, 2015. *Id.* Prior to the Department's issuance of the Minor Permit Modification, Pickens County had not requested in writing via certified mail, electronic mail or by any other method, to be notified by the Department of any decisions relating to Permit No. LF2-00003. *Id.* at pp. 1-2.

B. Pickens County's Knowledge of the Permit Modification Decision

Pickens County had actual knowledge of the Minor Permit Modification in December of 2015 and received a copy of it in January of 2016, as follows:

- In December of 2015, Pickens County filed a Freedom of Information Act request with the Department for the MRR Pickens permit file and requested a meeting to discuss

Permit No. LF2-00003 [**Exhibit D**; Affidavit of Gerald Wilson, CA No: 2016-CP. 39-100 (Feb. 17, 2016)];

- On December 15, 2015, DHEC staff met with Pickens County representatives and discussed the August 10, 2015 Minor Modification Permit Decision [*Id.* and **Exhibit C** - Att. 4, Affidavit of Joan F. Litton (April 15, 2016)];
- On January 11, 2016, DHEC sent Pickens County a copy of the Minor Permit Modification Decision via Electronic delivery to Gerald Wilson [**Exhibit E**; Electronic Mail from Tim Eleazer of DHEC to Gerald Wilson of Pickens County (Jan. 11, 2016)];
- On January 11, 2016, Pickens County issued a Land Use Approval Termination Letter to MRR Pickens and informed it of its knowledge of the Minor Permit Modification Decision. [**Exhibit F**; Letter from Pickens County to MRR Pickens (January 11, 2016)];
- On February 17, 2016, Gerald Wilson, an employee of Pickens County signed a sworn affidavit used as an exhibit in a Civil Action in the Court of Common Pleas for the Thirteenth Judicial District; CA No: 2016-CP-39-100 (Feb. 17, 2016)[**Exhibit D**]; and,
- On February 18, 2016, Petitioner attached a copy of the August 10, 2015, Minor Permit Modification Decision as Exhibit 12 to a pleading in CA No: 2016-CP-39-100 [**Exhibit G**; Pickens County's Response to Request for Emergency Preliminary Injunction; List of Exhibits and Exhibit 12 Minor Permit Modification Decision (February 18, 2016)(Other Exhibits Excluded)].

Therefore, Petitioner had actual and constructive notice of the Minor Permit Modification Decision on December 15, 2015; January 11, 2016; February 17, 2016; and at the latest, on February 18, 2016 (the date it used the Minor Permit Modification Decision as an Exhibit in a

State court proceeding). DHEC electronically mailed the decision to Pickens County employee Gerald Wilson on January 11, 2016.

C. Procedural History

i. Petitioner's Request for a Final Review Conference to the DHEC Board

Petitioner filed with the DHEC Board its Request for Final Review ("RFR") of the DHEC staff Minor Permit Modification Decision on March 23, 2016. On April 16, 2016, DHEC staff submitted Initial Staff Response to Request for Review with the DHEC Board setting forth its position that the request was untimely. [Exhibit C]. The DHEC Board sent its Acknowledgment of the RFR to Petitioner and also to MRR Pickens to the attention of Christopher Roof, MRR Pickens, LLC, 5842 Faringdon Place, Suite 1, Raleigh, NC 27609 (the "Faringdon Raleigh Address") on April 6, 2016. [Exhibit H; DHEC Board Acknowledgement of RFR & Cert. of Service (April 6, 2016)]. The DHEC Board denied the RFR by letter dated April 21, 2016, making the Minor Permit Modification Decision the "Final Agency Decision." The Clerk of the DHEC Board served a copy of its decision denying Petitioner's RFR for Pickens County by sending it Certified U.S. Mail to, Gary W. Poliakoff, Esq. as counsel for Petitioner and on Respondent MRR Pickens, by sending it U.S. Mail to Christopher T. Roof, MRR Pickens LCC at the Faringdon Raleigh Address. [Exhibit I; DHEC Board Denial of RFR and certificate of Service (April 21, 2016)] MRR Pickens received the DHEC Board's Final Agency Decision denying the RFR on April 25, 2016 [Exhibit J; Affidavit of Christopher T. Roof.] The Faringdon Raleigh Address is the address listed on the cover page of the August 10, 2015, Minor Permit Modification [Exhibit B].

ii. Petitioner's Request for a Contested Case Hearing

On May 19, 2016, Petitioner mailed its Request for a Contested Case Hearing to the ALC. [Exhibit K; Pickens County's Request for Contested Case Hearing (May 19, 2016)]. Petitioner, through its counsel Gary R. Poliakoff, Esq., used the ALC Request For Contested Case Hearing Form to file its appeal and completed and signed the Proof of Service section as follows:

"I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing on all other parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):

Name and/or Agency Name: S.C.D.H.E.C.
Address: c/o Edda R. Williams-Linen, Esq.
2600 Bull Street
Office of General Counsel
City, State and Zip: Columbia, SC 29201

Name and/or Agency Name: MRR Pickens, LLC
Address: 11743 Trails End Lane
City, State and Zip: Charlotte, NC 28078

Id., p. 1

Petitioner thus purported to serve its Request for a Contested Case Hearing on Respondent MRR Pickens by mailing it to 11743 Trails End Lane, Charlotte, North Carolina 28078 ("the Trails End Charlotte Address"). The Trails End Charlotte Address is not and has not been associated with MRR Pickens since 2008. [Exhibit J] MRR Pickens does not have an office at the Trails End Charlotte Address nor does its affiliated company, MRR Southern, LLC have an office there. Id. A former employee of MRR Pickens, Ronald Gilkerson, used to own the parcel identified as 11743 Trails End Lane, Charlotte, North Carolina and he worked from that address for a short period of time in 2008. Id.; Exhibit L, Mecklenburg County, NC Real Estate

lookup (July 27, 2016); **Exhibit M**, Mecklenburg County, NC Tax Bill Search for Years 2008-2014)]. Ronald Gilkerson has not been employed by either MRR Pickens or MRR Southern since 2008. *Id.* MRR Pickens LLC's registered agent is listed on the South Carolina Secretary of State's website as Corporation Service Company, 1703 Laurel Street, Columbia, SC 29201. **[Exhibit N; Secretary of State Corporation Registration for MRR Pickens (July 27, 2016)]**

To date MRR Pickens has not been served with Petitioner's Request for a Contested Case Hearing in this matter. **[Exhibit J]** The first time that MRR Pickens received notice that the Request for a Contested Case Hearing had been filed with the Administrative Law Court was upon receipt of the ALC Notice of Assignment, mailed to MRR Pickens by the clerk of the ALC at the Faringdon Raleigh Address and received there on May 31, 2016. **[Exhibit J]** The record reflects MRR Pickens was not represented by counsel at any time during the Board RFR process and therefore, Petitioner attempted to serve the Request for a Contested Case hearing on MRR Pickens directly.

ARGUMENT

I. PETITIONER FAILED TO TIMELY FILE ITS REQUEST FOR REVIEW OF THE STAFF DECISION WITH THE DHEC BOARD PURSUANT TO 44-1-60(E)

Section 44-1-60 of the South Carolina Code provides the exclusive procedure for bringing a contested case regarding permitting or licensing actions taken by "DHEC". *A.O. Smith Corporation vs. SCDHEC and Town of McBee*, 2016 WL 2771749, (S.C.ALC (May 5, 2016)); S.C. Code Ann. § 44-1-60(A) (Supp. 2015). A DHEC staff decision on a permit becomes the "final agency decision" fifteen calendar days after it has been mailed to the permit applicant and other affected persons who have properly requested notification, unless an RFR is filed with the DHEC Board within that time frame. S.C. Code Ann. § 44-1-60(E)(1)-(2). If an RFR is filed, the Board has three choices: (1) decline in writing to review the staff decision, (2) do nothing and

let the sixty day time frame to hold a review conference lapse; or (3) hold a conference and/or issue its own decision in the matter. S.C. Code Ann. §44-1-60(F). Where the DHEC Board declines in writing to conduct a final review conference, the applicant or other affected person has thirty calendar days from receipt of the DHEC Board denial to file a contested case with the ALC. S.C. Code Ann § 44-1-60(G)(1)(Supp. 2015). “The exclusive process established by Section 44-1-60 is the statutory equivalent of the judicial doctrine of exhaustion of administrative remedies...Under the statute, unless the steps prescribed are followed, beginning with the initial decision of the Department, a party may not bring a contested case before [the ALC].” *A.O. Smith Corporation*, 2016 WL at 277174, *2; citing *Ward v. State*, 343 S.C. 14, 18-19, 538 S.E.2d 245, 247 (2000)(“The general rule is that while there are several exceptions that may be applied to the judicially-imposed exhaustion requirement, those that apply to a statutory requirement are few.”)

Petitioner may argue that it should have been notified by DHEC staff of the Minor Modification Decision at the time it was made back on August 10, 2015, either by (1) mailing the decision directly to the Petitioner; and/or (2) by publicly noticing the decision through publication in a newspaper of general circulation.

A. DHEC Was Not Required to Mail the Minor Modification Decision to Petitioner because Petitioner is not an “Affected Party” who Requested Such Notice

MRR Pickens will first address Option 1: notice by direct mailing of the staff decision to Petitioner. Section 44-1-60(E) requires a party, such as Petitioner, to notify the Department in writing by certified, U.S. or electronic mail, that it is an “affected person” and wishes to be notified of any subsequent decisions relating to a permit. Since MRR Pickens was first issued Class 2 Permit LF2-00003 in 2008, Petitioner has never requested in writing that the Department notify it of any decisions relating to the permit. [Exhibit C, Att. 4; Affidavit of Joan Litton;

Para. 4 (April 15, 2016)]. Petitioners were aware - since 2008 - that Respondent MRR Pickens intended to operate a Class 2 Landfill in Pickens County. In fact, as stated in Petitioner's Prehearing Statement filed in this case, in 2008 Petitioner and Respondent MRR Pickens executed a Development Agreement to allow MRR Pickens to use the property for that purpose. See Petitioner's Prehearing Statement (July 5, 2016). Since 2008, Petitioner has never notified DHEC it wanted to be treated as an "affected person" and be notified of any future staff decisions on the permit. It does not allege that it made such a request in its filings in this case because it simply did not happen. Therefore, DHEC was not required to notify Petitioner directly by mailing of the 2015 DHEC Minor Permit Modification Decision.

This Court has addressed this exact issue in a similar situation where a party did not request DHEC provide notice of subsequent decisions on a previously issued permit. *Hubbard et al. v. SCDHEC and Shavon's Purple Lotus Body Art Boutique*, 2008 WL 2300351 (S.C.ALC)(May 2, 2008). In *Hubbard*, the Court held where notice was not requested of future staff decisions after an initial license or permit was issued, the Department was not required to give subsequent notices of renewals or otherwise treat them as an "affected party." The Court further held that a Petitioner cannot claim ignorance to avoid the requirement that it notify DHEC of its "affected party" status to trigger future notifications of permitting decisions. "Petitioners argue they were unaware that, pursuant to § 44-1-60(E), they had to notify the Department by certified mail, return receipt requested¹, that they were affected persons concerning the Department's decision. This argument lacks credibility; all citizens in this state are presumed to know the law." *Id.* at * 6; citing *Morgan v. S.C. Budget and Control Bd.*, Op. No. 4356 (S.C. Ct. App. filed Mar. 13, 2008) (Shearouse Adv. Sh. No. 12 at 56, 62) ("[C]itizens

¹ Certified mail is no longer required for notification of requests for decisions. However, notification still must be in writing and by electronic, U.S. or Certified Mail. S.C. Code Ann. § 44-1-60 (E)(l).

are presumed to know the law and are charged with exercising 'reasonable care to protect [their] interest[s].'"")

"A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review." S.C. Code Ann. § 1-23-380(A). Because Petitioner failed to timely exhaust its administrative remedies through a timely RFR to the DHEC Board, it cannot now ask the ALC to hear its appeal. *Id.* at *8 (holding the doctrine of exhaustion of administrative remedies generally requires a person seeking relief from the action of an administrative agency to pursue all available administrative remedies before seeking such relief from the courts. *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 208, 442 S.E.2d 582, 583 (1994).

B. Even if this Court finds Petitioner is an "Affected Person" Requiring Notice, Petitioner failed to file its RFR within 15 Days of DHEC's Mailing of Notice to Petitioner.

The seminal case on notice and timeliness of DHEC RFRs is *S.C. Coastal Conservation League vs S.C. Dept. of Health & Envtl Control and S.C. State Ports Authority*, 390 S.C. 418 (S.C.S.Ct. (Nov. 15, 2010)). In that case, the South Carolina Supreme Court interpreted the requirements set forth in S. C. Code Ann. §44-1-60(E). In the *S.C. Coastal Conservation League* case, the Petitioners argued that the fifteen day time frame to file an RFR with the DHEC Board does not run until the "affected party" receives notice of the DHEC staff decision on a permit, not when notice of the staff decision is mailed to the applicant, as held by the lower courts in that case. The South Carolina Supreme Court disagreed and held that the fifteen day time frame begins to run on the day the notice is mailed to an "affected party" that has requested to be notified of the staff decision. *Id.* at 252 (2010) (holding that in situations when DHEC fails to

simultaneously notify the applicant, permittee, licensee, and affected persons, the latest date of mailing controls when the fifteen-day period begins to run).

Here, Petitioner does not qualify as an “affected party”, entitled to mailing and notice of the DHEC staff Minor Permit Modification Decision. However, in the alternative and without waiving any arguments, even if this Court were to rule Petitioner is an “affected party”, it clearly missed the fifteen day deadline of filing its RFR to the DHEC Board. Using the time frame of fifteen days after the later of mailing to the applicant and “affected party” set forth in the *Coastal Conservation League* case, DHEC staff mailed a copy of the Minor Permit Modification to MRR Pickens as applicant on August 10, 2015. [Exhibit C] DHEC staff later emailed a copy of the Minor Permit Modification to Petitioner on January 11, 2016. [Exhibit E]. Pickens County did not file its RFR until 72 days after DHEC provided it with a written copy of the Minor Permit Modification. Therefore, no matter what date you use, Pickens County exceeded the fifteen day filing deadline after mailing and thus failed to exhaust its administrative remedies.² Thus, Petitioner cannot now ask this Court hear its review because the Court lacks subject matter jurisdiction over the appeal. See *Grand Bees Dev., LLC v. SCDHEC*, 2012 WC 10841840, at *1 (S.C.Ct.App. (May 23, 2012)); citing *Great Games, Inc.*, 529 S.E.2d 6, 7 n. 5; *Allison v. W.L. Gore & Assocs.*, 714 S.E.2d 547, 549–50 (2011) (noting it is a general rule “that an appellate body may not extend the time to appeal”).

² In fact, Petitioner had actual and constructive notice of the Minor Permit Modification Decision on December 15, 2016. [Exhibits C & D]. Petitioner waited ninety nine (99) days after it met DHEC and discussed the modification, seventy two (72) days after it received a copy of and notified Respondent MRR Pickens of its knowledge of the modification, 32 days after it signed an affidavit in Court of Common Pleas attesting under oath to its knowledge of the contents of the Minor Permit Modification Decision, and 33 days after it used a copy of the Minor Permit Modification Decision as an Exhibit in a civil proceeding in South Carolina.

C. DHEC was Not Required to Public Notice the Minor Permit Modification but Even if it Was, Petitioner had Actual and Constructive Notice of the Decision in December of 2015 and failed to File its RFR Within 15 days of Mailing and Receipt of Notice. Therefore the Minor verse Major Legal Determination is Moot.

MRR Pickens will now address notice Option 2: notice by public notice and comment period back in 2015. Petitioner may try to cloud the timeliness and jurisdictional issues by arguing the Minor Permit Modification should have been treated by the Department as a "Major Modification", thus requiring public notice and comment period under 61-107.19. Although the evidence supports a finding that MRR Pickens' modification request was properly treated by DHEC as a minor one, the Court need not address this issue for the sake of ruling on Respondent MRR Pickens' Motion to Dismiss. Simply put, Petitioner was personally emailed a copy of the Minor Permit Modification Decision on January 11, 2016, Petitioner had actual and constructive notice of the Minor Permit Modification Decision on December 15, 2015 (at the latest), and Petitioner failed to file a Request for Review of the decision within the fifteen day deadline required by 44-56-60(E). Therefore, this Court lacks subject matter jurisdiction to decide whether the Minor Permit Decision should have been publicly noticed; the issue is moot.

II. PETITIONER DID NOT SERVE ITS REQUEST FOR THE CONTESTED CASE HEARING ON RESPONDENT MRR PICKENS WITHIN 30 DAYS OF NOTICE OF THE DHEC BOARD DECISION.

To date, Petitioner has failed to serve Respondent, MRR Pickens, with its Notice of a Request for a Contested Case Hearing. [Exhibit J]. As stated above, Pickens County's counsel, Gary R. Poliakoff, Esquire, filed an ALC form Certificate of Service with the Court on the date it filed its request. On the Certificate of Service, Petitioner swore to serving the Request for a Contested Case on MRR Pickens as a necessary party at the Trails End Charlotte Address, an

address that has not been associated with MRR Pickens for approximately eight (8) years. Rules 11(B) and (C) of the SCALCR state:

“11.B. Service of Copies of the Request. A copy of a request must also be served on each party and on the affected agency or county official, in accordance with *Rule 5*. Proof of service must be included with the request.

11.C. Time for Filing. Unless otherwise provided by statute, a request must be *filed and served* within thirty (30) days after actual or constructive notice of the agency’s determination.”

SCALCR, Rules 11(B) and (C)(2015)(emphasis added).

Rule 5 of the SCALCR states:

5. Service. Any document filed with the Court shall be served upon all parties to the proceeding. Service shall be made upon counsel if the party is represented, or if there is no counsel, upon the party. Service shall be made by delivery, *by mail to the last known address*, or as otherwise approved by the Court through administrative order. Service is deemed complete upon mailing.”

SCALCR, Rule 5 (2015)(emphasis added).

Under no circumstances can Petitioner argue that at the time of filing the Request for Contested Case Hearing, it believed MRR Pickens’ last known address to be the Trails End Charlotte Address. First, Petitioner had possession of the Minor Permit Modification Decision mailed to MRR Pickens at the Faringdon Raleigh Address and with that address on its cover page. [Exhibit B] Second, Petitioner had the Board’s denial of the RFR and final agency decision addressed to all parties, including MRR Pickens at the Faringdon Raleigh Address, as evidenced by the Certificate of Service attached thereto. [Exhibit I]. Furthermore, Petitioner is represented by experienced counsel, Gary R. Poliakoff Esq., and he is aware of MRR Pickens current address as evidenced by his use of the Faringdon Raleigh Address on a recent Notice of Deposition for Christopher Roof in this matter dated July 20, 2016. [Exhibit P; Notice of Deposition (July 20, 2016)]. Therefore, Petitioner cannot plead ignorance of the last known address of Respondent MRR Pickens for purposes of proper service.

This Court has consistently held that failure to serve a Request for a Contested Case Hearing on a party within the 30 day time frame required by Rule 11 of the SCALC strips this Court of jurisdiction and requires dismissal. See *Jacek v. S.C. Department of Employment and Workforce*, 2015 WL 3822553 (SCALC) (June 12, 2015); *Brian Tollison v. S.C. Department of Employment and Workforce*, 2014 WL 2918182 (SCALC), (June 25, 2014); *Leslie J. Landeros v. S.C. Department of Employment and Workforce*, 2013 WL 2455855 (SCALC), (May 31, 2013); *Sal Gandolfo v. S.C. Department of Employment and Workforce*, 2013 WL 1120298 (SCALC), (March 5, 2013); *Sonya Oliver v. S.C. Department of Employment and Workforce*, 2013 WL 1395689 (SCALC), (April 4, 2013); *Scott J. Willis and Pamela P. Willis vs. Horry County Assessor*, 2011 WL 2413180 (SCALC), (June 10, 2011); *Felicia Blocker vs. Richland County School District One*, 2010 WL 2604805 (SCALC), (May 25, 2010); and *Aimee C. Bemis vs. S.C. Department of Employment and Workforce*, 2012 WL 1077693 (SCALC), (March 14, 2012). The Court cannot fix or ignore failure to serve within a timeframe required by its own Rules of Procedure to allow jurisdiction. The facts are not in dispute in this case: (1) Petitioner received notice of DHEC's Final Agency Decision on April 21, 2016; (2) Pickens County filed its Request for a Contested Case Hearing with the ALC on March 19, 2016; (3) Pickens County, by its own admission, attempted to serve Respondent MRR Pickens at the incorrect address despite having actual knowledge of the "last known address" as indicated on the cover of the Minor Permit Modification, the cover letter Certificate of Service of the clerk of the DHEC Board in issuing the Final Agency Decision, and Petitioner's own Notice of Deposition. Respondent MRR Pickens was not served with Petitioner's Request for a Contested Case Hearing at its last known address – the Faringdon Raleigh Address by the 30 day deadline and to date, has not been served

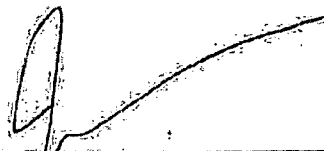
at that address or to any other address currently associated with MRR Pickens, LLC. [Exhibit J].

Therefore, this Court must dismiss this case with prejudice.

CONCLUSION

This Court does not have jurisdiction to hear this matter for the following reasons: (1) Petitioner Pickens County failed to timely file its Request for Final Review of the DHEC staff Minor Modification Decision with the DHEC Board pursuant to Section 44-1-60(E) of the South Carolina Code and thus, Petitioner did not exhaust its administrative remedies; (2) Petitioner failed to timely serve the Request for a Contested Case Hearing on Respondent MRR Pickens by mailing to MRR Pickens' last known address within 30 days of actual or constructive notice of the DHEC Board Final Agency Decision. For the reasons set forth above, MRR Pickens request the Court dismiss with prejudice Petitioner Pickens County's Request for a Contested Case Hearing.

Respectfully submitted,



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Attorneys for Respondent MRR Pickens, LLC

Columbia, South Carolina
July 29, 2016

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Pickens County,

Petitioner,

vs.

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

Respondents.

