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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

The Honorable John D. McLeod, Administrative Law Judge

Case No. 13-ALJ-0-7-0395-CC
Appellate Case No. 2017-001227
S.C. App. Op. No. 2017-UP-068

Rick Still, Donice Still, Christine Orr and Terry Orr.....Petitioners,

v.

South Carolina Department of Health and Environmental Control and Lisa Sumerel and Sumerel Poultry Farm, ...Respondents.

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VOLUME I

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SC Court of Appeals

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In The Court Of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

The Honorable John D. McLeod, Administrative Law Judge

Case No. 13-ALJ-07-0395-CC
Appellant Case No. 2015-000700

Rick Still, Donice Still, Christine Orr and Terry Orr.....Appellants,

v.

South Carolina Department of Health and Environmental Control and Lisa Sumerel and Sumerel Poultry Farm .....Respondents.

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Rick Still, Donice Still, Christine Orr and Terry Orr, Petitioners, vs. South Carolina Department of Health and Environmental Control and Lisa Sumerel and Sumerel Poultry Farm, Respondents.	Docket No. 13-ALJ-07-0395-CC **FINAL ORDER AND DECISION**

FILED
JAN 12 2015
SC ADMIN. LAW COURT

APPEARANCES:

For Petitioners:	Joseph O. Smith, Esquire
For Respondent SCDHEC:	Stephen P. Hightower, Esquire
For Respondents Lisa Sumerel and Sumerel Poultry Farm:	Thomas E. Hite, III, Esquire

STATEMENT OF THE CASE

This matter comes before the Administrative Law Court (ALC or Court) pursuant to S.C. Code Ann. § 1-23-310 *et seq.* (Rev. 2005 & Supp. 2013), S.C. Code Ann. § 1-23-600 (Supp. 2013), and S.C. Code Ann. § 44-1-60 (Supp. 2013), for a contested case hearing regarding the South Carolina Department of Health and Environmental Control's (SCDHEC or Department) decision to issue Bureau of Water Agricultural Permit ND0088307, Permit Number 19,647-AG (Permit) to Lisa Sumerel for the operation of Sumerel Farm. The Sumerel Farm, which is listed in the caption as Sumerel Poultry Farm, is a proposed broiler poultry facility located off Poole Town Road in Laurens, South Carolina. Petitioners Rick Still, Donice Still, Christine Orr and Terry Orr, who live on properties located on Poole Town Road in the vicinity of the proposed facility, filed a request for a contested case hearing to challenge the Department issuance of the permit. Pursuant to the Rules of the Administrative Law Court (RALC), and the Notice of Hearing filed on June 20, 2014 and served on all the parties, a hearing on the merits was held on August 25 and 26, 2014, at the ALC in Columbia, South Carolina.

At the hearing, the Court heard testimony from witnesses and admitted into evidence several exhibits. Petitioners called Petitioners Rick Still, Terry Orr, and Christine Orr; David Hargett, Ph.D, who was qualified as an environmental scientist consultant and an expert on water impacts; Carmen Parkhurst, Ph.D, who was qualified as an expert in animal feeding operations, poultry science, and waste management; Respondent Lisa Sumerel and her husband, Michael Sumerel; and three employees of the Department, Chrissy Matthews, who conducted the preliminary site inspections of the site; Stephen Smutz, who conducted the Department's review of potential air impacts; and William P. Chaplin, the Department's permit reviewer. Respondents Lisa Sumerel and Sumerel Farm called two witnesses, Leon Fulmer and Joy Shealy, P.E. Ms. Shealy prepared the Comprehensive Nutrient Management Plan reviewed by the Department and Mr. Fulmer conducted field observations used in the preparation of the plan. The Department did not call any witnesses and presented its case through cross-examination of the Department witnesses called by Petitioners and the witnesses called by Respondents Lisa Sumerel and Sumerel Farm. During its cross-examination of Mr. Smutz, the Department sought and the Court qualified Mr. Smutz as an expert in the field of meteorology and agricultural permitting. Several of the exhibits admitted into evidence were consented to by the parties and were admitted as Joint Exhibits (JE). Two additional exhibits were proffered and admitted into evidence, one by Petitioners and one by Respondents.

