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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2017-000066

Pickens County,

Appellant,

vs.

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

Respondents.

**APPELLANT'S MOTION FOR EXTENSION OF
TIME FOR FILING INITIAL BRIEF AND
DESIGNATION OF MATTER**

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

YOU WILL PLEASE TAKE NOTICE that the Appellant Pickens County hereby moves the Court for an Order extending the time for filing its Initial Brief and Designation of Matter. The Brief and Designation are currently due on April 12 and the Appellant seeks an extension of thirty (30) days, until May 12, 2017. The basis of this motion is as follows:

Pending before this Court is Intervenor's Motion to be Included as Appellants. The motion was filed after undersigned counsel for Pickens County, who had recently been retained to prepare this appeal, reviewed the case and decided the motion was necessary to preserve and include the rights of

the individuals who were proposed intervenors in the Administrative Law Court ("ALC") proceeding, but had not been included in the appeal. Responses to that motion are due today, April 10, and the reply deadline will follow on April 17. As a result, this Court will not have rendered a decision on the Motion to be Included until after the initial brief deadline of April 12.

Counsel for Pickens County is also counsel for the intervenors. Thus, the initial brief on appeal would contain significantly different content depending on whether the intervenors' motion is granted. While counsel has made substantial progress in researching and preparing the brief, in its current draft form the brief contains factual background and information about the intervenors that would not be necessary or warranted if the motion is denied. Furthermore, the legal arguments for the intervenors, although overlapping with the arguments for Pickens County in large part, are distinct vis-a-vis their rights and protections as adjacent landowners. The intervenors do not have the same contractual relationship with MRR as Pickens County. As neighboring property owners, the intervenors are also entitled to different regulatory protections.

The distinctions between the intervenors and the County are especially important to understand the Appellants' arguments regarding the illegality of DHEC's failure to provide notifications at different stages in the permit modification application process. When an agency acts outside the scope of its authority to grant a permit modification, that modification is illegal, but it also provides an exception to the general rule requiring exhaustion of administrative remedies. DHEC's actions outside the scope of its authority are somewhat different with respect to the intervenors than they are with respect to Pickens County. Furthermore, the content of the parties to be included and arguments included would drastically impact the organization and flow of the completed document, such that if the intervenors'

motion is denied, Pickens County would have to move this Court to seek leave to file an amended initial brief and designation of matter.

If counsel were to file the initial brief and designation of matter before the intervenors' motion is determined, a significant portion of the content of those documents could be rendered moot. Preparing such documents would be a waste of time and resources for the parties and court, and could result in a Record that contains unnecessary information, if, for example, documents related to the intervenors were no longer needed.

Counsel for Pickens County is mindful that this Court has already granted two extensions, and expressed that the previous extension would be the final one, absent "extraordinary circumstances." (March 15, 2017, Order). Therefore, this motion is not made lightly, but only after carefully considering the best interests of our clients and the judicial efficiencies to be gained from submitting the most pertinent initial brief possible. Counsel also spoke with Diane in the clerks' office regarding options in light of the pending initial brief deadline and the ongoing briefing schedule for the intervenors' motion.

Counsel for Pickens County was retained to work on the appeal about a month ago, and filed a notice of appearance with the second motion for an extension at that time in order to become familiar with the case and prepare the initial brief.

This is the third request for an extension. Counsel for Respondents do not consent to this motion.

WHEREFORE, the Pickens County requests that this Court issue an order extending the time to file their Initial Brief and Designation of Matter until May 12, 2017. The Appellant further requests that the briefing deadline be held in abeyance pending a decision on this motion.

Respectfully submitted,



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Attorneys for the Appellant

April 10, 2017

Georgetown, South Carolina

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Respondents.

CERTIFICATE OF SERVICE

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

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Amelia A. Thompson

April 10, 2017

Georgetown, SC



South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

a 501c3
non-profit organization.

April 10, 2017

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

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

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SC Court of Appeals

Dear Ms. Kitchings:

I am enclosing for filing Appellant's Motion for Extension of Time, along with my certificate of service and the filing fee in the above-captioned case. I am also enclosing seven copies of the motion and request that you kindly return a clocked-in copy of the motion in the enclosed pre-paid envelope.

Thank you very much for your kind cooperation and assistance.

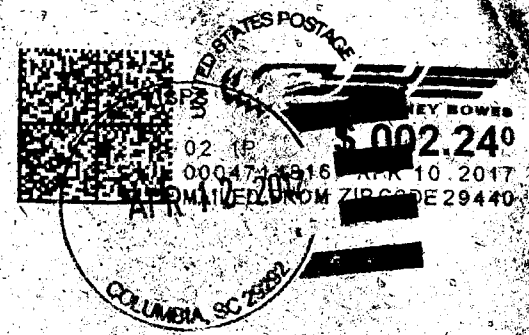
Yours very truly,



Amelia A. Thompson

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

*S.C. Environmental Law Project
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