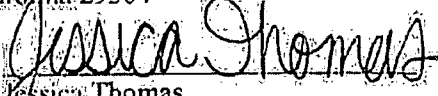
CERTIFICATE OF SERVICE

DOCKET NO. 16-ALJ-07-0164-CC

I hereby certify that on the 29th day of July, 2016, in Columbia, South Carolina, a copy of the foregoing Respondent MRR Pickens, LLC's Motion to Dismiss and Memorandum in Support of Motion to Dismiss were served on all parties to this matter by hand delivery or depositing the same in the United States Mail, postage paid, and addressed as follows:

Etta R. Williams Linen, Esquire
Office of the General Counsel
S.C. Department of Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Gary W. Poliakoff, Esquire
Poliakoff & Associates
P.O. Box 1571
Spartanburg, South Carolina 29304


Jessica Thomas
WILLIAMS MULLEN
1441 Main Street, Suite 1250
Columbia, SC 29201
Telephone: 803.567.4600
Facsimile: 803.567.4601
jthomas@williamsmullen.com

Respondent MRR Pickens Exhibit A



Application for Permit to Construct a Solid Waste Management System
Bureau of Land and Waste Management

Submit to: Division of Mining and Solid Waste Permitting, Bureau of Land and Waste Management
SC Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201-1708
(Please Print or Type)

- I. Name of project: Highway 93 Landfill - Minor Permit Modification
- II. Physical location (Directions to project - use street names, county road numbers, etc.):
2180 Greenville Highway, Liberty, SC 29657 County: Pickens
Latitude and longitude (nearest 15 seconds) or UTM coordinates: 34°47'50" North and 82°40'30" West
- III. In accordance with Title 44, Chapter 96 of the Code of Laws of South Carolina, 1976, as amended, I hereby make application, on behalf of the party(ies) whose name(s) appears below, for a permit to construct and operate the following type of solid waste management project (describe):
Construction, Demolition, and Land Clearing Debris Landfill
- IV. Facility name, mailing address: Highway 93 Landfill, 2180 Greenville Highway, Liberty, SC 29657 Telephone number: _____
- V. Operator's name, mailing address (if different from name of facility owner): MRR Pickens, LLC
5842 Faringdon Place, Suite 1, Raleigh, NC 27609 Telephone number: (919) 436-3570
- VI. Landowner's name, mailing address (if different from name of facility or operator): same
Telephone number: _____
- VII. I have placed my signature and seal upon the documents submitted with this application, certifying that I accept responsibility for the information and/or design contained therein. Additional submitter(s) who are registered will also bear my signature and seal, signifying that I accept responsibility for the information and/or design contained therein.
Engineer's name (print): Scott L. Brown, PE Signature: [Signature] No. 25687
S.C. Registration No: 25687 Registered Professional Engineer
- VIII. I have read this application and all attached documents. I agree to the requirements and conditions that are contained in it. Also, I agree to the admission of properly authorized persons at all reasonable hours for the purpose of sampling and inspection.
Name of Facility Representative (print): Christopher L. Brown Signature: [Signature]
Facility Representative's title: General Manager Date: 5/23/2000
Name of Operator Representative (print): _____ Signature: _____
(If different from facility representative)
Operator Representative's title: _____ Date: _____
Name of Landowner (print): _____ Signature: _____
(if different from facility or operator representative) Date: _____

Respondent MRR Pickens

Exhibit B



Catherine B. Heigel, Director

Promoting and protecting the health of the public and the environment

**OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003**

Date of Issuance: November 3, 2008

Date of
Modification: August 10, 2015

Permission is hereby granted to:

Name of Facility: Highway 93 Class 2 Landfill
Permittee: MRK Pickens, LLC
Address: 5842 Faringdon Place, Suite 1
Raleigh, NC 27609
Supervisor: Mr. Christopher T. Roof
Phone: (919) 436-3570

for the operation of a Class 2 landfill at 2180 Greenville Highway, in Pickens County located off Highway 93 near the City of Liberty, SC 29657.

This permit is issued pursuant to Sections 44-96-10 et seq., and 25A S.C. Code Regulation 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
August 10, 2015
Page 1 of 4

MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the approved design specifications, and construction plans received November 30, 2007; revised August 26, 2008, and last revised August 5, 2015, unless permit conditions state otherwise.
2. This permit is limited to the disposal of the items listed in Appendix I of R.61-107.19 and any other waste approved by the Department for disposal in a Class Two Landfill pursuant to R.61-107.19, Part IV, Section C.2.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to Jun30). Information concerning the facility's previous Fiscal Year's waste receipts is due on the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV, Subpart C.16, to the attention of:

Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

4. All Appendix-I acceptable wastes must be covered at least once every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to five (5) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than five (5) acres (at the time of the certification). The certification shall be completed within sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (16,133 yd³ of soil for 5 acres with 2' thickness). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

8. Sixty (60) days prior to starting construction of the Class Two landfill, the Permittee shall notify the Department of their selection between Option 1 (traditional Class Two landfill design), or Option 2 (alternate liner design). If the financial assurance mechanism needs to be increased, this shall be done prior to the acceptance of waste into the landfill.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. GROUNDWATER DETECTION MONITORING SYSTEM

a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.

b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit. The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.

c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.

d) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

2. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Subpart E.3.

3. REPORTING

- a) The permittee shall submit to the Department the result of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following schedule:

Sampling Schedule	Results Due
November/December	January 15 (Semi-Annual)
May/June	July 15 (annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.1.a.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Ground water Section, and to the Solid Waste Consultant in Upstate Region BEHS Greenville.

4. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required to comply with R.61-107.19, Part IV, Section C.21.

Respondent MRR Pickens

Exhibit C



Catherine E. Helgel, Director

Promoting and protecting the health of the public and the environment

**BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
INITIAL STAFF RESPONSE TO REQUEST FOR REVIEW**

Requestor: Pickens County

Docket No. 16-RFR- 15 – Decision dated August 10, 2015, to approve a modification to Permit No. LF2-00003, Highway 93 Class 2 Landfill -- Pickens County.

Office of General Counsel ("OGC") Number: 22666

I. SUMMARY

a) Type of Decision and Description of Program

On August 10, 2015, the South Carolina Department of Health and Environmental Control ("DHEC" or "the Department") issued a Department Decision (**Attachment 1**) approving a minor permit modification application from MRR Pickens, LLC ("MRR") to modify its Class 2 Permit for their Highway 93 Class 2 Landfill ("Landfill"), by adding a liner system to the Landfill.

The Landfill is located at 2180 Greenville Highway, Liberty, South Carolina, in an unincorporated area of Pickens County. On November 3, 2008, the Department issued Permit No. LF2-00003 to MRR for the operation of a Class 2 landfill.

On March 30, 2015 the Department received an application from MRR for a minor permit modification to allow the installation of a liner and associated leachate collection system for a portion of the existing permitted landfill area. On August 6, 2015 the Department received a revised copy of the minor permit modification application from MRR and on August 10, 2015 the Department approved the application and issued the permit modification.

Because the Department determined that the application met the regulatory definition of a minor permit modification, a public notice and comment period was not required prior to issuance of the permit modification by the Department. (R.61-107.19 Part 1, B.48.a). The Solid Waste regulations require public notice of all applications for new construction and *major* modifications of Class 2 landfills, but does not include applications for minor permit modifications. (R.61-107.19 Part I D.2.c.(1); Part IV I.2.)

This Department decision was issued on August 10, 2015, in accordance with the requirements of 8 S.C. Code Regs. 61-107.19, *SWM: Solid Waste Landfills and Structural Fills*, Parts I and IV, and became the final Agency Decision 15 days after the decision was mailed to MRR. Pickens County did not request to be notified of Department decisions as an affected person and did not file a timely request for review

by the DHEC Board ("Board") prior to the expiration of the statutory 15-day period. Further, even after being given actual notice of the Department decision some time after the decision was issued to MRR, Pickens County waited 99 days after obtaining notice of the decision before it filed, on March 23, 2016, its Request for Review ("RFR") with the Board. Because the RFR was not timely filed, the Board does not have jurisdiction to hear the RFR.

b) Parties

The applicant for the landfill permit modification is MRR Pickens, LLC. The requestor is Pickens County, who has a Host and Development Agreement with MRR Pickens.

c) Location

The Landfill is located on the south side of SC Highway 93 near its intersection with Clardy Road. The property is located in an unincorporated portion of Pickens County.

d) Relevant Chronology

November 3, 2008 – DHEC issued the original permit to MRR Pickens, LLC for the Highway 93 C&D Landfill – Permit No. LF2-00003 (**Attachment 2**).

March 30, 2015 – The Department received an application for a Minor Permit Modification to add a liner system from MRR Pickens.

June 12, 2015 – The Department sent a draft comment letter to MRR Pickens via e-mail.

July 8, 2015 – The Department sent additional comments to MRR Pickens via e-mail.

August 6, 2015 – The Department received a revised copy of the application for a Minor Permit Modification from MRR Pickens.

August 10, 2015 – The Department approved the application and issued a modified permit to add a liner system to MRR Pickens.

December 15, 2015 – Department staff met with representatives of Pickens County to discuss the Department's decision of August 10, 2015.

January 11, 2016 – Pickens County informed DHEC via a copy of a letter (**Attachment 3**) to MRR Pickens, that it had suspended MRR Pickens, LLC's land use permit because of the changes made to the Landfill permit.

March 23, 2016 – Pickens County filed a Request for Review with the DHEC Board of the Department's decision issued to MRR on August 10, 2015.

c) Decision

S.C. Code Ann. Regs. 61-107.19, Solid Waste Management: Solid Waste Landfills and Structural Fill ("Regulation"), is the Regulation that establishes the requirements for a Class 2 Landfill; defines a minor and major permit modification; and provides for public notice and comment for new construction and a major permit modification. The Department determined that the application from MRR was for a minor permit modification, and issued a Department decision approving the requested permit modification.

II. RELEVANT LAW

S.C. Code Ann., Section 44-1-60, (Supp. 2014), Appeals from department decisions giving rise to contested case procedures; specifically (E)(1)&(2).

8 S.C. Code Ann. Regs. 61-107.19, SWM: Solid Waste Landfills and Structural Fills ("Regulation"), specifically, Part 1(B)(48)(a)&(b), which defines a minor and major permit modification.

III. JURISDICTIONAL ISSUES

Because Pickens County has not timely filed this Request for Review as outlined below, the DHEC Board does not have jurisdiction to hear this matter.

IV. RESPONSE TO EACH GROUND STATED IN THE *REQUEST FOR REVIEW*

Timeliness of the Request for Review

Pursuant to S.C. Code Ann., Section 44-1-60(E)(1)&(2) (Supp. 2014)), Pickens County's Request for Review ("RFR"), submitted to the DHEC Board on March 23, 2016, should be dismissed because the RFR was not timely filed. The Department was not required to provide notice to Pickens County of the approval of the minor modification to MRR's Landfill permit. However, the facts show that the County received actual notice of the modification approximately ninety-nine (99) days **before** it filed its RFR with the Department.

The approval for the Landfill's minor permit modification application was issued on August 10, 2015. Therefore, the approval for the modification became the Department's final agency decision on August 25, 2015, 15 days after notice of the department decision was mailed to MRR. (See S.C. Code Ann., Section 44-1-60(E)(1)&(2) (Supp. 2014)). The statute provides as follows:

(1) Notice of a department decision must be sent by certified mail, returned receipt requested to the applicant, permittee, licensee, and affected persons who have requested in writing to be notified. Affected persons may request in writing to be notified by regular mail or electronic mail in lieu of certified mail. Notice of staff decisions for which a department decision is not required pursuant to subsection (D) must be provided by mail, delivery, or other appropriate means to the applicant, permittee, licensee, and affected persons who have requested in writing to be notified.

(2) The staff decision becomes the final agency decision fifteen calendar days after notice of the staff decision has been mailed to the applicant, unless a written request for final review accompanied by a filing fee is filed with the department by the applicant, permittee, licensee, or affected person." (S.C. Code Ann., Section 44-1-60(E) (Supp. 2014)).

Notice of a Department Decision is required to be sent to the "... affected persons who have requested in writing to be notified." S.C. Code Ann., Section 44-1-60(E)(1). Pickens County never requested that the Department provide notice of any department decision pertaining to the Highway 93 Class 2 Landfill (see Joan Farver Litton's affidavit, **Attachment 4**).

Even though the Department did not provide formal notice to Pickens County at the same time that it informed MRR of the approval, the County knew as early as December 15, 2015, of the Department's decision regarding the permit modification. During a meeting with the County on December 15, 2015, Pickens County was informed of the permit modification. (Also see Joan Farver Litton's affidavit, **Attachment 4**). The County had then obtained actual notice of the permit modification decision that was issued by the Department. "Actual notice means all the facts are disclosed and there is nothing left to investigate." Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 504 S.E.2d 117 (1998) *citing*, Government Employees Ins. Co. v. Chavis, 254 S.C. 507, 176 S.E.2d 131 (1970). "Actual notice may be shown by direct evidence or inferred from factual circumstances." *Ibid.* *citing* Southern Railway-Carolina Division v. Home Investment Co., 233 S.C. 440, 105 S.E.2d 527 (1958). Even after the County received actual notice of the Department decision on December 15, 2015, it did not request review of the decision until March 23, 2016. Even given Pickens County's argument that 44-1-60E(1) should not strictly apply, after Pickens County received actual notice of the Department decision on December 15, 2015, it would have had until December 30, 2015, to file its RFR with the Department. However, Pickens County waited over 90 days after it had obtained actual notice of the decision to file its RFR with the DHEC Board.

Pickens County failed to file the RFR within the 15 days statutory requirement and did not file until 99 days after obtaining actual notice, on December 15, 2015 of a permit

modification to the Landfill. Therefore, this RFR should be denied for lack of timeliness resulting in the DHEC Board having no jurisdiction to hear this matter.

Major Modification vs. Minor Modification

The application submitted by MRR was a minor permit modification as defined in R.61-107.19, Part I B. 48. A "modification" is defined as changes to a solid waste landfill that can be either "minor" or "major." A "minor modification" is defined as "a change that keeps the permit current with routine changes to the facility or its operations, or an administrative change." A "major modification" is "a change that substantially alters the facility or its operations, e.g. tonnage increase above 25%, any volumetric capacity increase, alternate designs that vary from the design prescribed in this regulation." Inclusion of a liner is not considered a major modification for the following reasons: 1) addition of a liner is not an alternate design of the required design criteria; (2) addition of a liner does not substantially change the operations of the landfill; and, (3) the addition of a liner does not allow the facility to accept additional waste types (i.e., Class 3 waste) or quantities of waste. Likewise, the minor permit modification does not change the existing landfill from a Class 2 to a Class 3 landfill.

In accordance with R.61-107.19, Part IV, Section D.1, the design criteria for a Class 2 Landfill requires a 2-foot separation between the landfill base grade and the seasonal high water table. If an applicant wanted to reduce the 2-foot separation requirement, then it must request an alternate design in lieu of the 2-foot separation, which would be considered a major modification. The Department does not consider the installation of the liner and associated leachate collection system an alternate design that would be a major modification requiring a public notice because the 2-foot of groundwater separation is being maintained. The installation of a liner would be voluntary and is considered an upgrade from the prescribed regulation.

Lack of Notification to the County

As stated above, since the permit modification was considered a minor modification, no notice of the application was required, and Pickens County had not requested to be notified of decisions regarding the Landfill. In addition, the Department is not required, by statute or regulation, to notice receipt of reports.

Solid Waste Management Plan

A. Prohibits Class 3 Landfills

The MRR Pickens, LLC Landfill is not permitted as a Class 3 Landfill, nor is there a proposal in place to modify it to a Class 3 Landfill. Therefore, the Department has not done a consistency review of the Pickens County Solid Waste Management Plan ("Pickens County Plan") for a new Class 3 Landfill.

B. Prohibits Special Wastes

The Pickens County Plan states that a Class 3 Landfill is designed to accept certain wastes, including incinerator ash. The Pickens County Plan does not address coal ash specifically. Furthermore, the Act does not authorize a county to include language in their Solid Waste Management Plan prohibiting wastes from a given class of landfill. The Department, through its regulations, can determine acceptable wastes for a given class of landfill. The Department does not consider disposing of a specific waste to be inconsistent with a County Solid Waste Management Plan.

Demonstration of Need

The addition of a liner does not change a Class 2 Landfill to a Class 3 Landfill. It also does not change the types of waste allowed in the Class 2 Landfill. The Department would require a new application for a Class 3 Landfill to comply with all permitting requirements listed in R.61-107.19, Parts I and V and meet all requirements of R.61-107.17, Demonstration of Need.

Contracts Between the County and MRR

Contracts between a County and a permit applicant are not a part of the Department's consideration when reviewing or issuing a permitting decision. The Department's responsibility is to follow applicable statutes and regulations in making permitting decisions.

Misrepresentations by MRR to Pickens County

The Department is unaware of the content of representations between MRR Pickens and the County.

Land Use Approval

Prior to issuing a permit for a new landfill or the expansion of an existing landfill, the Department must perform a consistency determination regarding local ordinances, including zoning. The Department determined that this Landfill was consistent with all local ordinances and issued the original permit on November 3, 2008. The approved minor modification did not require a consistency determination by the Department.

Pickens County Has Not Issued a Letter of Consistency for the Modification

Pursuant to a South Carolina Supreme Court case, counties no longer issue Letters of Consistency for any Department permitting decisions. "DHEC's practice has been to

delegate to the counties the authority to determine consistency through the counties' issuance of LOCs. We conclude this delegation of authority is impermissible." (Southeast Resource Recovery, Inc. vs. SC Department of Health and Environmental Control, 358 S.C. 402, 595 S.E.2d 468 (2008)). Therefore, permitting decisions are made by the Department and by the Department only.

On November 3, 2008, when the original permit was issued, the Department determined that the Landfill was consistent with the Pickens County Plan. The approved minor modification did not require a consistency determination of the Pickens County Plan by the Department.

Modification Was Issued in Violation of the 1999 State Solid Waste Management Plan

Prior to issuing a permit for a new landfill or the expansion of an existing landfill, the Department must perform a consistency determination regarding the State Solid Waste Management Plan (State Plan). The Department determined that this Landfill was consistent with the State Plan in 2008 and issued the original permit on November 3, 2008. The approved minor modification did not require a consistency determination of the State Plan by the Department.

Allowance of Coal Ash Would Violate Act 138 of 2016

The Landfill is not currently permitted to accept coal ash. If MRR Pickens requests to dispose of coal ash in this landfill, the Department will require MMR Pickens to comply with Act 138 of 2016 and all other applicable statutes and regulations.

Allowance of Coal Ash Would Violate US EPA Regulations and Guidelines

The Coal Combustion Residual Rule (CCR Rule) is a federal rule that became effective October 19, 2015, and requires CCR generated by electric utilities to be disposed in a landfill with specific requirements. The permit modification issued by the Department does not authorize the acceptance of coal ash and in no way relieves MRR of required compliance with federal regulations.

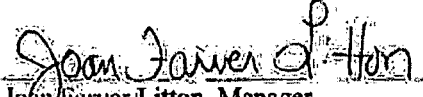
Issuance of the Modification Is in Contravention of the Needs and Desires of Pickens County and Its Citizens

The Department is tasked with making permitting decisions that are compliant with applicable statutes and regulations. The Department acted in compliance with applicable rules and regulations in issuing a minor modification of the permit for the MRR Pickens, LLC's Highway 93 Class 2 Landfill.

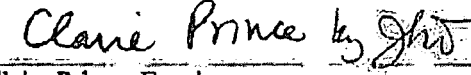
V. REQUESTED ACTION

This Request for Review should be denied because it was not filed timely. Because this matter was not timely filed, the DHEC Board has no jurisdiction to hear this RFR. The Staff's decision to issue an approval for the minor permit modification to MRR Pickens, LLC's Highway 93 Class 2 Landfill was made in compliance with applicable rules and regulations. Therefore, the Department respectfully requests that the DHEC Board deny a final review conference to Pickens County in the above-referenced matter and uphold the Staff decision.

Respectfully submitted,


John Farver Litton, Manager
Mining and Solid Waste Permitting,
SC DHEC


Etta R. Williams Linen, Esquire
Assistant General Counsel, SC DHEC


Claire Prince, Esquire
Special Counsel, SC DHEC

ATTACHMENT 1



Collette B. Heigl, Director

Promoting and protecting the health of the public and the environment

**OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003**

Date of Issuance: November 3, 2008

**Date of
Modification:** August 10, 2015

Permission is hereby granted to:

Name of Facility: Highway 93 Class 2 Landfill
Permittee: MRE Pickens, LLC
Address: 5842 Faringdon Place, Suite 1
Raleigh, NC 27609
Supervisor: Mr. Christopher T. Roof
Phone: (919) 436-3570

for the operation of a Class 2 landfill at 2180 Greenville Highway, in Pickens County located off Highway 93 near the City of Liberty, SC 29657.

This permit is issued pursuant to Sections 44-96-10 et seq., and 25A S.C. Code Regulation 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
August 10, 2015
Page 1 of 4

MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the approved design specifications, and construction plans received November 30, 2007; revised August 26, 2008, and last revised August 5, 2015, unless permit conditions state otherwise.
2. This permit is limited to the disposal of the items listed in Appendix I of R.61-107.19 and any other waste approved by the Department for disposal in a Class Two Landfill pursuant to R.61-107.19, Part IV, Section C.2.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to Jun30). Information concerning the facility's previous Fiscal Year's waste receipts is due on the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV. Subpart C.16, to the attention of:

Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

4. All Appendix-I acceptable wastes must be covered at least once every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to five (5) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than five (5) acres (at the time of the certification). The certification shall be completed within sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (16,133 yd³ of soil for 5 acres with 2' thickness). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.
8. Sixty (60) days prior to starting construction of the Class Two landfill, the Permittee shall notify the Department of their selection between Option 1 (traditional Class Two landfill design), or Option 2 (alternate liner design). If the financial assurance mechanism needs to be increased, this shall be done prior to the acceptance of waste into the landfill.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit. The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.
- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- d) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

2. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Subpart E.3.

3. REPORTING

- a) The permittee shall submit to the Department the result of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following schedule:

Sampling Schedule	Results Due
November/December	January 15 (Semi-Annual)
May/June	July 15 (annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.1.a.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHBC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Ground water Section, and to the Solid Waste Consultant in Upstate Region BBHS Greenville.

4. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required to comply with R.61-107.19, Part IV, Section C.21.



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

**OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LP2-00003**

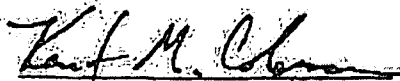
Permit Issued Date: November 3, 2008 Permit Effective Date: November 18, 2008

Permission is hereby granted to:

Name of Facility: Highway 93 C & D Landfill
Permittee: MRR Pickens, LLC
Address: 11743 Trails End Lane
Charlotte, NC 28078
Contact: Mr. Ronald C. Gilkerson
Phone: (704) 947-6652

for the operation of a Class 2 landfill at 2180 Greenville Highway, Liberty, South Carolina, 29657 in Pickens County located off Highway 93 at Clardy Road approximately 2,000 feet NE of the City of Liberty, SC.