During the hearing, Petitioners presented the following issues for review:

1) Whether the Department failed to properly evaluate the environmental impacts of the Sumerel Poultry Farm; and
2) Whether the Department's decision to issue the Permit:
    a. constitutes a violation of constitutional or statutory provisions;
    b. was made upon unlawful procedure;
    c. was affected by error of law;
    d. is clearly erroneous in view of the reliable, probative, and substantial evidence;
    e. and/or was arbitrary and capricious and an abuse of discretion;
    f. and prejudiced Petitioners' substantial rights.

After careful consideration of the issues, the testimony presented and exhibits admitted into evidence during the hearing, the Court concludes that the Department issued the Permit to Lisa Sumerel in accord with all applicable statues and regulations for the reasons set forth below.

FINDINGS OF FACT

Having observed the witnesses and reviewed the exhibits presented at the hearing, and taking into consideration the burden of persuasion and the credibility of the witnesses, the Court makes the following findings of fact by a preponderance of the evidence:

Background

Respondent Lisa Sumerel and her husband, Michael, are residents of Laurens County, South Carolina and reside at 2044 Poole Town Road. The Sumerel's have two adult sons, aged 27 and 30. They live in a rural farming community, and have applied for a permit to construct and operate poultry broiler farm on property located immediately north of their residence. Mrs. Sumerel is a kindergarten teacher at Ford Elementary School in Laurens County, District 55 and plans to retire in two years. Mrs. Sumerel is the holder of the proposed permit issued by the Department. When she retires she intends to help her husband operate the proposed facility by conducting walk throughs in the houses to keep the chicks moving and by keeping the books. Mr. Sumerel will be the primary operator of the proposed facility. He is currently a hay farmer and has farmed or been involved in farming for much of his lifetime and took classes in agriculture in high school. The property where the proposed facility is to be located was given to them by Mr. Sumerel's mother, who is one of their next-door neighbors.

Permitting Process

On April 23, 2012, the Sumerels filed a request with the Department's regional office located in Greenwood, South Carolina for a Preliminary Site Inspection (PSI) for a proposed poultry facility to be located on Poole Town Road in Laurens County, South Carolina. The request was given to Ms. Chrissy Matthews, an eight year employee of the Department who conducts inspections of agricultural facilities. Ms. Matthews's job includes routine and compliance inspections, preliminary site inspections, and she also performs stormwater compliance and routine inspections. Ms. Matthews conducted the PSI on April 23, 2012. The PSI began with a visit to the location off of Poole Town Road (Site) by Ms. Matthews to determine if the setback distances for poultry facilities could be met and the poultry houses for the proposed facility could fit. During this visit, Ms. Matthews observed that the east and south boundaries of

the Site were covered by a large, mature forest. When Ms. Matthews returned from the field she accessed the Laurens County Geographic Information Systems (GIS) website and used its measuring tool to measure the distances from the property lines of the Site to potential footprints for the facility, to determine if there was sufficient room for the houses. Ms. Matthews recorded her findings on a document known as a Preliminary Site Inspection Checklist, which was admitted into evidence as JE 6. A PSI Checklist is an unofficial form used to assist in the evaluation of a site. Based on her observation of the Site, use of GIS, and experience, Ms. Matthews concluded that the Site was generally suitable for an animal feeding operation governed by S.C. Code Ann. Regs. 61-43 Part 200 (2011). By letter dated April 27, 2012, Ms. Matthews notified the Sumerels that the Site "appears to be suitable" for the operation of a poultry farm. The letter also granted the Sumerels permission to plan and design an animal facility, and submit the plans to the Department before April 23, 2013 for review in accord with the regulations governing *Animal Facilities other than Swine*, which is codified at 4 S.C. Code Ann. Regs. 61-43 Part 200.