This permit is issued pursuant to Sections 44-96-10 et seq. (Supp. 2007) and 25A S.C. Code of Regulations Section 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, P.G., Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LP2-00003
November 3, 2008
Page 1 of 4

**MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003**

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the design specifications and construction plans received November 30, 2007, and last revised August 26, 2008, unless permit conditions state otherwise.
2. This permit is limited solely to the disposal of items listed in Appendix I of R.61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to June 30). Information concerning the facility's previous Fiscal Year's waste receipts is due in the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV, Subpart C.16, to the attention of:

**Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Ball Street
Columbia, South Carolina 29201**

4. All Appendix-I acceptable wastes must be covered at least every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to twelve (12) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than twelve (12) acres (at the time of the certification). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (38,720 yd³ of soil for 12 acres with 2' thickness). The certification shall have been completed within the last 60 days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.
2. Within ninety (90) days of the effective date of this permit, the Permittee shall submit a detailed Compliance Plan that describes steps to be taken in order to fully comply with all regulatory requirements of R.61-107.19 that relate to Class 2 Landfills. This Compliance Plan shall include, but not limited to, the following: a groundwater monitoring design workplan, a landfill post-closure care plan, and a landfill post-closure care cost estimate. Upon the Department's approval of said Compliance Plan, the Permittee will have six (6) months to implement the plan and will have a deadline for full compliance with R.61-107.19 of November 19, 2009.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. SPECIAL ENVIRONMENTAL PERMIT CONDITIONS

Within ninety (90) days of the effective date of this permit, the Permittee shall submit to the Department for review, a Groundwater Monitoring Design Workplan in accordance with R.61-107.19, Part IV, Section E (Groundwater Monitoring and Corrective Action). In addition, an approved groundwater monitoring system must be installed and operating prior to November 19, 2009, pursuant to R.61-107.19, Part I, Section A.6.c. Upon the Department's approval of the Groundwater Monitoring Design Workplan, permit conditions C.2, C.3 and C.4 will become effective.

2. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit.

The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.

- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- e) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

3. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine monitoring at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Part IV Subpart B.3.

4. REPORTING

- a) The Permittee shall submit to the Department the results of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following sampling schedule:

Sampling Schedule	Results Due
November/December	January 15 (Semi-Annual)
May/June	July 15 (Annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.2.A.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Groundwater Section, and to the Solid Waste Consultant in Region 2 BQC (Greenville).

5. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required comply with R.61-107.19, Part IV, Section C.21.

ATTACHMENT 2



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

November 3, 2008

CERTIFIED MAIL

Mr. Ronald C. Gilkerson, P.G.
MRR Pickens, LLC
11743 Trails End Lane
Charlotte, NC 28078

**RE: Class 2 Solid Waste Landfill Permit for
Highway 93 C&D Landfill
Permit No. LF2-00003
Location: 34° 47' 50" N, 82° 40' 30" W
Pickens County**

Dear Mr. Gilkerson:

Enclosed is a Class 2 Solid Waste Landfill Permit for the Highway 93 Construction and Demolition Landfill in Pickens County. This permit is issued under Regulation 61-107.19 *Solid Waste Management: Solid Waste Landfills and Structural Fill*. Also, enclosed is the approved landfill Engineering Report and Engineering Drawings, to be kept at the facility at all times.

The financial assurance for closure of this facility is established at three hundred thousand dollars (\$300,000) at this time. A mechanism that is acceptable to the Department must be established in the amount previously specified prior to the facility accepting waste. Please contact Pete Stevens of my staff at (803) 896-4149 for help in establishing a financial assurance mechanism that is acceptable to the Department.

This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person. This decision may be appealed by complying with the requirements described in the attached *Notice of Appeal Procedure*, provided as a courtesy by the Department.

MRR Pickens, LLC is responsible for complying with all of the conditions in the attached permit and should review each condition carefully.

November 3, 2008 letter
MRR Pickens Class 2 Landfill
Page 2 of 2

If you should have any questions, please contact Joan F. Litton of my staff at (803) 896-4264. All other questions should be directed to Bill Rampey in the Region 2 - Greenville EQC Office at (864) 241-1090.

Sincerely,



Kent M. Coleman, P.G. Director
Division of Mining and Solid Waste Management
Bureau of Land and Waste Management

KMC/TME/tmc

Enclosures

cc: Bill Rampey, Region 2, Greenville EQC Office
Keith Collinworth, P.G. Manager, Solid Waste Groundwater Section
Marty Lindler, Manager, Solid and Hazardous Waste Compliance
Jeff Herbig, P.E., B.P. Barber and Associates, Columbia, SC
BLWM File # 021212

Notice of Appeal Procedure

The following procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person.
2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393:

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. The request for final review should include the following:
 - a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
 - b. a statement of any significant issues or factors the Board should consider in deciding how to handle the matter
 - c. a copy of the Department's decision or action under review
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the Department decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

October 31, 2006



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003

Permit Issued Date: November 3, 2008 Permit Effective Date: November 18, 2008

Permission is hereby granted to:

Name of Facility: Highway 93 C & D Landfill
Permittee: MRR Pickens, LLC
Address: 11743 Trails End Lane
Charlotte, NC 28078
Contact: Mr. Ronald C. Gilkerson
Phone: (704) 947-6652

for the operation of a Class 2 landfill at 2180 Greenville Highway, Liberty, South Carolina, 29657 in Pickens County located off Highway 93 at Clardy Road approximately 2,000 feet NE of the City of Liberty, SC.

This permit is issued pursuant to Sections 44-96-10 *et seq.* (Supp. 2007) and 25A S.C. Code of Regulations Section 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, P.G., Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
November 3, 2008
Page 1 of 4

**MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003**

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the design specifications and construction plans received November 30, 2007; and last revised August 26, 2008, unless permit conditions state otherwise.
2. This permit is limited solely to the disposal of items listed in Appendix I of R.61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to June 30). Information concerning the facility's previous Fiscal Year's waste receipts is due in the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV, Subpart C.16, to the attention of:

**Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201**

4. All Appendix-I acceptable wastes must be covered at least every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to twelve (12) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than twelve (12) acres (at the time of the certification). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (38,720 yd³ of soil for 12 acres with 2' thickness). The certification shall have been completed within the last 60 days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.
2. Within ninety (90) days of the effective date of this permit, the Permittee shall submit a detailed Compliance Plan that describes steps to be taken in order to fully comply with all regulatory requirements of R.61-107.19 that relate to Class 2 Landfills. This Compliance Plan shall include, but not limited to, the following: a groundwater monitoring design workplan, a landfill post-closure care plan, and a landfill post-closure care cost estimate. Upon the Department's approval of said Compliance Plan, the Permittee will have six (6) months to implement the plan and will have a deadline for full compliance with R.61-107.19 of November 19, 2009.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. SPECIAL ENVIRONMENTAL PERMIT CONDITIONS

Within ninety (90) days of the effective date of this permit, the Permittee shall submit to the Department for review, a Groundwater Monitoring Design Workplan in accordance with R.61-107.19, Part IV, Section E (Groundwater Monitoring and Corrective Action). In addition, an approved groundwater monitoring system must be installed and operating prior to November 19, 2009, pursuant to R.61-107.19, Part I, Section A.6.c. Upon the Department's approval of the Groundwater Monitoring Design Workplan, permit conditions C.2, C.3 and C.4 will become effective.

2. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit.

The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.

- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- c) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

3. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine monitoring at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Part IV Subpart B.3.

4. REPORTING

- a) The Permittee shall submit to the Department the results of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following sampling schedule:

<u>Sampling Schedule</u>	<u>Results Due</u>
November/December	January 15 (Semi-Annual)
May/June	July 15 (Annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.2.A.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Groundwater Section, and to the Solid Waste Consultant in Region 2 EQC (Greenville).

5. METHANE MONITORING

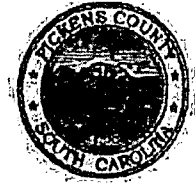
In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required comply with R.61-107.19, Part IV, Section C.21.

ATTACHMENT 3

COUNTY OF PICKENS

www.co.pickens.sc.us

Planning Commission



COMMISSION MEMBERS

BILL CATO, District 2, Chairman
WELDON CLARK, District 4, Vice Chairman
BOB BALLENTINE, District 1
JO JOHNSTON, District 3
DENNIS REINERT, District 5
BOB YOUNG, District 6

January 11, 2016

MRR Pickens, LLC
7413 Six Fork Road #358
Raleigh, NC 27615

Delivery USPS Certified Mail
91 7106 2133 2934 1312 8892

Re: Land Use Approval on Case No: LU-15-001
SCDHEC Class II Landfill

To MRR Pickens LLC,

We, the Pickens County Planning Commission (the "Commission"), are writing in regard to the above-referenced land use permit dated January 12, 2015. The approval of this permit was granted after your company appeared for a public hearing on your application for a renewal of your February 12, 2007 land use permit for a proposed C&D (now Class II) landfill off Highway 93 near Liberty, South Carolina.

In your 2007 appearance before the Commission, Mr. Ronald Gilbertson of your company characterized the type of waste for this project as "lumber, vinyl siding, concrete and brick," "grass clippings, leaves, limbs," and "storm debris." He also indicated that the life span of the project would be for "20-25 years." No mention was made of the disposal of coal combustion residuals ("CCR"), the need for a landfill liner, or plans to fill up the landfill quickly. Based in part on these representations by your company, the Planning Commission granted your land use request.

In your 2015 appearance before the Commission, Mr. Dan Moore of your company indicated that there were "no changes" from the 2007 request, and estimated that the proposed landfill would serve the citizens of the county for "50 years or more." No mention was made of the disposal of CCR. When you were specifically asked by a Commissioner about the need for a liner, Mr. Moore stated that no liner would be required. Based on these representations by your company, the Planning Commission granted your renewed use request.

We now understand from media reports that your company plans to dispose of CCR in the proposed landfill. We have also learned that your filings with SCDHEC include plans for a significantly shorter life span of the facility (5 years) and that a liner would be installed in order to comply with Class III requirements despite the fact that you repeatedly characterized this landfill as a Class II facility in all of your communications with the Commission.

These are significant deviations from the information you provided to us in 2007 and 2015. We consider these changes to be material alterations to the land use approved by the Commission, and constitute violations of your land use permit. Accordingly, pursuant to the authority granted under the Unified Development Standards Ordinance ("UDSO") Section 1504(d) and elsewhere, the Commission hereby suspends your land use permit for this project. You are directed to cease and desist any and all activities at the proposed site until such time as you have presented sufficient information to the Commission of your intention to strictly comply with our 2007 and 2015 land use approval and receive a renewal of your permit from the Commission.

Please be advised that Section 1505 of the UDSO provides that any violation of a land use approval is a misdemeanor with a punishment of a fine and/or jail time for each act or omission thereof. Also note that each and every day of a continuing violation constitutes a separate offense.

MRR Pickens, LLC
January 11, 2018
Page 2 of 2

If you have any questions about this stop work notification, or about the land use permitting process, please contact Chris Brink, Director of Community Development at 884-898-5956, or Ken Roper, County Attorney at 884-878-1577.

Sincerely,



William Cato, Chair
Pickens County Planning Commission
District 2



Weldon Clark, Vice-Chair
Pickens County Planning Commission
District 4

ABSENT

Robert Ballentine
Pickens County Planning Commission
District 1



Jo Johnston
Pickens County Planning Commission
District 3



Dennis Reinert
Pickens County Planning Commission
District 5

ABSENT

Bob Young
Pickens County Planning Commission
District 6

Cc: Pickens County Council
Senator Larry Martin
Representative Davey Hiett
SCDHEC

ATTACHMENT 4

AFFIDAVIT OF JOAN FARVER LITTON
Docket No. 16-RFR-15; Office of General Counsel # 22666

PERSONALLY appeared before me, Joan Farver Litton, who being duly sworn, deposes and says:

1. I have been employed by the South Carolina Department of Health and Environmental Control ("DHEC" or "the Department") since February 4, 1999.

2. I am currently the Manager for the Mining and Solid Waste Permitting Section in the Division of Mining and Solid Waste Management at DHEC.

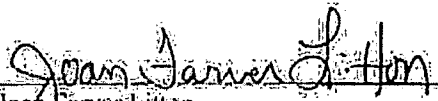
3. I am submitting this affidavit as supplemental information for the Request for Review Staff Summary Response in the matter of Pickens County's request for the DHEC Board to review the department's decision to issue an approval of the addition of a liner system to the MRR Pickens Highway 93 Class Two Landfill ("MRR Pickens"), which the Department issued to MRR Pickens on August 10, 2015.

4. I hereby affirm that Pickens County did not request to be notified of permitting decisions related to MRR Pickens, LLC's Highway 93 Class 2 Landfill, identified as Permit Number LF2-00003, prior to the Department's decision of August 10, 2015, to issue a modification for the addition of a liner system.

5. A meeting was held at 2600 Bull Street in Room 1425 on December 15, 2015, to discuss the Department's decision to issue the approval for the liner system (a minor modification) with representatives of Pickens County and their solid waste consultant. Those present on the County's behalf were Gerald Wilson, Director of Public Works for Pickens County; Ralph Guarino, Jr., who at the time was the acting Interim Administrator for Pickens County; and Wesley Hulsey, PG, President of Pickens County's solid waste consulting firm

Hulsey, McCormick & Wallace. Those in attendance for the Department were Justin Koon, Permitting Project Manager; Andrea Skinner, Permitting Project Manager; David Oberly II, Groundwater Project Manager; and myself, Joan Farver Litton, Manager of the Mining and Solid Waste Permitting Section. During the meeting, the Department confirmed that it had issued the decision to MRR Pickens for approval of the addition of a liner system as a minor modification to the MRR Pickens Highway 93 Class 2 Landfill; and, that decision was discussed at length during the meeting with the representatives of Pickens County.

I, Joan Farver Litton, hereby certify, under penalty of perjury, that the above-stated facts are true and correct to the best of my knowledge.


Joan Farver Litton

SUBSCRIBED AND sworn to before
me this 15th day of April, 2016.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: 01/22/2018

Respondent MRR Pickens

Exhibit D

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

MRR Pickens, LLC,)

Plaintiff,)

vs.)

County of Pickens and William Cato,)
Weldon Clark, Robert Ballentine, Jo)
Johnston, Dennis Reinert, and Bob Young,)
individually and in their official capacity as)
appointed members of the Pickens County)
Planning Commission,)

Defendants)

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-39-100

**AFFIDAVIT OF
GERALD G. WILSON**

Personally appeared before me Gerald G. Wilson, who having been duly sworn, deposes and states:

1. That I am over the age of 18 years and am competent to issue this Affidavit.
2. That I am the Public Works Director for Pickens County and have served in that capacity since 2009. Prior to that I was the Solid Waste Director/Recycling Coordinator from 2002 to 2009 and prior to that I was the foreman for the Solid Waste/Recycling Department. I came to work for Pickens County in February of 1992.
3. That the Pickens County Department of Public Works includes solid waste issues, with which I am most familiar. I have been actively involved with the proposed Highway 93 C&D Landfill since early discussions between MRR and Pickens County in approximately 2007. I am qualified to issue the statements and opinions contained herein.

4. That the only valid Permit for the Highway 93 C&D Landfill is the Permit issued November 3, 2008, Permit No. LF2-00003. The Special Conditions of this Permit provide the following:

2. This permit is limited solely to the disposal of items listed in Appendix I of R. 61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill. (emphasis added).

5. That Appendix I of said Regulation provides for four categories of waste: Construction and Demolition (C&D); Land Clearing Debris (LCD); Brown Goods (furniture, etc.); and Animal Carcasses. The limiting language stated above – “all other wastes . . . are prohibited from disposal in this landfill” – was crucial to Pickens County, and was developed after negotiations between MRR and Pickens County. Further, this limiting language is in accord with the Development Agreement between MRR and Pickens County and the Solid Waste Management Plan of Pickens County.

6. That in December of 2015, after hearing from sources other than MRR, that MRR had intentions of depositing Coal Combustion Residuals (CCR) into this C&D Landfill, I traveled to DHEC and asked questions. DHEC officials informed me that “minor modifications” had been made to the Permit, and since they were “minor,” neither DHEC nor MRR had notified Pickens County of any changes or modifications to the Permit.

7. That I made a Freedom of Information Act (FOIA) request to DHEC for documents pertaining to these changes and modifications. We have only recently learned that, without any notice to my department or to Pickens County, that MRR submitted a variety of documents to DHEC in 2014 and in 2015, regarding proposed changes and modifications, and has apparently obtained a new Permit, dated August 10, 2015, which has major changes and major modifications to the original 2008 Permit, including the following:

(A) Changes in Paragraph 2:

- (i) Eliminating the limiting language of "all other wastes . . . are prohibited."
- (ii) Adding: "... and any other waste approved by the Department for disposal in a Class Two Landfill pursuant to R. 61-107.19, Part IV, Section C.2."

(B) Adding provisions for a liner.

(C) Changing provisions for final cover.

(D) Other changes.

8. That the major changes and major modifications to our 2008 Permit, as reflected in the new Permit apparently issued in 2015, were never approved by Pickens County. Further, such changes (particularly regarding the elimination of the limitations on types of wastes and the addition of "other wastes") are in contravention of Pickens County's intentions and are in direct contradiction to the representations MRR made to Pickens County.

9. That neither MRR nor DHEC provided my department or Pickens County with engineering reports, documents and correspondence apparently provided by MRR to DHEC in 2014 and throughout most of 2015, regarding these major changes and major modifications. Submission of such documents and information to Pickens County is required by our Development Agreement and our Solid Waste Management Plan. Further, Mr. Dan Moore of MRR stated at the January 12, 2015 Planning Commission Meeting that such documents must be submitted to Pickens County immediately.

10. As of the time of the signing of this Affidavit, MRR has never submitted such documents relating to its requested major changes and modifications, nor the 2015 Permit, to my department or to Pickens County. Nor has DHEC formally provided such documents to us; rather, after the current recent disagreements between MRR and Pickens County commenced, I made the FOIA request to DHEC, and obtained documents. No formal Notice of these changes or modifications; nor the 2015 Permit, has been provided by MRR or DHEC or anyone.

SWORN and subscribed to before me this
17th day of February 2016.

Sheila W. Lipsley
Notary Public for South Carolina
Print Name: Sheila W. Lipsley
My Commission Expires: 11/6/2023

Gerald G. Wilson
Gerald G. Wilson

Respondent MRR Pickens

Exhibit E

Jason Anders

From: Gerald Wilson
Sent: Tuesday, March 15, 2016 3:29 PM
To: Jason Anders
Subject: FW: Question
Attachments: Highway 93 Landfill Final Permit Mod Alt Liner.pdf

Please Print

Gerald

From: Eleazer, Timothy [mailto:eleazetm@dhec.sc.gov]
Sent: Monday, January 11, 2016 3:39 PM
To: Gerald Wilson; Litton, Joan F.
Cc: Coleman, Kent M.; Koon, Justin; York, Karla A.
Subject: Re: Question

Mr. Wilson,

As requested, please find attached a copy of the August 10, 2015 permit approval.

Let me know if you should have any questions.

Tim Eleazer
Mining and Solid Waste Permitting Section
Bureau of Land and Waste Management
(803) 898-1374

From: Gerald Wilson <geraldw@co.pickens.sc.us>
Sent: Monday, January 11, 2016 1:26 PM
To: Litton, Joan F.
Cc: Coleman, Kent M.; Eleazer, Timothy; Koon, Justin
Subject: RE: Question

Joan

Thanks for the update. I also appreciate the files that were sent over last week. While reviewing the files I could not find the approval letter referenced in Kent's original press release in December. Kent stated that the permit was modified to allow the upgraded liner design on August 10, 2015. Would it be possible to get a copy of the approval letter?

Sincerely,

Gerald

Respondent MRR Pickens

Exhibit F

COUNTY OF PICKENS

www.co.pickens.sc.us

Planning Commission



COMMISSION MEMBERS

BILL CATO, District 2, Chairman
WELDON CLARK, District 4, Vice Chairman
BOB BALLENTINE, District 1
JO JOHNSTON, District 3
DENNIS REINERT, District 5
BOB YOUNG, District 6

COPY

January 11, 2016

MRR Pickens, LLC
7413 Six Fork Road #358
Raleigh, NC 27615

Delivery USPS Certified Mail
91 7108 2133 2934 1312 8892

Re: Land Use Approval on Case No: LU-15-001
SCDHEC Class II Landfill

To MRR Pickens LLC,

We, the Pickens County Planning Commission (the "Commission"), are writing in regard to the above-referenced land use permit dated January 12, 2015. The approval of this permit was granted after your company appeared for a public hearing on your application for a renewal of your February 12, 2007 land use permit for a proposed C&D (now Class II) landfill off Highway 93 near Liberty, South Carolina.

In your 2007 appearance before the Commission, Mr. Ronald Gilbertson of your company characterized the type of waste for this project as: "lumber, vinyl siding, concrete and brick," "grass clippings, leaves, limbs," and "storm debris." He also indicated that the life span of the project would be for "20-25 years." No mention was made of the disposal of coal combustion residuals ("CCR"), the need for a landfill liner, or plans to fill up the landfill quickly. Based in part on these representations by your company, the Planning Commission granted your land use request.

In your 2015 appearance before the Commission, Mr. Dan Moore of your company indicated that there were "no changes" from the 2007 request, and estimated that the proposed landfill would serve the citizens of the county for "50 years or more." No mention was made of the disposal of CCR. When you were specifically asked by a Commissioner about the need for a liner, Mr. Moore stated that no liner would be required. Based on these representations by your company, the Planning Commission granted your renewed use request.

We now understand from media reports that your company plans to dispose of CCR in the proposed landfill. We have also learned that your filings with SCDHEC include plans for a significantly shorter life span of the facility (5 years) and that a liner would be installed in order to comply with Class III requirements despite the fact that you repeatedly characterized this landfill as a Class II facility in all of your communications with the Commission.

These are significant deviations from the information you provided to us in 2007 and 2015. We consider these changes to be material alterations to the land use approved by the Commission, and constitute violations of your land use permit. Accordingly, pursuant to the authority granted under the Unified Development Standards Ordinance ("UDSO") Section 1504(d) and elsewhere, the Commission hereby suspends your land use permit for this project. You are directed to cease and desist any and all activities at the proposed site until such time as you have presented sufficient information to the Commission of your intention to strictly comply with our 2007 and 2015 land use approval and receive a renewal of your permit from the Commission.

Please be advised that Section 1505 of the UDSO provides that any violation of a land use approval is a misdemeanor with a punishment of a fine and/or jail time for each act or omission thereof. Also note that each and every day of a continuing violation constitutes a separate offense.

MRR Pickens, LLC
January 11, 2016
Page 2 of 2

If you have any questions about this stop work notification, or about the land use permitting process, please contact Chris Brink, Director of Community Development at 864 898 6958, or Ken Roper, County Attorney at 864 878 1577.

Sincerely,

Pickens County Planning Commission

Cc: Pickens County Council
Senator Larry Martin
Representative Davey Hiott
SCDHEC

Respondent MRR Pickens

Exhibit G

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

MRR Pickens, LLC,

Plaintiff,

vs.

County of Pickens and William Cato,
Weldon Clark, Robert Ballentine, Jo
Johnston, Dennis Reinert, and Bob Young,
individually and in their official capacity as
appointed members of the Pickens County
Planning Commission,

Defendants.

) IN THE COURT OF COMMON PLEAS

) THIRTEENTH JUDICIAL CIRCUIT

) Civil Action No.: 2016-CP-39-100

) **RESPONSE OF PICKENS COUNTY**
) **TO PLAINTIFF MRR PICKENS, LLC'S**
) **MOTION FOR AN EMERGENCY**
) **PRELIMINARY INJUNCTION**

TO: PLAINTIFF AND ITS ATTORNEYS:

Pickens County hereby responds to Plaintiff's Motion for an Emergency Preliminary Injunction:

MRR Pickens, LLC (hereinafter "MRR") is not entitled to any Injunction, neither Emergency nor Preliminary nor any kind, for the following reasons:

(A) MRR has made serious material misrepresentations to Pickens County, including willful, intentional false statements, to obtain agreements and a Permit for this landfill.

(B) MRR has made serious material misrepresentations to this Court in the pursuit of this Motion, including willful, intentional and false statements, in an effort to obtain an unwarranted Injunction. In particular, the two Affidavits appended to MRR's Motion (F. Norbert Hector, Jr. And Scott L. Brown) contain intentional material misrepresentations to this Court.

(C) MRR has not exhausted its Administrative Remedies with Pickens County Planning Commission. MRR has the right to appeal the decision in question of the Planning Commission,

which it has not exercised. Nor can such an appeal process be deemed as futile. The Commission has questions that MRR thus far has failed to answer, and Pickens County and the Planning Commission believe that an appeal process has legitimate potential to be productive.

(D) No irreparable harm can be shown. Plaintiff complains primarily that it may lose income from operation of its landfill. It has sued Pickens County and the individually named members of the Planning Commission. Pickens County has assets and income and is not leaving the state or going out of business. In the extremely unlikely event that MRR should prevail in this litigation, its damages can be recovered.

(E) MRR has an adequate remedy at law. It has sued Pickens County, and in the extremely unlikely event that it should prevail in this litigation, its damages can be recovered.

(F) MRR is unlikely to succeed on the merits of this litigation. Pickens County agreed with MRR, through a Host Agreement, a Development Agreement, and revision of its Solid Waste Management Plan, for MRR to operate a landfill limited to Construction and Demolition (C&D) and Land Clearing Debris (LCD), as reflected in the Permit issued by DHEC on November 3, 2008. Pickens County is willing to honor all agreements which reflect the above, and per the limitations on waste explicitly stated in the November 3, 2008 Permit. Unfortunately, MRR has made material misrepresentations to Pickens County, which constitute fraud, misrepresentation and violations of the Unfair Trade Practices Act, for which Pickens County intends to counterclaim. Further, MRR has obtained an unlawful Permit from DHEC, dated August 10, 2015, which was obtained without any Notice to Pickens County or its affected citizens, and which has never, to date, been formally submitted to Pickens County.

(G) Pickens County is appealing the issuance of the Permit issued August 10, 2015, by DHEC, as it was obtained and in violation of Statutes and Regulations, and without any Notice to Pickens County, nor any opportunity for public comment and review. Pickens County believes that it will be successful in the appeal of said Permit.

(H) That if MRR is allowed to bring Coal Combustion Residue (CCR) into Pickens County, the irreparable harm would be to Pickens County and its citizens who reside in areas near the landfill. It is a violation of Federal and S.C. law to place CCR into a Class Two Landfill. (See Affidavits of Avner Vengosh, Ph.D., Shelley Robbins and C. Wesley Hulsey, P.G., attached). Further, a Class Three Landfill cannot legally be permitted at this time in Pickens County (admitted by MRR), due to inability to comply with Demonstration of Need requirements.

Pickens County responds to MRR's numbered paragraphs as follows:

1. That all allegations of MRR's Motion not hereafter specifically admitted or qualified are hereby denied.
2. Admits so much of paragraph 1 as would indicate that MRR obtained a valid Permit dated November 3, 2008, which limited types of wastes, and prohibited other wastes, in accord with MRR's representations at that time. Denies that MRR lawfully obtained any subsequent Permit for this landfill, and would show that the Permit apparently issued August 10, 2015 was obtained unlawfully and in violation of Statutes and Regulations, and was obtained by fraud and misrepresentation. Admits that MRR has transferred some property. Denies remainder of said paragraph.

3. Admits that Planning Commission issued a land use approval, but would show that MRR obtained the approval through material misrepresentations, fraud and unfair and deceitful trade practices. Denies the remainder of said paragraph.

4. Denies paragraph 3 in that the Permit apparently issued on August 10, 2015 was unlawfully obtained, is illegal, and must be rendered null and void. The Permit issued November 3, 2008 specifically prohibits wastes other than those specifically listed in Appendix 1 to R. 61-107.19.

5. Admits so much of paragraph 4 as would indicate that Pickens County issued a letter to MRR dated January 11, 2016, which referenced MRR's serious deviations from its prior representations, and MRR's "material alterations of the land use approved by the Planning Commission." The letter states that "You are directed to cease and desist any and all activities at the proposed site until such time as you have presented sufficient information to the Commission of your intention to strictly comply with our 2007 and 2015 land use approval and receive a renewal of your Permit from the Commission." The remainder of paragraph 4 is denied, and Pickens County craves reference to the letter of January 11, 2016 (see attached, Ex. 13).

6. Denies paragraphs 5, 6 and 7 of MRR's Motion.

7. Denies paragraph 8, and would show that MRR's non engineering firm has repeatedly reported to DHEC that it intends to change the design of this C&D Landfill to meet the requirements of a Class Three Landfill, which is prohibited in Pickens County, per DHEC and per the Pickens County Solid Waste Management Plan. As stated by MRR's consulting firm CEC to DHEC:

"During recent meetings between MRR and DHEC, it was confirmed that the modification of the Class Two Permit to meet the requirements of Regulation R. 61-107.19 Part V Class Three Landfills would require a minor Permit modification."

(See CEC's Work Plan for Site-Specific Hydrogeological Investigation, Aug./Sept. 2014; attached, Ex. 8).

8. Denies paragraph 9. Acceptance of CCR into a Class Two Landfill violates Federal Law and S.C. Law, and a Class Three Landfill is prohibited in Pickens County.

9. Has insufficient information on which to base a decision regarding paragraph 10 and therefore denies same and demands strict proof thereof. However, Pickens County would show that CCR waste is prohibited in Pickens County.

10. Denies paragraph 11 entirely.

11. Has insufficient information on which to base a decision regarding paragraph 12 and 13 and therefore denies same and demands strict proof thereof. However, Pickens County would show that CCR waste is prohibited in Pickens County.

12. Denies paragraph 14 in its entirety. Any further development of MRR's unlawful efforts to bring CCR into Pickens County would cause irreparable harm to Pickens County.

13. Denies paragraph 15 and would show that MRR's attempts to bring CCR into Pickens County are contrary to the material representations it has made to Pickens County for years, and deposit of CCR into a Class Two Landfill would violate Federal and State Law.

14. Denies paragraph 16 and would show that MRR is not entitled to any Injunction. Any furtherance of MRR's efforts to deposit CCR into this landfill in Pickens County would cause irreparable harm to Pickens County and its affected citizens.

15. Regarding paragraph 17, would show that MRR is not entitled to any Injunction.

**FURTHER GROUNDS OF PICKENS COUNTY'S OPPOSITION
TO MRR'S REQUEST FOR INJUNCTION**

16. Pickens County reaffirms all of its earlier allegations as fully as if repeated herein.

17. Coal Combustion Residuals (CCR) are extremely toxic and pose serious health risks to people and to the environment, and adversely affect water quality and air quality. Also, due to the serious risks of handling CCR, disposal into a Class Two Landfill, even with a liner, would be highly inappropriate. (Ex. 1, Report of Avner Vergosh, Ph.D.)

18. Deposit of CCR into a Class Two Landfill in South Carolina, even with a liner, would violate Federal Law and S.C. Law. (Ex. 2, Report of Shelley H. Robbins; Ex. 3, Affidavit of C. Wesley Hulsey; Ex. 4, Affidavit of Christopher Brink).

19. In South Carolina CCR meets the definition of "Special Waste." Per Federal Law, S.C. Law, "Special Waste" must be deposited into a Class Three, NOT a Class Two Landfill in Pickens County, as no Class Three Landfill can meet the Demonstration of Need Requirements in Pickens County (MRR concurs). Further, "Special Waste" is not allowed in any landfill in Pickens County, per the Pickens County Solid Waste Management Plan. (Ex. 7). (Also see Ex. 2, Report of Shelley H. Robbins; Ex. 3, Affidavit of C. Wesley Hulsey, P.G.; Ex. 4, Affidavit of Christopher Brink; and Ex. 5, Affidavit of Gerald G. Wilson.

20. Per Regulation 61-107.19, Part I, A. 48.:

- a. "Minor modification" means a change that keeps the permit current with routine changes to the facility or its operations, or an administrative change; and
- b. "Major modification" means a change that substantially alters the facility or its operations, e.g., tonnage increase above 25%, any volumetric capacity increase, alternate designs that vary from the design prescribed in this regulation.

When MRR met with DHEC and arranged for concurrence that MRR's changes would be "minor modifications," this purported characterization was for the purpose of avoiding the requirement for public review and public comment, which are necessary for "major modifications," per R. 61-107.19, Part IV. I. 2 (Ex. 16). However, the changes which MRR proposed from the original 2008 Permit are the addition of "alternate liner design" (no liner was referenced in the 2008 Permit); also changes from Class Two to Class Three (see CEC Reports, Exhibits 8, 9, 10); eliminating the limiting language of "all other wastes . . . are prohibited;" replacing the limiting language by adding ". . . and any other waste approved by the Department for disposal in a Class Two Landfill . . .;" changing provisions for final cover, and other changes. (See 2008 Permit, Ex. 11, and 2015 Permit, Ex. 12). Per any reasonable interpretation of these Regulations, these changes constitute a "major modification," requiring public comment and public review and Notice to the County. No such Notice or public involvement occurred. The purported Permit issued August 10, 2015 is invalid, and must be rendered null and void. (See Ex. 2, Report of Shelley H. Robbins; Ex. 3, Affidavit of C. Wesley Hulsey; Ex. 4, Affidavit of Christopher Brink; and Ex. 5, Affidavit of Gerald G. Wilson).

21. That at no time was Pickens County notified that MRR was seeking these major changes and major modifications. To this date, neither DHEC nor MRR has provided formal Notice of the purported August 10, 2015 Permit. To the contrary, MRR always represented to Pickens County that this landfill would accept only C&D and LCD waste. (See Ex. 3, Affidavit of C. Wesley Hulsey; Ex. 4, Affidavit of Christopher Brink; and Ex. 5, Affidavit of Gerald G. Wilson).

22. That Pickens County relied on the representations of MRR, in proceeding with agreements and plans for this landfill, particularly MRR's repeated representations that only C&D and LCD would be accepted into this landfill. (See Exhibits 3, 4 and 5).

23. That in particular, the action of the County Planning Commission approving the land use immediately following the January 12, 2015 Planning Commission was based on, and in reliance upon, the representation of MRR at said meeting. (See Exhibits 3, 4 and 5).

24. That it has now come to light that at the January 12, 2015 Planning Commission meeting, MRR made serious and material misrepresentations. These misrepresentations included the following:

- (A) No Liner - MRR claimed that it needed no liner for this landfill. (See Ex. 6, Transcript of Planning Commission meeting of January 12, 2015, p. 14). (But see Exhibits 8, 9, and 10, wherein CEC, MRR's consulting firm, was negotiating with DHEC for changes to include a liner, throughout 2014 and much of 2015).
- (B) No change in land use details or development details from 2007 - MRR claimed that land use details and development details "are just the same as they were when we got the initial approval on the site back in 2007." (See Ex. 6, Transcript, p. 6). (But see Exhibits 8, 9, and 10, wherein CEC, MRR's consulting firm, was negotiating with DHEC throughout 2014 and much of 2015, to add a liner, and to eliminate the limiting language of the 2008 Permit, "All other wastes . . . are prohibited," and to add expansive language to allow other wastes DHEC might approve, and other changes).
- (C) Still a C&D Landfill, "exactly the same type of facility that the county is operating" - MRR stated this at the meeting. (Ex. 6, Transcript, p. 8).

- (D) Also note that the existing County Landfill, soon to reach capacity and close, accepts only C&D and LCD waste. (But see Exhibits 8, 9, and 10, wherein CEC and MRR were negotiating with DHEC throughout 2014 and much of 2015, for major and serious changes and additions to this landfill. Also see Exhibit 11, the 2008 Permit; and Exhibit 12, the purported 2015 Permit).

25. Also, at the January 12, 2015 Planning Commission meeting, MRR stated that the Development Agreement between MRR and Pickens County requires MRR to provide Pickens County with all documentation with DHEC:

“... anything we submit to DHEC has to be submitted to you at the very same time we submit it to DHEC. Anything we get from DHEC has to be submitted to you all ... in a matter of a day or so. (Ex. 6, Transcript, p. 11).

(But see Exhibits 8, 9 and 10, which are complex engineering reports by CEC for MRR, all done for the purpose of changing the design of the landfill, changing the wastes that could be accepted, and other material changes. Also see Exhibits 3, 4, and 5, where in County officials report that none of these ongoing efforts by MRR to make changes were shared with the County, and further, that neither MRR nor DHEC provided the new purported Permit of August 10, 2015 to the county.

26. That the Affidavits attached to MRR's Motion for Injunction contain material and serious misrepresentations to this Court.

In particular:

- (A) Affidavit of F. Norbert Hector, Jr., Managing Member of MRR:

Para. 18: “At the Planning Commission meeting, MRR never stated that it was not lining the landfill or that it was planning to restrict its

waste to Construction and Demolition/Land Clearing Debris (C&D/LCD) waste.”

(B) Affidavit of Scott L. Brown, engineering consultant for MRR:

Para. 9: “During the public meeting, neither I nor other representatives of MRR Pickens stated the company was not lining the landfill.”

Para. 10: “During the public meeting, neither I nor other representatives of MRR Pickens stated that the company was planning to restrict its waste in the Class Two Landfill to Construction and Demolition/Land Clearing (C&D/LCD) waste or County generated waste.”

But see Ex. 6, Transcript of Planning Commission meeting of January 12, 2015: Page 14: MRR confirms no liner.

Page 6: MRR confirms no changes from 2007 (which limited the waste to C&D/LCD).

Page 8: MRR confirms that this remains a C&D Landfill, “the same type of facility that the County is operating.” (The County’s landfill only accepts C&D/LCD).

The above misrepresentations of MRR officials to this Court are blatant, willful and material, as were the misrepresentations to Pickens county.

CONCLUSION

Pickens County craves reference particularly to Exhibits 1, 2, 3, 4, and 5, being the Reports of Experts and knowledgeable persons, and Affidavits of County officials involved in this matter. Pickens County also craves reference to Ex. 6, the Transcript of the County Planning Commission meeting, which shows material misrepresentations made to this Court.

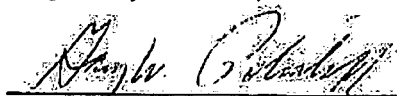
MRR is entitled to no Injunction. It has acted with deceit and with material misrepresentations. It has conspired with DHEC to issue reports and obtain a new purported Permit, through violation of Regulations. It has hidden its activity from Pickens County, the local government with whom it has a Host Agreement and Development Agreement, in violation of said Agreements and in violation of the Pickens County Solid Waste Management Plan.

MRR's Motion must be denied.

February 17, 2016

Spartanburg, SC

Respectfully submitted,



Gary W. Poliakoff
atty@gpoliakoff.com
POLIAKOFF & ASSOCIATES, P.A.
215 Magnolia Street
Post Office Box 1571
Spartanburg, South Carolina 29304
(864) 582-5472

ATTORNEY FOR PICKENS COUNTY

EXHIBITS

1. Affidavit of Avner Vengosh, Ph.D., with Report and C.V.
2. Affidavit of Shelley H. Robbins, with Report
3. Affidavit of C. Wesley Hulse, with C.V.
4. Affidavit of Christopher Brink
5. Affidavit of Gerald G. Wilson
6. Transcript of Planning Commission Meeting of January 12, 2015
7. Solid Waste Management Plan, January 2013, excerpts
8. "Work Plan for Site-Specific Hydrogeologic Investigation," by CEC for MRR, to DHEC - Aug./Sept. 2014, excerpts
9. "Site-Specific Hydrogeologic Investigation Report," by CEC for MRR, to DHEC - Dec. 15, 2014, excerpts
10. "Minor Permit Modification," by CEC for MRR, to DHEC, March/Aug. 2015, excerpts
11. Permit - November 3, 2008
12. Permit - August 10, 2015 (invalid)
13. Letter of County Planning Commission of January 11, 2016
14. Letter from CEC to DHEC, August 5, 2015
15. Appendix I to R. 61-107.19
16. R. 61-107.19 Part I, 48. and I. (major/minor modifications)

EXHIBIT D



Catherine E. Helget, Director

Promoting and protecting the health of the public and the environment

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003

Date of Issuance: November 3, 2008

Date of
Modification: August 10, 2015

Permission is hereby granted to:

Name of Facility: Highway 93 Class 2 Landfill
Permittee: MRR Pickens, LLC
Address: 5842 Farrington Place, Suite 1
Raleigh, NC 27609
Supervisor: Mr. Christopher T. Roof
Phone: (919) 436-3570

for the operation of a Class 2 landfill at 2180 Greenville Highway, in Pickens County located off Highway 93 near the City of Liberty, SC 29657.

This permit is issued pursuant to Sections 44-96-10 et seq., and 25A S.C. Code Regulation 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
August 10, 2015
Page 1 of 4

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LP2-00003

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the approved design specifications, and construction plans received November 30, 2007; revised August 26, 2008, and last revised August 5, 2015, unless permit conditions state otherwise.
2. This permit is limited to the disposal of the items listed in Appendix I of R.61-107.19 and any other waste approved by the Department for disposal in a Class Two Landfill pursuant to R.61-107.19, Part IV, Section C.2.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to Jun30). Information concerning the facility's previous Fiscal Year's waste receipts is due on the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV. Subpart C.16, to the attention of:

Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Ball Street
Columbia, South Carolina 29201

4. All Appendix-I acceptable wastes must be covered at least once every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to five (5) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5. (above) is equal to or less than five (5) acres (at the time of the certification). The certification shall be completed within sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (16,133 yd³ of soil for 5 acres with 2' thickness). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.
8. Sixty (60) days prior to starting construction of the Class Two landfill, the Permittee shall notify the Department of their selection between Option 1 (traditional Class Two landfill design), or Option 2 (alternate liner design). If the financial assurance mechanism needs to be increased, this shall be done prior to the acceptance of waste into the landfill.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit. The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.
- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- d) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

2. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Subpart E.3.

3. REPORTING

- a) The permittee shall submit to the Department the result of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following schedule:

Sampling Schedule	Results Due
November/December	January 15 (Semi-Annual)
May/June	July 15 (annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.1.a.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Groundwater Section, and to the Solid Waste Consultant in Upstate Region BEHS Greenville.

4. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required to comply with R.61-107.19, Part IV, Section C.21.

Respondent MRR Pickens

Exhibit H

BOARD
Allen Ancker
Chairman
Mark S. Lutz
Vice Chairman
Ann B. Kinol, DDS
Secretary



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment
South Carolina Board of Health and Environmental Control

2600 Bull Street, Columbia, South Carolina 29201. Telephone: (803) 898-3309. Facsimile: (803) 898-3393. lisa.longshore@dhc.sc.gov

BOARD
R. Kenyon Wells
Charles M. Joyce II, RF
I. Clarence Batts, Jr.
John O. Harris, Sr., MD
William Lee Hewitt, III

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Pickens County, Requestor
Gary W. Poliakoff, Attorney for Requestor

MRR Pickens, LLC, Applicant

Etta R. Williams Linen, Attorney for Department

FROM: Lisa Lucas Longshore, Clerk

RE: Docket No. 16-RFR-15, Hwy 93 C&D Class 2 Landfill – Modification of Permit
No. LF2-00003

DATE: April 6, 2016

A Request for Final Review of the above-referenced decision was filed on March 28, 2016. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference in this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference in this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements

BOARD
Allen Ansley
Chairman

Mark S. Lutz
Vice Chairman

Ann B. Kroll, DDS
Secretary



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment
South Carolina Board of Health and Environmental Control

2600 Bull Street, Columbia, South Carolina 29201 - Telephone: (803) 898-3309 - Facsimile: (803) 898-3393 - lisa.longshore@dhec.sc.gov

BOARD:
R. Kenyon Wells

Charles M. Joyce II, EE
L. Clarence Batts, Jr.
John O. Hutto, Sr., MD
William Lee Hewitt III

CERTIFICATE OF SERVICE

I, Lisa Lucas Longshore, Clerk, S.C. Board of Health and Environmental Control, with the South Carolina Department of Health and Environmental Control, hereby certify that I have this 6th day of April 2016 served the foregoing ***Acknowledgement of Request For Final Review and Notice of Procedures – Docket Nos. 16-RFR-15*** upon all parties and/or counsel of record by placing a copy of same in an envelope and depositing it in the U.S. Mail, with sufficient postage as indicated below:

U.S. Mail

Gary W. Poliakoff, Esq.
Poliakoff & Associates
Post Office Box 1571
Spartanburg, SC 29304

MRR Pickens, LLC
5842 Fairington Place, Suite 1
Raleigh, NC 27609

Via Interagency Mail Delivery

Etta R. Williams Linen, Esquire
SCDHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201


Lisa Lucas Longshore, Clerk

April 6, 2016
Columbia, South Carolina

**BEFORE THE
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL**

In Re:

Staff Decision to Grant
Permit Modification dated
August 10, 2015

**REQUEST FOR
FINAL REVIEW
(BOARD REVIEW)**

Facility: Highway 93 C&D Landfill
Permittee: MRR Pickens, LLC
Class 2 Landfill
Permit No. LF2-00003

16-SEP-15
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

Pickens County, an "affected person" pursuant to S.C. Code Section 44-1-60(E), hereby requests Final Review by the South Carolina Board of Health and Environmental Control, of the Staff Decision to grant a Permit Modification dated August 10, 2015.