The Review Process

On October 10, 2012, the Sumerels signed a Comprehensive Nutrient Management Plan (CNMP), which was received by the Department on October 11, 2012. The CNMP was prepared by Shealy Engineering, LLC. Shealy Engineering, LLC is owned by Joy S. Shealy, P.E.[1] Ms. Shealy graduated from Clemson University with a Bachelor of Science degree in agricultural engineering and holds professional engineer licenses for South Carolina, North Carolina, and Georgia. Prior to establishing Shealy Engineering in 2004, Ms. Shealy had worked for the Department. As a SCDHEC employee, Ms. Shealy worked one year in stormwater permitting and six and a half years in agricultural permitting. Also, during her time with the Department, Ms. Shealy was involved with the promulgation of 4 S.C. Code Ann. Regs. 61-43. Ms. Shealy works with Leon Fulmer, an agricultural engineer, who also is a former Department agricultural permitting reviewer whose duties included those now performed by the current Section Manager of the Agricultural Permitting Section. As an employee of Shealy Engineering, LLC, Mr. Fulmer conducts site inspections to determine if a site is suitable for a poultry facility and to obtain detailed information for the preparation of animal facility management plans. In addition to these

[1] Subsequent to the preparation of the CNMP, on June 2, 2014, Ms. Shealy sold Shealy Engineering, LLC to Shealy Consulting. (Tr. pp. 402, 478).

duties, Mr. Fulmer is the operator of a broiler poultry facility.

The CNMP for the Sumerel facility proposes the construction and operation of a four poultry house broiler facility with a total facility capacity of 109,600 broilers, which "will be brought into the house as chicks and are confined for a period of sixty-three (63) days or until they reach an exit weight of eight and three quarter (8.75) pounds" with a normal production live weight of 493,200 pounds. The proposed facility would be sited so that all applicable set back distance are met or exceeded. Specifically, the proposed facility complies with the following set back distances: 1) potable wells (required 200 feet, actual 1,300 feet); 2) potable wells owned by the applicant (required 50 feet, actual 500 feet); 3) waters of the State located downslope (excluding ephemeral & intermittent streams) (required 100 feet, actual 150 feet); 4) ephemeral or intermittent streams located downslope (required 100 feet, actual 150 feet); 5) ditches or swales located downslope (required 50 feet, actual 50 feet); 6) property line (500,000 lbs or less) (required 200 feet, actual 200 feet); and 7) occupied residence (required 1,000 feet, actual 1,300 feet). The CNMP also provided documentation that the Sumerels had notified all property owners with property located within 1,320 feet from the footprint of the proposed facility, including Petitioners, as required by the regulation's public notice provision.

On the same day that it was received, the Sumerel application package was sent to the Department's Agricultural Permitting Section for review. William P. Chaplin, the Section Manager of the Agricultural Permitting and Dam Safety Section, reviewed the permit and made all of the decisions regarding its issuance. Mr. Chaplin has worked for the Department since 1992. For twelve years, his duties included septic tank inspections and mosquito control. Mr. Chaplin has been the Section Manager of Agricultural Permitting and Dam Safety Section for the last eight years.

The Department's review began when compliance generated requests to the Bureau of Air Quality and the Division of On-Site Wastewater Management's, Bureau of Environmental Health to evaluate air and groundwater requests. Stephen W. Smutz, of the Bureau of Air Quality's Air Modeling Section, responded to the request in a Memorandum, dated October 16, 2012, on the Air Quality Issue of the proposed facility. In his memorandum, which set forth his evaluative process, Mr. Smutz made the following conclusions: 1) that "[i]n consideration of the relevant standards under state and federal laws, an increase in air pollution is not expected from the proposed operation;" and 2) that "[i]n view of the fact that no State or Federal standards exist

for odors and the foregoing information, the Bureau does not recommend any additional requirements or setbacks for this permit." William H. Burriss of the Bureau of Environmental Health, Division of On-site Wastewater Management responded to the Agricultural Permitting Section's request in a memorandum dated October 22, 2012. The memorandum incorporated field notes that indicated the fieldwork performed to determine if the proposed mortality burial site was suitable. Based on this information, Mr. Chaplin concluded that the proposed burial site was not suitable for mortality disposal.