1. Staff Decision at Issue:

Permit Modification to Permit No. LF2-00003, dated August 10, 2015, by Division of Mining and Solid Waste Management, Bureau of Land & Waste Management.

Attached hereto:

- Copy of the August 10, 2015 Permit Modification (issued contrary to law and which must be voided).
- Copy of the Permit issued November 3, 2008 (which is valid and remains valid as issued November 3, 2008).

2. Timeliness of this Request for Review:

(A) Pickens County is an "affected person," per S.C. Code Section 44-1-60(E), in that Pickens County is the duly qualified and approved Host Local Government in regard to Permit No. LF-2-00003, and based upon its Host Agreement and Development Agreement with the Permittee,

and based upon the Pickens County Solid Waste Management Plan, revised in 2013. The Department of Health and Environmental Control is fully aware of Pickens County's status as Host Local Government, and is fully aware of and in possession of the Host Agreement and Development Agreement in question.

(B) Pickens County requests this Review on behalf of (1) Pickens County, a governmental entity duly existing and authorized to govern; and (2) on behalf of the affected public, particularly those members of the public who reside in Pickens County, and those members of the public who reside within one mile of the Landfill in question in Pickens County and who will be immediately affected adversely by dust and ash, groundwater contamination, air pollution, decrease in property values, and other resulting problems and damages, should the purported Permit Modification of August 10, 2015 be allowed to stand.

(C) Despite its status as an "affected person," Pickens County has never, to this date, received formal Notice of the purported Permit Modification dated August 10, 2015, nor has the Department ever mailed the staff decision in question, or the Permit Modification dated August 10, 2015, to Pickens County. Pickens County only learned of such staff decision and purported Permit Modification recently, after controversies between Pickens County and the Permittee arose.

As no formal Notice to Pickens County ever occurred, nor any mailing of the staff decision or Permit Modification of August 10, 2015 by the Department to Pickens County, this Request for Final Review is timely.

To date, Pickens County has never received formal Notice or mailing of the decision in question.

(D) Illegality of the Failure to Notify Pickens County

- (1) The Permit, validly issued on November 3, 2008, was for a C&D Landfill, and which contained the following special condition:

This permit is limited solely to the disposal of items listed in Appendix I of R. 61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill.

The above Permit issued November 3, 2008, with the above Special Condition, is in accord with the Pickens County Solid Waste Management Plan, and is in accord with the agreements and representations between Pickens County and the Permittee.

- (2) The purported Permit Modification dated August 10, 2015 made major modifications to the original Permit, which substantially alter and change the facility and its operations, including but not limited to:

- (a) An alternate design that varies from the design prescribed in the relevant Class 2 Regulations R. 61-107.19, Parts I and IV).
- (b) An alternate design that includes the addition of a liner, which was not previously permitted (and not approved by Pickens County).
- (c) The addition of Class 3 design features to the Class 2 Landfill Permit (done for the purposes of adding wastes which were not previously approved by Pickens County, and which in fact

would violate the Pickens County Solid Waste Management Plan).

- (d) The addition of Class 3 operational features to a Class 2 Landfill Permit (also done for the purpose of adding wastes which were not previously approved by Pickens County, and which in fact would violate the Pickens County Solid Waste Management Plan).
- (e) The alternate designs of the purported Permit Modification of August 10, 2015, as well as the changes that substantially alter the facility and its operations, constitute a "Major Modification," per R. 61-107.19, Part I, B. 48.
- (f) Despite the alternate designs and the changes that substantially alter the facility and its operations, the Department characterized these changes as a "minor modification." Such characterization was in violation of R. 61-107.19, Part I, B. 48., and the result was to deprive Pickens County and the public of any Notice, any involvement in the application and in the permitting modification process, and of the right to comment and review.
- (g) Per R. 61-107.19, a "major modification" of a Permit requires Notice to "affected persons" (here, Pickens County), and to the public, and requires opportunity for public review and

comment. The failure to provide Notice to Pickens County and to the public was a further violation of relevant regulations.

- (h) That, according to MRR's engineering consultants:

During recent meetings between MRR and DHEC, it was confirmed that a modification of the Class Two Landfill Permit to meet the requirements of R. 61-107.19 Part V. Class Three Landfills would require a minor permit modification.

("Site-Specific Hydrogeologic Investigation Report," prepared by MRR Pickens, LLC, by Civil & Environmental Consultants, Inc., d. 12-15-14, received by S.C. DHEC December 16, 2014).

Note: The above-referenced report, and several subsequent reports by MRR's consultant, were submitted to S.C. DHEC in 2014 and 2015, without any Notice whatsoever to Pickens County or to the public. Only recently, since controversies between Pickens County and MRR have arisen, has Pickens County learned of such reports.

- (i) That the Department and MRR apparently had meetings and discussions, regarding the changing of this Class Two Permit to meet Class Three Permit features, wherein DHEC and MRR agreed to call these changes a "minor modification"

despite the clear and unequivocal true qualification as a
“major modification.”

- (j) That the apparent purpose of MRR and the Department meeting, conducting discussions, and “confirming” that this would be a “minor modification,” was to avoid Notice to Pickens County and to the public.
- (k) The above actions of the Department and of the Permittee were in violation of relevant Statutes and Regulations, as referenced above.
- (l) That, due to the failure of Notice and mailing, as required by relevant Statutes and Regulations, Pickens County’s Request for Review is timely.

3. Grounds for Rescinding the Staff Decision (Permit Modification of August 10, 2015):

- (A) The Pickens County Solid Waste Management Plan, revised 2013, prohibits:
 - (i) Class Three Landfills in Pickens County. (A purpose purported Permit Modification was to add Class Three design features to a permitted Class Two Landfill).
 - (ii) “Special Wastes” are prohibited. (Coal Ash, a/k/a Coal Combustion Residuals (CCR), require special handling, due to propensity to create dust, and due to propensity to contain toxic substances, and propensity to contaminate groundwater and surface water, and therefore qualifies as “Special Wastes,” per S.C. Code Section 44-96-390, and per the definition

of "Special Waste" contained in the Pickens County Solid Waste Management Plan).

(B) The Department has already determined, per the Demonstration of Need Regulations, that no "Need" (as defined by the DON Regulations) exists for a Class Three Landfill in Pickens County. The efforts by the Department and MRR to add Class Three design and operational features to a permitted Class Two Landfill constitute an attempt to circumvent, and/or to render null and void, the DON Regulations.

(C) That Pickens County had determined to enter into agreements with the Permittee MRR, including a Host Agreement and other agreements, for the Permittee to operate a Landfill solely to receive Construction and Demolition (C&D) and Land Clearing Debris (LCD) wastes. The changes and modifications to the 2008 Permit violate and contravene the agreements between Pickens County and MRR, and are in contravention of MRR's continued representations to Pickens County, to the public, and to the Planning Commission.

(D) That representatives of MRR not only intentionally concealed from Pickens County and from the public its intentions and efforts to make substantial and major alterations to the agreed-upon Permit issued in 2008, but also made willful misrepresentations to Pickens County and to the Pickens County Planning Commission, regarding the nature of the landfill facility and its operations. The Department must not be a party to such misrepresentations, nor should it condone, allow, ratify or approve such misrepresentations and/or such behavior. (Proof of such continuing misrepresentations by MRR will be submitted to the Board).

(E) The Land Use Approval issued by the Pickens County Planning Commission on or about January 12, 2015, was issued in reliance upon the material misrepresentations by MRR, which

the Commission discovered in early 2016 to have been false. The Pickens County Planning Commission, in January of 2016, once it learned of the material misrepresentations by MRR, rescinded the land use approval issued January 12, 2015. NOTE: Pickens County has clarified repeatedly, and continues to emphasize, that it remains in full agreement for the Permittee to operate a C&D/LCD Landfill, in accord with the conditions of the Permit issued November 3, 2008. Further: the Pickens County Planning Commission directed the Permittee to come back before it, to answer questions and provide further information, which the Permittee has failed and refused to do. Further, the Permittee failed and refuses to exhaust available administrative remedies with the Planning Commission.

(F) That neither Pickens County nor the Pickens County Planning Commission has issued a Letter of Consistency regarding the purported Permit Modification issued August 10, 2015. Both Pickens County and the Planning Commission were kept in secrecy of the application for modification, the reports leading up to the modification, and the issuance of the modification itself.

(G) The purported Permit Modification issued August 10, 2015 was issued in violation of the 1999 State Solid Waste Management Plan, and operation of this Landfill pursuant to said purported Modification would violate the 1999 State Solid Waste Management Plan.

(H) The allowance of Coal Ash, or CCR, into this Landfill would violate recently enacted Act 138 of 2016, signed into law March 2, 2016, prohibiting disposal of Coal Ash into Class Two Landfills such as the Landfill in question, in South Carolina.

(I) The allowance of Coal Ash, or CCR, into this Landfill would violate regulations and guidelines of the United States Environmental Protection Agency.

(J) That the issuance of the purported Modification of August 10, 2015 is in contravention of the needs and desires of Pickens County and its citizens and of the public.

4. Significant Issues and Factors:

All of the above-stated Grounds are re-emphasized. The Department has acted in violation of relevant Statutes and Regulations by willfully mischaracterizing a "major modification" as a "minor." The purpose of the meetings and discussions between DHEC and MRR, and the agreement to mischaracterize the modification, was no mere issue of unimportant semantics. The purpose of such mischaracterization was to deprive Pickens County and the public of Notice, and to prevent any input and any public comment and review. Further, as stated hereinabove, Pickens County has substantive reasons to oppose this purported Modification, including the violations of its Solid Waste Management Plan, and the violations of its agreements with the Permittee, among other substantive reasons and issues.

The Department must not participate in such violations of Statutes and Regulations, and must not participate in efforts to deprive Counties, Host Local Governments, "affected persons," and/or the public, of legitimate Notice, opportunity for input, and opportunity for public comment and review.

5. Relief Requested:

(A) Pickens County requests that the purported Permit Modification issued August 10, 2015 be rescinded and be declared null and void. It is appropriate for the original Permit, issued November 3, 2008, with the Conditions issued therein at that time, to remain in full force and effect.

(B) Should the Board for any reason deny this Request for Review, Pickens County requests that the Department issue a Notice to All Host Local Governments and to All County Governments as follows:

That should any Host Local Government or County Government consider entering into a Host local Government Agreement or similar Agreement with a Landfill owner or operator, that the Host Local Government and/or County Government must be aware:

- (i) That the Department may, and will, make major modifications to a Landfill Permit, without any Notice to the Host Local Government and/or County Government and/or the public, and without any opportunity to be heard, or to provide input, or to have comment or review.
- (ii) That the Department may, and will, conduct meetings and engage in discussions with Permittees, regarding major modifications to Permits, without any Notice to the Host Local Government and/or County Government and/or the public, and without any opportunity to be heard, or to provide input, or to have comment or review.
- (iii) That the Department may, and will, characterize a "major modification" as "minor," in violation of the Regulations defining such, and that in defense of such violation, the Department may, and will, claim that the Department has the right to make permit determinations (even when the actions are unequivocally in violation of Statutes and Regulations), and that all parties must give great deference to Department determinations (even those in violation of Statutes and Regulations).

- (iv) That the Department may, and will, meet with and discuss with Permit Applicants and Permittees, ways and methods of depriving Host Local Governments, Counties and the public, of Notice and opportunity to be heard, in situations in which such Notice and opportunity are appropriate and legitimate.

Note: The above is presented as emphasis of the inappropriateness of the issuance of the purported Permit Modification, and of the inappropriateness of any approval of such Permit Modification by this Board.

5. Enclosed Herewith:

- Check for filing fee in the amount of \$100.00
- Copy of the Permit Modification issued August 10, 2015, which is the subject of this Request for Review.
- Copy of the Permit issued November 3, 2008, which is valid and should be recognized as remaining in full force and effect.

6. Pickens County requests a formal Conference and/or formal Hearing, with opportunity to present evidence and to make arguments.

7. Addresses:

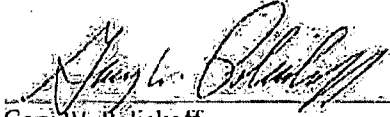
Attorneys for Pickens County:

Gary W. Poliakoff
atty@gwpoliakoff.com
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Spartanburg, SC 29304
(864) 582-5472 (864) 582-7280 fax

Kenneth S. Roper, Esq.
~~Ken@roperlawfirm.com~~
ROPER LAW FIRM, LLC
P.O. Box 246
Pickens, SC 29671
(864) 878-1577 (864) 878-1336 fax

Tom Hendricks
Interim Administrator
Pickens County
222 McDaniel Ave., Ste. B-2
Pickens, SC 29671

March 23, 2016



Gary W. Poliakoff
Attorney for Pickens County



Catherine E. Helgel, Director

Promoting and protecting the health of the public and the environment

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003

Date of Issuance: November 3, 2008

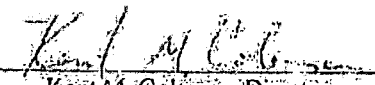
Date of
Modification: August 10, 2015

Permission is hereby granted to:

Name of Facility: Highway 93 Class 2 Landfill
Permittee: MRR Pickens, LLC
Address: 5842 Faringdon Place, Suite 1
Raleigh, NC 27609
Supervisor: Mr. Christopher T. Roof
Phone: (919) 436-3570

for the operation of a Class 2 landfill at 2180 Greenville Highway, in Pickens County located off Highway 93 near the City of Liberty, SC 29657.

This permit is issued pursuant to Sections 44-96-10 et seq., and 25A S.C. Code Regulation 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
August 10, 2015
Page 1 of 4

MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the approved design specifications, and construction plans received November 30, 2007; revised August 26, 2008, and last revised August 5, 2015, unless permit conditions state otherwise.
2. This permit is limited to the disposal of the items listed in Appendix I of R.61-107.19 and any other waste approved by the Department for disposal in a Class Two Landfill pursuant to R.61-107.19, Part IV, Section C.2.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to Jun30). Information concerning the facility's previous Fiscal Year's waste receipts is due on the form of an annual report to the Department no later than **September 1st** of each year, as required by R.61-107.19 Part IV. Subpart C.16, to the attention of:

**Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201**

4. All Appendix-I acceptable wastes must be covered at least once every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to five (5) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before **July 1** of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than five (5) acres (at the time of the certification). The certification shall be completed within sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (16,133 yd³ of soil for 5 acres with 2' thickness). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.
8. Sixty (60) days prior to starting construction of the Class Two landfill, the Permittee shall notify the Department of their selection between Option 1 (traditional Class Two landfill design), or Option 2 (alternate liner design). If the financial assurance mechanism needs to be increased, this shall be done prior to the acceptance of waste into the landfill.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit. The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.
- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- d) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

2. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Subpart E.3.

3. REPORTING

- a) The permittee shall submit to the Department the result of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following schedule:

Sampling Schedule	Results Due
November/December	January 15 (Semi-Annual)
May/June	July 15 (annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.1.a.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Ground water Section, and to the Solid Waste Consultant in Upstate Region BEHS Greenville.

4. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility; the Facility may be required to comply with R.61-107.19, Part IV, Section C.21.



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003

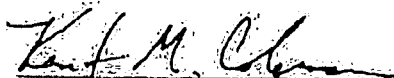
Permit Issued Date: November 3, 2008 Permit Effective Date: November 18, 2008

Permission is hereby granted to:

Name of Facility: Highway 93 C & D Landfill
Permittee: MRR Pickens, LLC
Address: 11743 Trails End Lane
Charlotte, NC 28078
Contact: Mr. Ronald C. Gilkerson
Phone: (704) 947-6652

for the operation of a Class 2 landfill at 2180 Greenville Highway, Liberty, South Carolina, 29657 in Pickens County located off Highway 93 at Clardy Road approximately 2,000 feet NE of the City of Liberty, SC.

This permit is issued pursuant to Sections 44-96-10 *et seq.* (Supp. 2007) and 25A S.C. Code of Regulations Section 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, P.G., Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
November 3, 2008
Page 1 of 4

**MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003**

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the design specifications and construction plans received November 30, 2007; and last revised August 26, 2008, unless permit conditions state otherwise.
2. This permit is limited solely to the disposal of items listed in Appendix I of R.61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to June 30). Information concerning the facility's previous Fiscal Year's waste receipts is due in the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV. Subpart C.16, to the attention of:

**Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201**

4. All Appendix-I acceptable wastes must be covered at least every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to twelve (12) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than twelve (12) acres (at the time of the certification). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (38,720 yd³ of soil for 12 acres with 2' thickness). The certification shall have been completed within the last 60 days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.
2. Within ninety (90) days of the effective date of this permit, the Permittee shall submit a detailed Compliance Plan that describes steps to be taken in order to fully comply with all regulatory requirements of R.61-107.19 that relate to Class 2 Landfills. This Compliance Plan shall include, but not limited to, the following: a groundwater monitoring design workplan, a landfill post-closure care plan, and a landfill post-closure care cost estimate. Upon the Department's approval of said Compliance Plan, the Permittee will have six (6) months to implement the plan and will have a deadline for full compliance with R.61-107.19 of November 19, 2009.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. SPECIAL ENVIRONMENTAL PERMIT CONDITIONS

Within ninety (90) days of the effective date of this permit, the Permittee shall submit to the Department for review, a Groundwater Monitoring Design Workplan in accordance with R.61-107.19, Part IV, Section E (Groundwater Monitoring and Corrective Action). In addition, an approved groundwater monitoring system must be installed and operating prior to November 19, 2009, pursuant to R.61-107.19, Part I, Section A.6.c. Upon the Department's approval of the Groundwater Monitoring Design Workplan, permit conditions C.2, C.3 and C.4 will become effective.

2. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit.

The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.

- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- e) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

3. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine monitoring at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Part IV Subpart B.3.

4. REPORTING

- a) The Permittee shall submit to the Department the results of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following sampling schedule:

<u>Sampling Schedule</u>	<u>Results Due</u>
November/December	January 15 (Semi-Annual)
May/June	July 15 (Annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.2.A.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Groundwater Section, and to the Solid Waste Consultant in Region 2 EQC (Greenville).

5. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required comply with R.61-107.19, Part IV, Section C.21.

Respondent MRR Pickens

Exhibit I

BOARD:
Allen Ansley
Chairman

Mark S. Lutz
Vice Chairman

Ann B. Kiriol, DDS
Secretary



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment
South Carolina Board of Health and Environmental Control

2600 Bull Street, Columbia, South Carolina 29201 Telephone: (803) 898-3309 Facsimile: (803) 898-3393 lisa.longshore@dhec.sc.gov

BOARD:
R. Kenyon Wells
Charles M. Joye II, PE.
L. Clarence Batts, Jr.
John O. Hurto, Sr., MD
William Lee Hewitt, III

April 21, 2016

CONFIDENTIAL
Received: 4/25/2016

U.S. Mail – Certified

9214 8969 0099 9790 1404 517R 18
Gary W. Poliakoff, Esq.
Poliakoff & Associates
Post Office Box 1571
Spartanburg, SC 29304

U.S. Mail

Christopher T. Roof, Supervisor
MRR Pickens, LLC
5842 Fairington Place, Suite 1
Raleigh, NC 27609

Electronic Mail Delivery

Etta R. Williams Linen, Esquire
SCDHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201

RE: Docket No. 16-RFR-15, MRR Pickens/Hwy 93 C&D Class 2 Landfill – Modification of Permit No. LF2-00003

Dear Counsel of Record and Mr. Roof:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.

CONTESTED CASE GUIDANCE

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law

Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

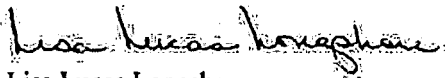
A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



Lisa Lucas Longshore
Clerk

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.



2600 Bull Street
Columbia, SC 29201

Return Service Requested

Christopher T. Roof, Supervisor
MRR Pickens, LLC
5842 Fairington Place, Suite 1
Raleigh, NC 27609

CYY-SMP 27609



Respondent MRR Pickens

Exhibit J

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Pickens County,

Petitioner,

vs.

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

Respondents.

Docket No. 16-ALJ-07-0164-CC

**AFFIDAVIT OF
CHRISTOPHER T. ROOF**

Christopher T. Roof, being duly sworn deposes and says the following:

1. My name is Christopher Roof. I am of the age of majority and am of sound mind and body. This Affidavit is not being written under stress or promise of anything. I am not under the influence of drugs or alcohol at the time this Affidavit is written.

2. I am currently the General Manager of MRR Pickens, LLC and have held that position since January 24, 2007.

3. As General Manager of MRR Pickens, LLC, I am responsible for overseeing local and state permitting, development and operations of the South Carolina Department of Health and Environmental Control (DHEC) permitted Class 2 Landfill to be operated in Pickens County, South Carolina.

4. In my position as General Manager, I have always and remain the sole person responsible for reviewing all correspondence addressed to the company and received at our only office and place of business located at 5842 Faringdon Place, Suite 1, Raleigh, North Carolina 27609.

5. Since January 24, 2007, MRR Pickens, LLC has been and remains registered with the South Carolina Secretary of State as a South Carolina Domestic limited liability company, in

Good Standing, with its registered agent located at Corporation Service Company, 1703 Laurel Street, Columbia, SC 29201.

6. MRR Pickens, LLC only office and place of business is currently and has been at all times since November 1, 2014, located at 5842 Faringdon Place, Suite 1, Raleigh, North Carolina 27609.

7. To my knowledge, all correspondence from South Carolina DHEC to MRR Pickens, LLC relating to the August 10, 2015 DHEC Minor Permit Modification for its Class 2 Landfill in Pickens County (LF2-00003) has been addressed to me and sent to 5842 Faringdon Place, Suite 1, Raleigh, North Carolina 27609.

8. Prior to moving to the 5842 Faringdon Place, Suite 1, Raleigh, North Carolina, 27609 location, MRR Pickens on November 1, 2014, LLC's headquarters, office and primary place of business was located at 431 Raleigh View Road, Raleigh, North Carolina 27610.

9. From January 3, 2006 to December 22, 2007, Ronald Gilkerson worked for MRR Pickens, LLC and an affiliated company, MRR Southern, LLC.

10. Ronald Gilkerson was responsible at that time for assisting in the permitting and development of solid waste landfills to be located in South Carolina.

11. For the majority of his time working for MRR Southern, LLC and MRR Pickens, LLC, in 2006 and 2007, Ronald Gilkerson worked at a satellite office located at 11925 Sam Roper Drive, Suite C, Office 2, Charlotte, North Carolina 28269.

12. MRR Pickens, LLC closed the satellite office located at 11925 Sam Roper Drive, Suite C, Office 2, Charlotte, North Carolina when Ronald Gilkerson ceased working for MRR Southern, LLC and MRR Pickens in December of 2007.

13. For a brief period of time in 2008, Ronald Gilkerson worked as an independent consultant for MRR Southern, LLC and MRR Pickens, LLC from his home located at 11743 Trails End Lane, Charlotte, North Carolina 28078.

14. Ronald Gilkerson has not worked for MRR Pickens, LLC as an independent consultant since 2008 and was not involved in any way with August 10, 2015 Minor Permit Modification for MRR Pickens, LLC's Class 2 Landfill in Pickens County, South Carolina.

15. MRR Pickens, LLC has used the 5842 Faringdon Place, Suite 1, Raleigh, North Carolina 27609 address on all correspondence and the application to DHEC relating to the August 10, 2015 DHEC Minor Permit Modification.

16. On or around April 11, 2016, I received from the Clerk of the DHEC Board an Acknowledgement of Request for Review notifying MRR Pickens, LLC that Pickens County had filed a Request for Final Review of an August 10, 2015 Minor Permit Modification for its Class 2 Landfill in Pickens County, South Carolina, and attaching a copy of the County's Request.

17. The Acknowledgement of Request for Final Review and attached Pickens County Request for Final Review (Board Review) were sent from the Clerk of the DHEC Board to my attention at the correct address, 5842 Fairington Place, Suite 1, Raleigh, NC 27609, as indicated on the Certificate of Service attached to same.

18. On April 25, 2016, I received the decision of the South Carolina Board of Health and Environmental Control denying Pickens County's Request for Final Review (Board Review) in DHEC Board Docket No. 16-RFR-15, MRR Pickens/Hwy 93 C&D Class 2 Landfill - Modification of Permit No. LF2-00003, was dated April 21, 2006.

19. The April 21, 2016, decision of the DHEC Board denying Pickens County's Request for Final Review (Board Review) was addressed to me at MRR Pickens, LLC, 5842 Fairington Place, Suite 1, Raleigh, NC 27609.

20. On May 31, 2016, I received the Notice of Assignment of the Honorable Shirley C. Robinson to the case of Pickens County vs. South Carolina Department of Health and Environmental Control and MRRR Pickens, LLC, SC Administrative Law Court (SCALC), Docket No. 16-AIJ-07-0164-CC, dated May 26, 2016, and issued by Ralph King Anderson, III, Chief Administrative Law Judge.

21. The SCALC Notice of Assignment dated May 26, 2016, was sent to my attention and addressed to MRR Pickens, LLC, 5842 Fairington Place, Suite 1, Raleigh, North Carolina 27609.

22. To date, MRR Pickens, LLC has not been served in person, by mailing, nor by any other means with a copy of Pickens County's Request for A Contested Case Hearing relating to DHEC Docket No. 16-RFR-15 at its address at 5842 Fairington Place, Suite 1, Raleigh, NC 27609.

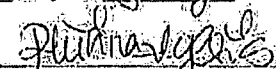
23. To my knowledge and to date, MRR Pickens, LLC has not been served in person, by mailing, or any other means at any other location relating to Pickens County's Request for a Contested Case Hearing and DHEC Docket No. 16-RFR-15.

Further attains, sayeth not.

Dated: July 28th 2016.


Christopher T. Roof

Signed and sworn to before me this
28th day of July, 2016


Notary Public for the State of North Carolina
My commission expires 6/9/2021

RHINNA IGLESIAS
Notary Public
Wake Co., North Carolina
My Commission Expires June 9, 2021

Respondent MRR Pickens
Exhibit K

Gary W. Poliakoff
atty@gpoliakoff.com

Raymond P. Mulman, Jr.
rmulmanjr@gmail.com



Bernard B. Poliakoff
(1916-1955)

J. Manning Poliakoff
(1923-1949)

Matthew Poliakoff
(1919-1979)

May 19, 2016

VIA FEDEX

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

MAY 23 2016

DHEC
OFFICE OF GENERAL COUNSEL

Re: **Request for Contested Case Hearing**
DHEC Permit Modification dated 8/10/15

Dear Clerk's Office:

Enclosed please find Request for Contested Case Hearing along with our filing fee of \$500.00 concerning the above matter. Also enclosed is copy of the Pickens County Request for Final Review (Board Review) and DHEC letter dated April 21, 2016 declining the review.

Thank you for your consideration.

With best regards, I am

Yours very truly,

A handwritten signature in dark ink, appearing to read 'Gary W. Poliakoff', is written over a horizontal line.

Gary W. Poliakoff
POLIAKOFF & ASSOCIATES, P.A.

GWP/tjd

Enclosures

cc: (w/enclosures) (via U.S. Mail)
S.C. DHEC, Office of General Counsel
MRR Pickens, LLC
Kenneth S. Roper, Esq.
Tom Hendricks, Pickens County Interim Administrator

Courthouse Square
215 Magnolia Street, Spartanburg, South Carolina 29306
Mailing Address: P.O. Box 1571, Spartanburg, South Carolina 29304
Telephone: 864-582-5472, 864-582-8101 • Facsimile: 864-582-7280
www.gpoliakoff.com

South Carolina Administrative Law Court (SC ALC)
Request for Contested Case Hearing FORM
Mail to: 1205 Pendleton St., Suite 224, Columbia, SC 29201

Last Name: Pickens County		First:	Middle:	☐ Mr. ☐ Mrs.	☐ Miss ☐ Ms.	Docket No. (To Be Completed by ALC)
Mailing Address: 222 McDaniel Avenue, B-1		City: Pickens			State and Zip: SC 29671	
Home Number:	Work Number: 864-898-5856	Cell Number:		*E-Mail Address:		

*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

REPRESENTATION

Are you representing yourself? ☐ Yes ☒ No	
Are you represented by an Attorney? ☒ Yes ☐ No	
Name of Attorney: Gary W. Poliakoff	
City, State and Zip: Spartanburg, SC 29304	
Attorney Mailing Address: P.O. Box 1571	
Attorney Work Number and Cell Number: 864-582-5472 w; 864-205-6755 c	
Attorney E-Mail Address: atty@gpoliakoff.com	

CASE INFORMATION

Name of Agency that Issued the Decision: (Example - Dept. of Revenue, Dept. of Insurance, DHEC) DHEC	
In order to have your case processed, you must attach the agency decision. Is it attached? ☒ Yes ☐ No	
Date the decision was issued:	Date the decision was received: April 21, 2016
Please provide a brief statement regarding why the hearing is being requested and the relief sought: Pickens County filed a Request for Final Review (attached) with S.C.D.H.E.C., requesting that DHEC rescind a Permit Modification dated August 10, 2015, regarding Facility named Highway 93 Class 2 Landfill, for Permittee MRR Pickens, LLC, as such Permit Modification was unlawfully issued. DHEC declined review. Pickens County requests Hearing.	
Payment via ☒ Check ☐ Money Order ☐ Cash for \$ submitted today to the Administrative Law Court via: (applicable filing fee pursuant to ALC Rule 71) is being ☒ U.S. Postal Service ☐ Hand-delivery	
<i>Gary W. Poliakoff</i> X Your Signature or Signature of Attorney	
Date: May 19, 2016	

PROOF OF SERVICE (MUST BE COMPLETED)

Your Name: Gary W. Poliakoff		Date: 5/19/16	City: Spartanburg State: SC
I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing on all other parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows: (Use the reverse side for any additional names)			
S.C.D.H.E.C.		c/o Etta R. Williams-Linen, Esq. 2600 Bull Street	
Office of General Counsel		Columbia, SC 29201	
Name and/or Agency Name	Address	City, State and Zip	
MRR Pickens, LLC	11743 Trails End Lane	Charlotte, NC 28078	
Name and/or Agency Name	Address	City, State and Zip	
<i>Gary W. Poliakoff</i> X Your Signature or Signature of Attorney		Date: May 19, 2016	

Attention: All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website www.scalc.net or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.

**BEFORE THE
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL**

In Re:

**REQUEST FOR
FINAL REVIEW
(BOARD REVIEW)**

Staff Decision to Grant
Permit Modification dated
August 10, 2015

Facility: Highway 93 C&D Landfill
Permittee: MRR Pickens, LLC
Class 2 Landfill
Permit No. LF2-00003

Pickens County, an "affected person" pursuant to S.C. Code Section 44-1-60(E), hereby requests Final Review by the South Carolina Board of Health and Environmental Control, of the Staff Decision to grant a Permit Modification dated August 10, 2015.

1. Staff Decision at Issue:

Permit Modification to Permit No. LF2-00003, dated August 10, 2015, by Division of Mining and Solid Waste Management, Bureau of Land & Waste Management.

Attached hereto:

- Copy of the August 10, 2015 Permit Modification (issued contrary to law and which must be voided);
- Copy of the Permit issued November 3, 2008 (which is valid and remains valid as issued November 3, 2008).

2. Timeliness of this Request for Review:

(A) Pickens County is an "affected person," per S.C. Code Section 44-1-60(E), in that Pickens County is the duly qualified and approved Host Local Government in regard to Permit No. LF-2-00003, and based upon its Host Agreement and Development Agreement with the Permittee,

and based upon the Pickens County Solid Waste Management Plan, revised in 2013. The Department of Health and Environmental Control is fully aware of Pickens County's status as Host Local Government, and is fully aware of and in possession of the Host Agreement and Development Agreement in question.

(B) Pickens County requests this Review on behalf of (1) Pickens County, a governmental entity duly existing and authorized to govern; and (2) on behalf of the affected public, particularly those members of the public who reside in Pickens County, and those members of the public who reside within one mile of the Landfill in question in Pickens County and who will be immediately affected adversely by dust and ash, groundwater contamination, air pollution, decrease in property values, and other resulting problems and damages, should the purported Permit Modification of August 10, 2015 be allowed to stand.

(C) Despite its status as an "affected person," Pickens County has never, to this date, received formal Notice of the purported Permit Modification dated August 10, 2015, nor has the Department ever mailed the staff decision in question, or the Permit Modification dated August 10, 2015, to Pickens County. Pickens County only learned of such staff decision and purported Permit Modification recently, after controversies between Pickens County and the Permittee arose.

As no formal Notice to Pickens County ever occurred, nor any mailing of the staff decision or Permit Modification of August 10, 2015 by the Department to Pickens County, this Request for Final Review is timely.

To date, Pickens County has never received formal Notice or mailing of the decision in question.

(D) Illegality of the Failure to Notify Pickens County

- (1) The Permit, validly issued on November 3, 2008, was for a C&D Landfill, and which contained the following special condition:

This permit is limited solely to the disposal of items listed in Appendix I of R. 61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill.

The above Permit issued November 3, 2008, with the above Special Condition, is in accord with the Pickens County Solid Waste Management Plan, and is in accord with the agreements and representations between Pickens County and the Permittee.

- (2) The purported Permit Modification dated August 10, 2015 made major modifications to the original Permit, which substantially alter and change the facility and its operations, including but not limited to:

- (a) An alternate design that varies from the design prescribed in the relevant Class 2 Regulations R. 61-107.19, Parts I and IV).
- (b) An alternate design that includes the addition of a liner, which was not previously permitted (and not approved by Pickens County).
- (c) The addition of Class 3 design features to the Class 2 Landfill Permit (done for the purposes of adding wastes which were not previously approved by Pickens County, and which in fact

would violate the Pickens County Solid Waste Management Plan).

- (d) The addition of Class 3 operational features to a Class 2 Landfill Permit (also done for the purpose of adding wastes which were not previously approved by Pickens County, and which in fact would violate the Pickens County Solid Waste Management Plan).
- (e) The alternate designs of the purported Permit Modification of August 10, 2015, as well as the changes that substantially alter the facility and its operations, constitute a "Major Modification," per R. 61-107.19, Part I, B. 48.
- (f) Despite the alternate designs and the changes that substantially alter the facility and its operations, the Department characterized these changes as a "minor modification." Such characterization was in violation of R. 61-107.19, Part I, B. 48., and the result was to deprive Pickens County and the public of any Notice, any involvement in the application and in the permitting modification process, and of the right to comment and review.
- (g) Per R. 61-107.19, a "major modification" of a Permit requires Notice to "affected persons" (here, Pickens County), and to the public, and requires opportunity for public review and

comment. The failure to provide Notice to Pickens County and to the public was a further violation of relevant regulations.

- (h) That, according to MRR's engineering consultants:

During recent meetings between MRR and DHEC, it was confirmed that a modification of the Class Two Landfill Permit to meet the requirements of R. 61-107.19 Part V. Class Three Landfills would require a minor permit modification.

("Site-Specific Hydrogeologic Investigation Report," prepared by MRR Pickens, LLC, by Civil & Environmental Consultants, Inc., d. 12-15-14, received by S.C. DHEC December 16, 2014).

Note: The above-referenced report, and several subsequent reports by MRR's consultant, were submitted to S.C. DHEC in 2014 and 2015, without any Notice whatsoever to Pickens County or to the public. Only recently, since controversies between Pickens County and MRR have arisen, has Pickens County learned of such reports.

- (i) That the Department and MRR apparently had meetings and discussions regarding the changing of this Class Two Permit to meet Class Three Permit features, wherein DHEC and MRR agreed to call these changes a "minor modification"

despite the clear and unequivocal true qualification as a
"major modification."

(j) That the apparent purpose of MRR and the Department meeting, conducting discussions, and "confirming" that this would be a "minor modification," was to avoid Notice to Pickens County and to the public.

(k) The above actions of the Department and of the Permittee were in violation of relevant Statutes and Regulations, as referenced above.

(l) That, due to the failure of Notice and mailing, as required by relevant Statutes and Regulations, Pickens County's Request for Review is timely.

3. Grounds for Rescinding the Staff Decision (Permit Modification of August 10, 2015):

(A) The Pickens County Solid Waste Management Plan, revised 2013, prohibits:

(i) Class Three Landfills in Pickens County. (A purpose purported Permit Modification was to add Class Three design features to a permitted Class Two Landfill).

(ii) "Special Wastes" are prohibited. (Coal Ash, a/k/a Coal Combustion Residuals (CCR), require special handling, due to propensity to create dust, and due to propensity to contain toxic substances, and propensity to contaminate groundwater and surface water, and therefore qualifies as "Special Wastes," per S.C. Code Section 44-96-390, and per the definition

of "Special Waste" contained in the Pickens County Solid Waste Management Plan).

(B) The Department has already determined, per the Demonstration of Need Regulations, that no "Need" (as defined by the DON Regulations) exists for a Class Three Landfill in Pickens County. The efforts by the Department and MRR to add Class Three design and operational features to a permitted Class Two Landfill constitute an attempt to circumvent, and/or to render null and void, the DON Regulations.

(C) That Pickens County had determined to enter into agreements with the Permittee MRR, including a Host Agreement and other agreements, for the Permittee to operate a Landfill solely to receive Construction and Demolition (C&D) and Land Clearing Debris (LCD) wastes. The changes and modifications to the 2008 Permit violate and contravene the agreements between Pickens County and MRR, and are in contravention of MRR's continued representations to Pickens County, to the public, and to the Planning Commission.

(D) That representatives of MRR not only intentionally concealed from Pickens County and from the public its intentions and efforts to make substantial and major alterations to the agreed-upon Permit issued in 2008, but also made willful misrepresentations to Pickens County and to the Pickens County Planning Commission, regarding the nature of the landfill facility and its operations. The Department must not be a party to such misrepresentations, nor should it condone, allow, ratify or approve such misrepresentations and/or such behavior. (Proof of such continuing misrepresentations by MRR will be submitted to the Board).

(E) The Land Use Approval issued by the Pickens County Planning Commission on or about January 12, 2015, was issued in reliance upon the material misrepresentations by MRR, which

the Commission discovered in early 2016 to have been false. The Pickens County Planning Commission, in January of 2016, once it learned of the material misrepresentations by MRR, rescinded the land use approval issued January 12, 2015. NOTE: Pickens County has clarified repeatedly, and continues to emphasize, that it remains in full agreement for the Permittee to operate a C&D/LCD Landfill, in accord with the conditions of the Permit issued November 3, 2008. Further: the Pickens County Planning Commission directed the Permittee to come back before it, to answer questions and provide further information, which the Permittee has failed and refused to do. Further, the Permittee failed and refuses to exhaust available administrative remedies with the Planning Commission.

(F) That neither Pickens County nor the Pickens County Planning Commission has issued a Letter of Consistency regarding the purported Permit Modification issued August 10, 2015. Both Pickens County and the Planning Commission were kept in secrecy of the application for modification, the reports leading up to the modification, and the issuance of the modification itself.

(G) The purported Permit Modification issued August 10, 2015 was issued in violation of the 1999 State Solid Waste Management Plan, and operation of this Landfill pursuant to said purported Modification would violate the 1999 State Solid Waste Management Plan.

(H) The allowance of Coal Ash, or CCR, into this Landfill would violate recently enacted Act 138 of 2016, signed into law March 2, 2016, prohibiting disposal of Coal Ash into Class Two Landfills such as the Landfill in question, in South Carolina.

(I) The allowance of Coal Ash, or CCR, into this Landfill would violate regulations and guidelines of the United States Environmental Protection Agency.

(J) That the issuance of the purported Modification of August 10, 2015 is in contravention of the needs and desires of Pickens County and its citizens and of the public.

4. Significant Issues and Factors:

All of the above-stated Grounds are re-emphasized. The Department has acted in violation of relevant Statutes and Regulations by willfully mischaracterizing a "major modification" as a "minor." The purpose of the meetings and discussions between DHEC and MRR, and the agreement to mischaracterize the modification, was no mere issue of unimportant semantics. The purpose of such mischaracterization was to deprive Pickens County and the public of Notice, and to prevent any input and any public comment and review. Further, as stated hereinabove, Pickens County has substantive reasons to oppose this purported Modification, including the violations of its Solid Waste Management Plan, and the violations of its agreements with the Permittee, among other substantive reasons and issues.

The Department must not participate in such violations of Statutes and Regulations, and must not participate in efforts to deprive Counties, Host Local Governments, "affected persons," and/or the public, of legitimate Notice, opportunity for input, and opportunity for public comment and review.

5. Relief Requested:

(A) Pickens County requests that the purported Permit Modification issued August 10, 2015 be rescinded and be declared null and void. It is appropriate for the original Permit, issued November 3, 2008, with the Conditions issued therein at that time, to remain in full force and effect.

(B) Should the Board for any reason deny this Request for Review, Pickens County requests that the Department issue a Notice to All Host Local Governments and to All County Governments as follows:

That should any Host Local Government or County Government consider entering into a Host local Government Agreement or similar Agreement with a Landfill owner or operator, that the Host Local Government and/or County Government must be aware:

- (i) That the Department may, and will, make major modifications to a Landfill Permit, without any Notice to the Host Local Government and/or County Government and/or the public, and without any opportunity to be heard, or to provide input, or to have comment or review.
- (ii) That the Department may, and will, conduct meetings and engage in discussions with Permittees, regarding major modifications to Permits, without any Notice to the Host Local Government and/or County Government and/or the public, and without any opportunity to be heard, or to provide input, or to have comment or review.
- (iii) That the Department may, and will, characterize a "major modification" as "minor," in violation of the Regulations defining such, and that in defense of such violation, the Department may, and will, claim that the Department has the right to make permit determinations (even when the actions are unequivocally in violation of Statutes and Regulations), and that all parties must give great deference to Department determinations (even those in violation of Statutes and Regulations).

- (iv) That the Department may, and will, meet with and discuss with Permit Applicants and Permittees, ways and methods of depriving Host Local Governments, Counties and the public, of Notice and opportunity to be heard, in situations in which such Notice and opportunity are appropriate and legitimate.

Note: The above is presented as emphasis of the inappropriateness of the issuance of the purported Permit Modification, and of the inappropriateness of any approval of such Permit Modification by this Board.

5. Enclosed Herewith:

- Check for filing fee in the amount of \$100.00
- Copy of the Permit Modification issued August 10, 2015, which is the subject of this Request for Review.
- Copy of the Permit issued November 3, 2008, which is valid and should be recognized as remaining in full force and effect.

6. Pickens County requests a formal Conference and/or formal Hearing, with opportunity to present evidence and to make arguments.

7. Addreses:

Attorneys for Pickens County:

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gwp@poliakoff.com
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ROPER LAW FIRM, LLC
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(864) 878-1577 (864) 878-1336 fax

Tom Hendricks
Interim Administrator
Pickens County
222 McDaniel Ave., Ste. B-2
Pickens, SC 29671

March 23, 2016



Gary W. Poliakoff
Attorney for Pickens County



Catherine E. Helge, Director

Promoting and protecting the health of the public and the environment

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003

Date of Issuance: November 3, 2008

Date of

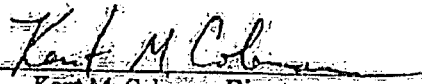
Modification: August 10, 2015

Permission is hereby granted to:

Name of Facility: Highway 93 Class 2 Landfill
Permittee: MRR Pickens, LLC
Address: 5842 Faringdon Place, Suite 1
Raleigh, NC 27609
Supervisor: Mr. Christopher T. Roof
Phone: (919) 436-3570

for the operation of a Class 2 landfill at 2180 Greenville Highway, in Pickens County located off Highway 93 near the City of Liberty, SC 29657.

This permit is issued pursuant to Sections 44-96-10 et seq., and 25A S.C. Code Regulation 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
August 10, 2015
Page 1 of 4

MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the approved design specifications, and construction plans received November 30, 2007; revised August 26, 2008, and last revised August 5, 2015, unless permit conditions state otherwise.
2. This permit is limited to the disposal of the items listed in Appendix I of R.61-107.19 and any other waste approved by the Department for disposal in a Class Two Landfill pursuant to R.61-107.19, Part IV, Section C.2.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to Jun30). Information concerning the facility's previous Fiscal Year's waste receipts is due on the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV, Subpart C.16, to the attention of:

**Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201**

4. All Appendix-I acceptable wastes must be covered at least once every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to five (5) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than five (5) acres (at the time of the certification). The certification shall be completed within sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (16,133 yd³ of soil for 5 acres with 2' thickness). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.
8. Sixty (60) days prior to starting construction of the Class Two landfill, the Permittee shall notify the Department of their selection between Option 1 (traditional Class Two landfill design), or Option 2 (alternate liner design). If the financial assurance mechanism needs to be increased, this shall be done prior to the acceptance of waste into the landfill.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit. The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.
- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- d) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

2. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Subpart E.3.

3. REPORTING

- a) The permittee shall submit to the Department the result of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following schedule:

Sampling Schedule	Results Due
November/December	January 15 (Semi-Annual)
May/June	July 15 (annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.1.a.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Ground water Section, and to the Solid Waste Consultant in Upstate Region BRHS Greenville.

4. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required to comply with R.61-107.19, Part IV, Section C.21.



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

**OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003**

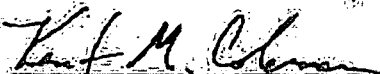
Permit Issued Date: November 3, 2008 Permit Effective Date: November 18, 2008

Permission is hereby granted to:

Name of Facility: Highway 93 C & D Landfill
Permittee: MRR Pickens, LLC
Address: 11743 Trails End Lane
Charlotte, NC 28078
Contact: Mr. Ronald C. Gillecrone
Phone: (704) 947-6652

for the operation of a Class 2 landfill at 2180 Greenville Highway, Liberty, South Carolina, 29657 in Pickens County located off Highway 93 at Clardy Road approximately 2,000 feet NE of the City of Liberty, SC.

This permit is issued pursuant to Sections 44-96-10 *et seq.* (Supp. 2007) and 25A S.C. Code of Regulations Section 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, P.G., Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
November 3, 2008
Page 1 of 4

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29901 • Phone: (803) 893-9452 • www.scdhec.gov

**MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LP2-00003**

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the design specifications and construction plans received November 30, 2007, and last revised August 26, 2008, unless permit conditions state otherwise.
2. This permit is limited solely to the disposal of items listed in Appendix I of R.61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to June 30). Information concerning the facility's previous Fiscal Year's waste receipts is due in the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV, Subpart C.16, to the attention of:

**Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201**

4. All Appendix-I acceptable wastes must be covered at least every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to twelve (12) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than twelve (12) acres (at the time of the certification). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (38,720 yd³ of soil for 12 acres with 2' thickness). The certification shall have been completed within the last 60 days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.
2. Within ninety (90) days of the effective date of this permit, the Permittee shall submit a detailed Compliance Plan that describes steps to be taken in order to fully comply with all regulatory requirements of R.61-107.19 that relate to Class 2 Landfills. This Compliance Plan shall include, but not limited to, the following: a groundwater monitoring design workplan, a landfill post-closure care plan, and a landfill post-closure care cost estimate. Upon the Department's approval of said Compliance Plan, the Permittee will have six (6) months to implement the plan and will have a deadline for full compliance with R.61-107.19 of November 19, 2009.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. SPECIAL ENVIRONMENTAL PERMIT CONDITIONS

Within ninety (90) days of the effective date of this permit, the Permittee shall submit to the Department for review, a Groundwater Monitoring Design Workplan in accordance with R.61-107.19, Part IV, Section E (Groundwater Monitoring and Corrective Action). In addition, an approved groundwater monitoring system must be installed and operating prior to November 19, 2009, pursuant to R.61-107.19, Part I, Section A.6.c. Upon the Department's approval of the Groundwater Monitoring Design Workplan, permit conditions C.2, C.3 and C.4 will become effective.

2. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit.

The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.

- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- e) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

3. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine monitoring at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Part IV, Subpart B.3.

4. REPORTING

- a) The Permittee shall submit to the Department the results of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following sampling schedule:

<u>Sampling Schedule:</u>	<u>Results Due:</u>
November/December	January 15 (Semi-Annual)
May/June	July 15 (Annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.2.A.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Groundwater Section, and to the Solid Waste Consultant in Region 2 EQC (Greenville).

5. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required comply with R.61-107.19, Part IV, Section C.21.

BOARD:
Allen Amster
Chairman
Mark S. Lutz
Vice Chairman
Ann B. Klrol, DDS
Secretary



Catherine E. Heigel, Director

*Promoting and protecting the health of the public and the environment
South Carolina Board of Health and Environmental Control*

2600 Bull Street, Columbia, South Carolina 29201 Telephone: (803) 898-3309 Facsimile: (803) 898-3393 lisa.longshore@dhec.sc.gov

BOARD:
R. Kenyon Wells
Charles M. Joye II, PE
L. Clarence Barrs, Jr.
John O. Hutto, Sr., MD
William Lee Hewitt, III

April 21, 2016

U.S. Mail - Certified
9214 8969 0099 9790 1404 5178 18
Gary W. Poliakoff, Esq.
Poliakoff & Associates
Post Office Box 1571
Spartanburg, SC 29304

U.S. Mail
Christopher T. Roof, Supervisor
MRR Pickens, LLC
5842 Fairington Place, Suite 1
Raleigh, NC 27609

Electronic Mail Delivery
Etta R. Williams Linen, Esquire
SCDHEC - Office of General Counsel
2600 Bull Street
Columbia, SC 29201

RE: Docket No. 16-RFR-15, MRR Pickens/Hwy 93 C&D Class 2 Landfill - Modification of Permit No. LF2-00003

Dear Counsel of Record and Mr. Roof:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.

CONTESTED CASE GUIDANCE

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law

Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



Lisa Lucas Longshore
Clerk

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

Respondent MRR Pickens Exhibit L



Real Estate Lookup

Print

Close

Parcel Information

Parcel ID 01934118	Account NC CORP	Parent 01934118	Previous 01934118
Owner(s) Owner Name GREENWAY WASTE SOLUTIONS LLC		Mailing Address 19109 W CATAWBA AVE STE 118	City/State CORNELIUS NC 28031

Legal Information

Legal PTR 1&2 M25-912	Municipality MECKLENBURG COUNTY-UNINCORPORATED	Date Annexed	Special District FIRE SERVICE D	Fire District HUNTERVILLE RURAL	Acreage 15.897
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Total Parcel Assessment

Building 424600	Land 443400	Features 30100	Total 898100	Exemptions Exemption	Year Approved	Review Date	Amount
---------------------------	-----------------------	--------------------------	------------------------	--------------------------------	----------------------	--------------------	---------------

Sales Information

Sale	Price	Stamps	Qualify	VI	Type	Legal Ref.	Grantor
Sep 19 2014		1640	MULTIPARCEL	IMP	MULT LISTING	29456-673	GILKERSON, RONALD C
Sep 19 2014			MULTIPARCEL	IMP	MULT LISTING	29456-657	GILKERSON, RONALD C
Feb 16 2001	0			IMP		11936-800	

Land Use

Use R122	Units 15.9	Type AC	Neighborhood B901	Assessment 443400
--------------------	----------------------	-------------------	-----------------------------	-----------------------------

Building Information

Bldg 1	Description Single-Fam	Type RES	Year 1993	Property Location 11743 TRAILS END LN UNINC
------------------	----------------------------------	--------------------	---------------------	---

Bldg 1	Story 2.0 STORY	Units 1	Total SqFt 5576	Heated SqFt 4618	Foundation CRAWL SPACE	Ext. Wall ALUM,VINYL -	Grade GOOD 06	Value 424600
------------------	---------------------------	-------------------	---------------------------	----------------------------	----------------------------------	----------------------------------	-------------------------	------------------------

Bldg 1	Heat AIR-DUCTED	Fuel GAS	Fire Place 1 - FP4	AC AC-CENTRAL	Fixtures 0	Bedrooms 4	Full Baths 3	3/4 Baths 0	1/2 Baths 2
------------------	---------------------------	--------------------	------------------------------	-------------------------	----------------------	----------------------	------------------------	-----------------------	-----------------------

Sub Area

Bldg	Description	Size
1	PORCH - OPEN - FINISHED	360
1	BASE (FIRST FLOOR)	2262
1	GARAGE - FINISHED	598
1	UPPER STORY - FINISHED	2356

Depreciation

Bldg 1	Physical AV - 11.00%	Functional - 0.00%	Economic - 0.00%	Special - 0.00%	Override - 0.00%
------------------	--------------------------------	------------------------------	----------------------------	---------------------------	----------------------------

Special Features & Yard Items

Bldg	Built	Type	Quantity	Units	Value
1	1993	DECK	1	168.00000	900
1	2004	POOL-CONC.	1	392.00000	11600
1	1993	TERRACE	1	200.00000	1800
1	2004	SHELTER	1	200.00000	4400
1	2004	BARN	1	1200.00000	11400

Notes

Tax Year	Notes	Note Date
-----------------	--------------	------------------

Value Changes

Notice Date	Tax Year	Reason	Changed To	Deferred
Feb 8 2011	2011	Countywide Revaluation	610500	0
Jul 7 2005	2005	Remodeled and/or New Addition	364200	0
Jul 7 2005	2005	Remodeled Improvements and/or New Addition	364200	0
Jan 17 2003	2003	Countywide Revaluation	353000	0
Apr 2 2001	2001	Division of Land and/or New Parcel	348610	
Apr 2 2001	2001	Division of Real Estate and/or New Parcel	348610	

Respondent MRR Pickens

Exhibit M

Bill Search Special Assessment Search Delinquent Bill Search Personal Property Search

[New Search](#)

Search By

Street Name ☒

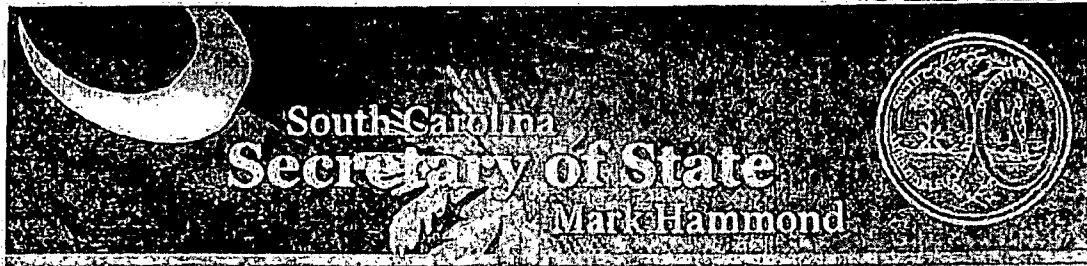
Trails End

Go

e.g. Tryon **NOT** 123 N Tryon Street

[Page: 24 of 30] First: 19 20 21 22 23 24 25 26 27 28 29					
Bill #	Old Bill #	Parcel #	Name	Location	Bill Flags
0001490594-2014- 2014-0000-00		01934118	GILKERSON, RONALD C	11743 TRAILS END LN UNINCORPORATED	
0001490594-2013- 2013-0000-00		01934118	GILKERSON, RONALD C	11743 TRAILS END LN UNINCORPORATED	
0001490594-2012- 2012-0000-00		01934118	GILKERSON, RONALD C	11743 TRAILS END LN UNINCORPORATED	
0007647759-2012- 2012-0000-00		01934107	C D MANAGEMENT COMPANY LLC	11743 TRAILS END LN UNINCORPORATED	
0002739669-2011- 2011-0000-00			GILKERSON, RONALD CRAIG	11743 TRAILS END LN UNINCORPORATED	
0001490594-2011- 2011-0000-00		01934118	GILKERSON, RONALD C	11743 TRAILS END LN UNINCORPORATED	
0001490579-2010- 2010-0000-00		01934107	C D MANAGEMENT COMPANY LLC	11743 TRAILS END LN UNINCORPORATED	OWNERSHIP TRANSFER
0002739669-2010- 2010-0000-00			GILKERSON, RONALD CRAIG	11743 TRAILS END LN UNINCORPORATED	
0001490594-2010- 2010-0000-00		01934118	GILKERSON, RONALD C	11743 TRAILS END LN UNINCORPORATED	
0001490579-2009- 2009-0000-00		01934107	GILKERSON, RONALD C	11743 TRAILS END LN UNINCORPORATED	
0001490594-2009- 2009-0000-00		01934118	GILKERSON, RONALD C	11743 TRAILS END LN UNINCORPORATED	
0001490579-2008- 2008-0000-00		01934107	GILKERSON, RONALD C	11743 TRAILS END LN UNINCORPORATED	
0001490594-2008- 2008-0000-00		01934118	GILKERSON, RONALD C	11743 TRAILS END LN UNINCORPORATED	
0007246866-2012- 2012-0000-00			HAMMILL, WILLIAM WALLACE	11745 TRAILS END LANE UNINCORPORATED	
0001490580-2007- 2007-0000-00	20070684519	01934108	MULLIGAN, RAYMOND C	11745 TRAILS END LANE UNINCORPORATED	

Respondent MRR Pickens Exhibit N

**MRR PICKENS, LLC**

*Note: This online database was last updated on 7/27/2016 3:08:03 AM.
See our Disclaimer.*

DOMESTIC / FOREIGN:

Domestic

STATUS:

Good Standing

**STATE OF INCORPORATION
/ ORGANIZATION:**SOUTH CAROLINA
Profit**REGISTERED AGENT INFORMATION****REGISTERED AGENT NAME:**

CORPORATION SERVICE COMPANY

ADDRESS:

1703 LAUREL STREET

CITY:

COLUMBIA

STATE:

SC

ZIP:

29201

SECOND ADDRESS:**FILE DATE:**

01/24/2007

EFFECTIVE DATE:

01/24/2007

DISSOLVED DATE:

//

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Agent	12/06/2007	CHG AGTS ADD CORPORATION SERVICE COMPANY	
Domestic LLC	01/24/2007	AT WILL	

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

7/27/2016

South Carolina Secretary of State: Search Business Filings

Physical Address: Edgar Brown Building - 1205 Pendleton Street Suite 525 Columbia, SC 29201

Mailing Address: SC Secretary of State's Office 1205 Pendleton Street Suite 525 Columbia, SC
29201

Respondent MRR Pickens Exhibit O

RECEIVED 5/31/2016

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Pickens County,

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control and MRR Pickens,
I.L.C.,

Respondents.

NOTICE OF ASSIGNMENT
(Contested Case)

DOCKET NO. 16-ALJ-07-0164-CC

NOTICE IS GIVEN that a request for a contested case hearing was filed on May 20, 2016. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2015), the Honorable Shirley C. Robinson, Administrative Law Judge, has been assigned to preside in this matter. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550.

Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scaic.net.

A copy of any document or any other item filed with the Court shall be sent to all other parties at the time of filing. If a mailing address changes, or if an address is incorrect, the Court must be notified immediately of the correct address.

This the twenty-sixth day of May, 2016.

Ralph King Anderson, III
Chief Administrative Law Judge

By:

Jane E. Shealy
Jane E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

FILED

MAY 26 2016

SC ADMIN. LAW COURT

Respondent MRR Pickens
Exhibit P

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Pickens County,	)	
	)	Docket No.: 16-A1J-07-0164-CC
Petitioner,	)	
	)	
vs.	)	NOTICE OF DEPOSITIONS
	)	
South Carolina Department of Health and	)	
Environmental Control and MRR Pickens,	)	
LLC,	)	
	)	
Respondents.	)	

TO: DEFENDANTS SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND MRR PICKENS, LLC AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that in accordance with Rule 30 of the South Carolina Rules of Civil Procedure, the undersigned Attorney for the Plaintiff will take, or cause to be taken, before a Notary Public, the discovery deposition of the person(s) named below on the date and time listed below at the location(s) listed below, at which time and place you are notified to appear and take such part in the examination as you may be advised as shall be fit and proper. This deposition will be recorded by stenographic means. Plaintiff will provide a court reporter.

<u>Deponent</u>	<u>Date & Time</u>	<u>Location</u>
Chris Roof	August 15, 2016 - 10:00 a.m.	5842 Faringdon Place, Suite 1 Raleigh, NC, or, if such location is not available, at a designated location in Raleigh, NC
Joan Litton	August 16, 2016 - 10:00 a.m.	SCDHEC Headquarters, Bull Street, Columbia, SC, or, if such location is not available, at a designated location in Columbia, SC

July 20, 2016


Gary W. Poliakoff
gwpoliakoff.com
Raymond P. Mullman
POLIAKOFF & ASSOCIATES, P.A.
P.O. Box 1571
Spartanburg, SC 29304
(864) 582-5472 (864) 582-7280 fax

Kenneth S. Roper, Esq.
ken@roperlawfirm.com
ROPER LAW FIRM, LLC
P.O. Box 246
Pickens, SC 29671
(864) 878-1577 (864) 878-1336 fax

ATTORNEYS FOR PICKENS COUNTY

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Pickens County,

Petitioner,

vs.

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

Respondents.

DOCKET NO. 16-ALJ-07-0164-CC

**RESPONDENT MRR PICKENS, LLC'S
MOTION TO STAY DISCOVERY
DURING PENDENCY OF
MOTION TO DISMISS**

**TO: GARY J. POLIAKOFF, ESQUIRE, ATTORNEY FOR PETITIONER PICKENS
COUNTY, AND ETTA R. WILLIAMS LINEN, ESQUIRE, ATTORNEY FOR
RESPONDENT SOUTH CAROLINA DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

YOU WILL PLEASE TAKE NOTICE that Respondent MRR Pickens, LLC ("MRR Pickens"), by and through counsel, pursuant to South Carolina Administrative Law Court Rules ("ALC Rule(s)") 19 and 21, and Rule 26(c) of the South Carolina Rules of Civil Procedure ("SCRCP"), hereby moves the Administrative Law Court ("ALC" or "Court") stay all discovery in this matter until such time as the Court adjudicates the Motion to Dismiss filed by MRR Pickens contemporaneously herewith and issues a final decision on same.¹

Rule 26(b)(1), SCRCP, provides that parties "may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." However, Rule 26(c) provides that "[u]pon motion by a party . . . and for good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect a party or

¹ Prior to the date of filing of this Motion (on July 20, 2016), Petitioner served Respondent MRR Pickens with written discovery and notices of deposition which require responses within the next 30 days. Therefore, MRR Pickens respectfully requests this Court for an immediate hearing (by conference call or in person) if a ruling cannot be made without a hearing in the near future.

person from annoyance, embarrassment, oppression, or undue burden by expense, including . . . that the discovery not be had." Similarly, ALC Rule 21(A) provides "[u]pon motion for good cause shown or upon his own motion, discovery may be expanded or curtailed by the administrative law judge."

WHEREFORE, in the interest of judicial economy and efficiency, and to avoid undue burden and expense on the parties, MRR Pickens respectfully requests an order, pursuant to Rule 26(c), SCRPC, and ALC Rule 21(A) staying discovery in this action pending issuance of a final decision upon Respondent MRR Pickens' Motion to Dismiss.

Respectfully submitted, this the 29 day of July, 2016.

WILLIAMS MULLEN



A. Keith McAlister, Jr. (S.C. Bar # 78213)
Jessica J.O. King (S.C. Bar # 11202)
1441 Main Street, Suite 1250
Columbia, South Carolina 29201
Telephone: (803) 567-4000
Facsimile: (803) 567-4601
Email: kmcalister@williamsmullen.com
Email: jking@williamsmullen.com

GOINGS LAW FIRM, LLC

Robert F. Goings (S.C. Bar # 74855)
Goings Law Firm, LLC
914 Richland Street, Suite A-101
Columbia, South Carolina 29201
Telephone: (803) 350-9230
Facsimile: (877) 789-6340
Email: rgoings@goingslawfirm.com

**ATTORNEYS FOR RESPONDENT
MRR PICKENS, LLC**

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Pickens County,

Petitioner,

vs.

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

Respondents.

DOCKET NO. 16-ALJ-07-0164-CC

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of July, 2016, in Columbia, South Carolina, a copy of the foregoing Respondent MRR Pickens, LLC's Motion to Stay Discovery During Pendency of Motion to Dismiss was served on all parties to this matter by hand delivery or depositing the same in the United States Mail, postage paid, and addressed as follows:

Etta R. Williams Linen, Esquire
Office of the General Counsel
S.C. Department of Health and
Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Gary W. Poliakoff, Esquire
Poliakoff & Associates
P.O. Box 1571
Spartanburg, South Carolina 29304


Jessica Thomas, Legal Assistant
WILLIAMS MULLEN
1441 Main Street, Suite 1250
Columbia, SC 29201

Telephone: 803.567.4604
Facsimile: 803.567.4601

Respondents' Exhibit D

King, Jessica

From: Teckla Henderson <thenderson@scalcn.net>
Sent: Wednesday, September 7, 2016 12:27 PM
To: Prince, Claire; Williams Linen, Etta; Gary Poliakoff; King, Jessica; Ken; McAlister, Kip; rgoings@goingslawfirm.com
Cc: Hellerman, Donna; Terry Davidson
Subject: RE: Pickens County v. SCDHEC and MRR Pickens, LLC 16A0164 Conference Call Scheduled 09/07 Summary

Dear Attorneys:

Thank you for participating in our conference call this morning. I am sending this correspondence to summarize Judge Robinson's rulings and instructions made during our call.

1. Respondent MRR Pickens' Motion to Stay Discovery is **GRANTED**.
2. The Motion to Intervene is **HELD IN ABEYANCE** pending the Court's decision on the Motions to Dismiss.
3. Attorney Poliakoff is **granted** an extension of time in which to file a Reply to the Responses in Opposition to the Motion to Intervene.
4. The Motions to Dismiss are currently being considered by the Court. Should Judge Robinson determine that oral argument on the motions is necessary, I will contact the parties in order to set a Motions Hearing date.

As always, should you find that you have any questions or concerns or need anything in addition, please do not hesitate to contact me.

Very truly yours,

Teckla S. Henderson
Judicial Law Clerk to The Honorable Shirley C. Robinson
South Carolina Administrative Law Court
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
(803) 734- 6402 Chambers
(803) 734- 6400 Fax

From: Teckla Henderson
Sent: Monday, August 29, 2016 11:01 AM
To: 'Prince, Claire' <PrinceCH@dhec.sc.gov>; Williams Linen, Etta <WILLIAER@dhec.sc.gov>; Gary Poliakoff <atty@gpoliakoff.com>; 'King, Jessica' <jking@williamsmullen.com>; Ken <ken@roperlawfirm.com>; McAlister, Kip <kmcalister@williamsmullen.com>; rgoings@goingslawfirm.com
Cc: Hellerman, Donna <hellerrdk@dhec.sc.gov>; Terry Davidson <tdavidson@gpoliakoff.com>
Subject: RE: Pickens County v. SCDHEC and MRR Pickens, LLC 16A0164 Conference Call Scheduled 09/07 11am

Dear Attorneys:

Thank you all for responding. The conference call will take place **Wednesday, September 7, 2016 at 11:00 am**. Should you have any further questions or concerns, please do not hesitate to contact me.

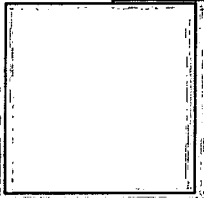
Very truly yours,

Teckla S. Henderson
Judicial Law Clerk to The Honorable Shirley C. Robinson
South Carolina Administrative Law Court
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
(803) 734- 6402 Chambers
(803) 734- 6400 Fax

From: Prince, Claire [<mailto:PrinceCH@dhec.sc.gov>]
Sent: Monday, August 29, 2016 10:59 AM
To: Teckla Henderson <thenderson@scalc.net>; Williams Linen, Etta <WILLIAER@dhec.sc.gov>; Gary Poliakoff <atty@gpoliakoff.com>; 'King, Jessica' <jking@williamsmullen.com>; Ken <ken@roperlawfirm.com>; McAlister, Kip <kmcalister@williamsmullen.com>; rgoings@goingslawfirm.com
Cc: Hellerman, Donna <hellerdk@dhec.sc.gov>; Terry Davidson <tdavidson@gpoliakoff.com>
Subject: Re: Pickens County v. SCDHEC and MRR Pickens, LLC 16A0164 Conference Call Proposed Date 09/07 11am

I am available. Thank you.

Name: Claire H. Prince
Title: Special Counsel
Program Area or Division: Office of General Counsel
S.C. Dept. of Health & Environmental Control
Columbia Office: (803) 898-3060
Myrtle Beach Office: (843) 238-4378
Connect: www.scdhec.gov [Facebook](#) [Twitter](#)



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From: Teckla Henderson <thenderson@scal.net>

Sent: Monday, August 29, 2016 10:50 AM

To: Williams Linen, Etta; Gary Poliakoff; 'King, Jessica'; Ken; McAlister, Kip; rgoings@goingslawfirm.com; Prince, Claire

Cc: Hellerman, Donna; Terry Davidson

Subject: RE: Pickens County v. SCDHEC and MRR Pickens, LLC 16A0164 Conference Call Proposed Date 09/07 11am

Good morning:

I have spoken with Judge Robinson and she suggests that the conference call take place on **Wednesday, September 7, 2016 at 11:00 am**. Does that date and time work for you all?

Teckla

Teckla S. Henderson

Judicial Law Clerk to The Honorable Shirley C. Robinson

South Carolina Administrative Law Court

Edgar Brown Building

1205 Pendleton Street, Suite 224

Columbia, South Carolina 29201

(803) 734- 6402 Chambers

(803) 734- 6400 Fax

From: Williams Linen, Etta [<mailto:WILLIAER@dhec.sc.gov>]

Sent: Monday, August 29, 2016 9:22 AM

To: Gary Poliakoff <atty@gpoliakoff.com>; 'King, Jessica' <jking@williamsmullen.com>; Teckla Henderson <thenderson@scal.net>; Ken <ken@roperlawfirm.com>; McAlister, Kip <kmcalister@williamsmullen.com>; rgoings@goingslawfirm.com; Prince, Claire <PrinceCH@dhec.sc.gov>

Cc: Hellerman, Donna <hellerdk@dhec.sc.gov>; Terry Davidson <tdavidson@gpoliakoff.com>

Subject: Re: Pickens County v. SCDHEC and MRR Pickens, LLC 16A0164 DHEC'S Extension Granted and Conference Call Scheduling 09/01

I am not available on August 30th; I will be on family sick leave from August 31st through September 2nd, but will aim to make myself available for whatever other time and date might be chosen for the teleconference. __ ETTA

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: Gary Poliakoff <atty@gpoliakoff.com>

Sent: Monday, August 29, 2016 9:16:58 AM

To: 'King, Jessica'; Teckla Henderson; Ken; Williams Linen, Etta; McAlister, Kip; rgoings@goingslawfirm.com; Prince, Claire

Cc: Hellerman, Donna; Terry Davidson

Subject: RE: Pickens County v. SCDHEC and MRR Pickens, LLC 16A0164 DHEC'S Extension Granted and Conference Call Scheduling 09/01

Good Morning Everyone –

I am available on Thursday Sept. 1 anytime until 3:00 p.m. (I am flying to Houston then for depositions all day on Sept. 2).

I can also make myself available anytime tomorrow Aug. 30; anytime Wed. Aug. 31 after 2 p.m.; anytime on Tuesday Sept. 6.

If those times aren't workable I can find other times next week as well.

Thanks and best wishes to all;

Gary Poliakoff



Gary W. Poliakoff

Attorney at Law

P.O. Box 1571, Spartanburg, SC 29304
215 Magnolia St., Spartanburg, SC 29306
(864) 582-5472 Fax (864) 582-7280
Toll Free: (888) 582-5472

atty@gpoliakoff.com
www.gpoliakoff.com

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From: King, Jessica [<mailto:king@williamsmullen.com>]

Sent: Sunday, August 28, 2016 2:41 PM

To: Teckla Henderson <thenderson@scalco.net>; Gary Poliakoff <atty@gpoliakoff.com>; Ken <ken@roperlawfirm.com>; Williams Linen, Etta R. <williaer@dhec.sc.gov>; McAlister, Kip <kmcalister@williamsmullen.com>; rgoings@goingslawfirm.com; Prince, Claire <PrinceCH@dhec.sc.gov>

Cc: Hellerman, Donna <hellerdk@dhec.sc.gov>; Terry Davidson <tdavidson@gpoliakoff.com>

Subject: RE: Pickens County v. SCDHEC and MRR Pickens, LLC 16A0164 DHEC'S Extension Granted and Conference Call Scheduling 09/01

Teckla and Counsel – I just found out I need to fly to DC on Aug. 31st – returning on the 1st. The return flight has me in the air on the September 1st from 10:12 -11:52. I apologize for the late notice. Would it be possible to do it later in the day? Or any time on the 2nd? Please let me know - again, I am sorry for the late notice.

Sincerely,
Jessie King

Jessica King
Attorney
Williams Mullen
1441 Main Street
Suite 1250
Columbia, SC 29201
T 803.567.4602
F 803.567.4601
jking@williamsmullen.com
www.williamsmullen.com

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From: Teckla Henderson [<mailto:thenderson@scalc.net>]

Sent: Thursday, August 25, 2016 12:30 PM

To: Gary Poliakoff; Ken; Williams Linen, Etta R.; McAlister, Kip; King, Jessica; rgoings@goingslawfirm.com; Prince, Claire

Cc: Hellerman, Donna; Terry Davidson

Subject: RE: Pickens County v. SCDHEC and MRR Pickens, LLC 16A0164 DHEC'S Extension Granted and Conference Call Scheduling 09/01

Dear Attorney Poliakoff:

Thank you for responding. It appears that a representative for each party will be available to participate in our conference call on Thursday, September 1, 2016 at 11:30 am. The Court appreciates your office's willingness to facilitate the call and asks that you disseminate the conference call phone number and access code to all involved.

Very truly yours,

Teckla S. Henderson
Judicial Law Clerk to The Honorable Shirley C. Robinson
South Carolina Administrative Law Court
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
(803) 734- 6402 Chambers
(803) 734- 6400 Fax

From: Gary Poliakoff [<mailto:atty@gpoliakoff.com>]

Sent: Thursday, August 25, 2016 12:18 PM

To: Teckla Henderson <thenderson@scalc.net>; Ken <ken@roperlawfirm.com>; Williams Linen, Etta R. <williaer@dhec.sc.gov>; McAlister, Kip <kmcalister@williamsmullen.com>; jking@williamsmullen.com; rgoings@goingslawfirm.com

Cc: Hellerman, Donna <hellerrdk@dhec.sc.gov>; Terry Davidson <tdavidson@gpoliakoff.com>

Subject: RE: Pickens County v. SCDHEC and MRR Pickens, LLC 16A0164 DHEC'S Extension Granted and Conference Call Scheduling 09/01

Dear Teckla-

Petitioner can participate in the conference call on Sept. 1 at 11:30 a.m.

Assuming that all parties can participate then, we will set up a call-in number for the call.

In the meantime, petitioner has no objection to any request by any party for a request for extension to respond to anything.

Thank you and best wishes,

Gary Poliakoff



Gary W. Poliakoff

Attorney at Law

P.O. Box 1571, Spartanburg, SC 29304
215 Magnolia St., Spartanburg, SC 29306
(864) 582-5472 Fax (864) 582-7280
Toll Free: (888) 582-5472
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From: Teckla Henderson [<mailto:thenderson@scalco.net>]

Sent: Thursday, August 25, 2016 11:48 AM

To: Gary Poliakoff <atty@gpoliakoff.com>; Ken <ken@roperlawfirm.com>; Williams Linen, Etta R. <williaer@dhec.sc.gov>; McAlister, Kip <kmcalister@williamsmullen.com>; iking@williamsmullen.com; rgoings@goingslawfirm.com

Cc: Hellerman, Donna <hellerrdk@dhec.sc.gov>

Subject: Pickens County v. SCDHEC and MRR Pickens, LLC 16A0164 DHEC'S Extension Granted and Conference Call Scheduling 09/01

Dear Attorneys:

Judge Robinson has **granted** the Department's motion seeking an extension of time in which to file DHEC's Reply to Petitioner's Response in Opposition to DHEC's Motion to Dismiss. The Department's Reply shall be due on or before Tuesday, August 30, 2016.

In addition, Judge Robinson has asked that I schedule a telephone conference call to address several other issues that have been brought to her attention through the filing of the parties' motions/responses. She would like for our conference call to take place on **Thursday, September 1, 2016 at 11:30 am** and requests that counsel for Petitioner facilitate the call by providing everyone with a conference phone number and access code.

Please respond to this correspondence indicating whether you will be available for a conference call on Thursday, September 1st at 11:30 am.

Very truly yours,

Teckla S. Henderson
Judicial Law Clerk to The Honorable Shirley C. Robinson
South Carolina Administrative Law Court
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
(803) 734- 6402 Chambers
(803) 734- 6400 Fax

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Respondents' Exhibit E

Transcript of the Testimony of
PICKENS COUNTY V. SC DHEC ET AL.

Date: December 2, 2016



CREEL COURT REPORTING, INC.
Condensed Transcript and Word Index

1230 Richland Street
Columbia, SC 29201
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Internet: www.creelreporting.com

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1 interrupt you again but Ms. Linen is standing
2 and I'm going to hear what she has to say.
3 MS. LINEN: Your Honor, Mr. Poliakoff continues to
4 reference adjoining landowners and that they
5 weren't noticed about this decision, but he
6 represents Pickens County.
7 THE COURT: Yes.
8 MS. LINEN: And I know he has a Motion to Intervene,
9 but that has not been addressed and they have
10 not intervened yet. So, I mean, I think that,
11 you know, that he should contain his comments
12 to his clients and not to clients that have not
13 been brought into this case as of yet.
14 MR. POLIAKOFF: Your Honor ---
15 THE COURT: Mr. Poliakoff, I do agree that we're
16 only -- the only parties to this action at this
17 point is Pickens County and I have held your
18 motion in abeyance on whether those adjoining
19 landowners would be allowed to ---
20 MR. POLIAKOFF: If I might just add briefly, Your
21 Honor, the adjoining landowners, in each of
22 their affidavits, say we do want the County to
23 advocate for us. I mean, these are people who
24 don't have the ability to hire attorneys to
25 come fight this. These are -- if you look at

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1 the houses that surround this landfill that's
2 on the verge of receiving thousands of tons of
3 coal ash, they don't have the ability to hire
4 their own attorneys. They want the County to
5 advocate for them and that's why they're asking
6 the County in their affidavits to please
7 advocate for them. And so, we are here today,
8 Your Honor, because ---
9 MS. KING: Your Honor, may I address something?
10 THE COURT: Mr. Poliakoff, Ms. King?
11 MS. KING: May I just address that statement. We
12 are not going to address every statement or
13 falsity that the attorney is stating because
14 they all go to the merits of this case.
15 However, statements like on the verge of
16 disposing coal ash, they're inflammatory, they
17 have nothing to do with this case. There is no
18 facts in the record to support that. And they
19 simply -- we just simply can't allow it and not
20 stand and object to them because there is no
21 evidence that we are on the verge of disposing
22 coal ash. This case is not about coal ash,
23 it's about a liner and it's about -- this
24 motion is about the fact that Pickens County
25 did not timely file its appeal. He has

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1 conceded that. He has said the County was
2 figuring out what to do, in his own words.
3 Well the County had plenty of time to issue --
4 January 11 to withdraw a development permit
5 that was issued to my client and our lawsuit
6 has to do with their legal action to pull our
7 development permit in Pickens County. It is in
8 the record. I have added it as an exhibit to
9 my Motion to Dismiss. Pickens County was
10 actively pursuing actions against my client but
11 simply did not request final review of this
12 issue. And that's what we're here for today.
13 And I just -- I don't want to go further on
14 every falsity that he's stated, but I would
15 like the Court to know.
16 MR. POLIAKOFF: Your Honor, based on that and
17 counsel's using the term falsity, we have a
18 method here of resolving this entire matter in
19 the next one minute and counsel for MRR said
20 this is not about coal ash. If MRR will
21 stipulate on the record right now, and the
22 Department concur, that coal ash will not be
23 deposited in this particular landfill, we can
24 fold up tents and go home. Will you do that on
25 the record today?

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1 MS. KING: Do I need to respond to that, Your Honor?
2 I certainly can say that we will not do that
3 today but that this case is about a minor
4 modification for a liner and not coal ash.
5 MR. POLIAKOFF: Your Honor, I was just accused of
6 falsity by suggesting coal ash and now counsel
7 -- when counsel is put to it ---
8 THE COURT: Mr. Poliakoff, that goes to the
9 substance of the case which we're not dealing
10 with that today.
11 MR. POLIAKOFF: I just wanted to comment that I was
12 accused of some falsities because of bring up
13 this coal ash, and counsel has told the Court
14 that this is not about coal ash. Yet, they
15 still want coal ash in this Class Two landfill.
16 Class Two landfills are for construction and
17 demolition and LCD. It got changed so that
18 they can put coal ash in it illegally, Your
19 Honor. And so, yes, that -- first of all, in
20 further response to your question, the County
21 was told by -- first of all, the permit was
22 issued in August of 2015 unbeknownst to County,
23 adjoining landowners, public, affected parties
24 or anybody. So in December, yes, the County
25 gets paperwork from DHEC. That does not comply

20 (Pages 77 to 80)

Respondents' Exhibit F

FILED

DEC 12 2016

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Pickens County,

Docket No.: 16-ALJ-07-0164-CC

Petitioner,

vs.

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

Respondents.

**ORDER GRANTING
RESPONDENTS'
MOTIONS TO DISMISS**

APPEARANCES

For Petitioner:	Gary W. Poliakoff, Esquire and Kenneth S. Roper, Esquire
For the Department:	Etta R. Williams Linen, Esquire
For MRR Pickens, LLC:	A. Keith McAlister, Esquire, Jessica J. O. King, Esquire, and Robert Goings, Esquire

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("the ALC" or "the Court") pursuant to the Request for Contested Case Hearing filed May 20, 2016 by Pickens County ("Petitioner" or "the County"). Petitioner challenges the decision of the South Carolina Department of Health and Environment Control ("the Department" or "DHEC"), which granted a modification to the Class 2 Landfill Permit issued to MRR Pickens, LLC ("MRR") in 2008.

On July 28, 2016, the Department filed a Motion to Dismiss. The following day, Respondent MRR also filed a Motion to Dismiss. Petitioner filed memorandums in opposition of each motion. The Department filed a reply to the memorandum in opposition of its motion. On December 2, 2016, a motion hearing was held at the ALC in Columbia, South Carolina. Each party was represented by counsel and presented arguments on both motions. After consideration of the arguments and filings of all parties, the Court grants the motions to dismiss on the grounds that Petitioner did not timely fulfil the procedural requirements for bringing a contested DHEC case before the ALC.

BACKGROUND

Respondent, MRR Pickens, LLC, received a Class 2 Landfill Permit from DHEC in 2008. The landfill is located in Pickens County. In March 2015, MRR applied to DHEC for a permit modification. The Department received a revised application on August 6, 2015. The Department determined that the modification requested was minor, and therefore did not necessitate the public notice and comment procedure required by regulation 61-107.19 Part I for a major modification. Thereafter, the Department mailed a staff decision to MRR on August 10, 2015 approving the requested modification. This staff decision became final fifteen days later, after no request for final review by the DHEC Board was received.

On December 15, 2015, the Department informed the County of the permit modification decision in a meeting. Subsequently, the actual decision was emailed to the County's Director of Public Works, Gerald Wilson, who had been present at the meeting on January 11, 2016. The County filed a request for final review with the DHEC Board on March 23, 2016. This request was denied on April 21, 2016. The County's request was filed 226 days after the staff decision was issued, 99 days after the meeting where the decision was discussed with the County, and 72 days after the decision was emailed to the County.

ISSUE

Whether Petitioner has met the statutory and procedural requirements for filing a case before the ALC contesting a DHEC permit decision.

DISCUSSION

Both respondents have framed portions of their arguments using the term subject-matter jurisdiction. As a preliminary matter, the Court notes that it has subject-matter jurisdiction over this case. "Subject matter jurisdiction is 'the power to hear and determine cases of the general class to which the proceedings in question belong.'" Dove v. Gold Kist, Inc., 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994) (citations omitted). Section 44-1-60 provides that the ALC hears contested cases stemming from final DHEC decisions relating to permits. Thus, the Court has the power to hear this type of case.

In addition to providing subject-matter jurisdiction over this case, section 44-1-60 also sets forth the procedural requirements for bringing a case contesting a DHEC agency decision. Both respondents argue that Petitioner failed to timely follow the procedural requirements of the statute.

Section 44-1-60 sets forth a series of steps that a party must follow to exhaust their administrative remedies before filing at the ALC. The process begins when the Department issues an initial decision involving a permit. See S.C. Code Ann. § 44-1-60(C) (Supp. 2016). This initial decision is known as a "staff decision." Id. In cases where no "Department decision" is required, the staff decision becomes the final agency decision fifteen calendar days after it is mailed to the permittee or other affected persons who have requested notice, unless a written request for final review is filed with the Department. Id. at § 44-1-60(E). Once a timely request for review is filed, the Board can hold a review conference and issue a final decision, decline to hold a review conference, or take no action, in which case the staff decision becomes final after sixty days. Id. at § 44-1-60(F). Following the issuance of a final agency decision, a party may appeal to the ALC. Id. at § 44-1-60(G).

The exclusive process established by section 44-1-60 is the statutory equivalent of the judicial doctrine of exhaustion of administrative remedies. See Ward v. State, 343 S.C. 14, 18-19, 538 S.E.2d 245, 247 (2000) (citations omitted) ("The general rule is that while there are several exceptions that may be applied to the judicially-imposed exhaustion requirement, those that apply to a statutory requirement are few."). The South Carolina Supreme Court has held that dismissal of a case is proper where there is a requirement to first exhaust administrative remedies as a matter of law. See Unisys Corp. v. S.C. Budget & Control Bd., 346 S.C. 158, 176-77, 551 S.E.2d 263, 273 (2001) (citation omitted). Section 44-1-60 provides that a party may only request a contested case hearing at the ALC if they have first given the Board an opportunity to conduct a final review of the agency decision in the time frame allowed. Failure to file the request for final review and participate in the Department's review process in a timely manner forecloses a contested case action at the ALC.

In this case, Petitioner was given various forms of notice over a period of months. However, Petitioner still waited months before filing a request for review. Petitioner asserts that it was never given the notice required by regulation. In part, the County argues that it did not have the opportunity to take action because DHEC improperly classified the matter as a minor permit modification, which exempted the Department from the public notice and comment procedure followed for major modifications and new construction. Whether the Department improperly classified the modification, and whether it should have granted the modification, is a matter that

can only be decided in a hearing on the merits of this case. However, the matter currently before the Court is Respondents' motions to dismiss this case on procedural grounds. Petitioner also argues that DHEC's failure to comply with the notice requirements in the regulations is the reason it filed the request for review months late. However, this argument is foreclosed by the fact that Petitioner received actual notice on multiple occasions and still failed to take prompt action.¹ Using the latest possible date of notice still renders Petitioner's request untimely.

Petitioner further argues that that it should be granted equitable tolling to make its filing timely. The doctrine of equitable tolling is applied when it is necessary to suspend the timeframe set by statute in order to preserve justice and provide fairness. See Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr., 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009). There must be a compelling reason for granting such relief, "... equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use." See id., 386 S.C. at 116, 687 S.E.2d at 33. In this case, the County had actual notice of the decision made by DHEC, but failed to pursue the available administrative remedies in a timely fashion, and has not stated a legally valid or compelling reason for its failure.² The Court does not find this to be a case that warrants the application of equitable tolling.

Therefore, because Petitioner failed to timely exhaust the administrative remedies prescribed by law as prerequisite to filing a contested DHEC case in the ALC,³ the Court concludes that this matter must be dismissed pursuant to Section 44-1-60 and SCALC Rule 23(B).⁴

¹ The actual notice also makes it unnecessary to construe whether Petitioner should have requested notice as an affected party, pursuant to section 44-1-60(E)(1).

² Counsel for Petitioner asserted at the hearing that the County took no action because it believed the matter to be final and because it took time for counsel to ascertain the facts of the case.

³ Because the Court concludes that the prerequisites for filing a contested case at the ALC were not met, the Court finds it unnecessary to address MRR's argument regarding improper service of the Request for Contested Case.

⁴ The Department argued that this matter should be dismissed under SCALC Rule 38. However, that rule is applicable only to cases heard in the ALC's appellate jurisdiction, not to contested cases. The comparable rule for contested cases is SCALC Rule 23(B), which provides:

Upon motion of any party, or on its own motion, the Court may dismiss a contested case or resolve the contested case adversely to the offending party for failure to comply with any of the rules of procedure for contested cases, including the failure to comply with any of the time limits provided in these rules or by order of the Court.

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED** that the Respondents' Motions to Dismiss are **GRANTED**.

IT IS FURTHER ORDERED that this matter is **DISMISSED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

December 12, 2016
Columbia, South Carolina

CERTIFICATE OF SERVICE
This document, including all attachments, has been served in accordance with the provisions of the South Carolina Rules of Civil Procedure, Rule 5, by the undersigned, a duly qualified and sworn Administrative Law Judge, on the within captioned matter, on the date and at the place indicated below.
Date: 12 day of December, 2016
By: Shirley C. Robinson