On October 25, 2012, the Sumerel application was placed on public notice, in accord with 4 S.C. Code Ann. Regs. 61-43 Part 200.60(A). Ms. Matthews posted five signs in the vicinity of the Site notifying the public about the application and informing the public that from October 25, 2012 through November 24, 2012, the Department would be accepting comments on the application.

The Department's technical review of the Sumerel application package began on February 2, 2013. On February 25, 2013, the Department sent out letters to the seventy-seven (77) individuals on the petition and those who wrote letters in opposition to the Sumerel facility, notifying them that the Department had scheduled a public meeting to be held on March 11, 2013 at Laurens Academy Gymnasium at 6:30 PM. The public meeting was held on March 11, 2013 as planned.

In May 2013, the Sumerels submitted amendments to their facility plans. Included in the amendments was a Dead Animal Composting Facility Management Plan (Composting Plan), which changed the mortality disposal method from burial to hay bale composting, incineration, and landfill disposal. On May 28 and 29, 2013, the Department received CNMP pages, which included incorporation of the new mortality disposal methods contained in the CNMP. On June 10, 2013, the Department completed its technical review of the Sumerel application.

On June 12, 2013, the Department issued the Permit to Lisa Sumerel for the operation of a no-discharge broiler poultry feeding operation. The Permit authorizes the construction and operation of four poultry broiler houses, each housing 27,400 birds, for a total of 109,600 birds at any one time. The facility can house up to 4.5 flocks per year and the average animal live weight of each flock is 493,200 lbs. The Permit also authorizes mortality disposal through the use of a hay bale composting system and/or incineration. The Permit also contained a Special Conditions section that enumerates eight requirements, including requirements that: 1) local permits such as

building and stormwater be obtained; 2) any drinking water wells installed on the property for animal or human consumption meet certain regulatory setbacks; and 3) the owner or operator obtain Confined Animal Manure Manager (CAMM) Certification from Clemson University within a year of the Permit's effective date.

Twelve days after receiving the Permit, on June 24, 2013, the Sumerels submitted a request to the Greenwood Regional Office for a PSI to be conducted in order to evaluate the exact locations of the composting and incineration for mortality disposal, including the siting of the composter and incinerator(s) on their facility. That same day, Ms. Matthews conducted a PSI inspection of the Sumerel property to see if the property north of where the proposed poultry houses will be built is suitable for the placement of a hay bale composting system and incinerator. By letter dated June 27, 2013, Ms. Matthews notified the Sumerels that placement of hay bale composting system and incinerator hay bale composting system and incinerator north of the proposed site for the poultry houses was approved. The PSI was not necessary to, nor used by Mr. Chaplin in his decision to authorize composting for poultry mortality at the proposed facility.

Petitioners' Objections to the Issuance of the Permit

Petitioners take issue with the Department issuance of the Permit to Mrs. Sumerel, claiming that the Department's review was inadequate. They cite general quality of life claims and the following specific claims: the Odor and Vector Abatement Plans do not conform to regulatory requirements; the Department inadequately considered water impacts because potential impacts from grading activities and stormwater runoff were not considered; the proposed facility was a large facility because the information on the average live weight in the CNMP was inaccurate; and the Department's review of the Composting Plan was inadequate. The parties presented testimony and exhibits regarding each of these claims and based on this evidence, the Court makes the following additional findings of fact:

Petitioner Rick Still testified that he and his wife moved to the area for the quiet enjoyment of nature and the outdoors. The Stills live at 1734 Poole Town Road and their residence is located 1,650 feet from the footprint of the proposed facility. The Stills claim that they utilize their land surrounding their home and outdoor space on a frequent basis, including using the large outdoor kitchen on the property. Mr. Still is concerned that the Sumerel operation will have numerous negative impacts upon his right to the quiet and peaceful enjoyment of his property. Namely, Mr. Still expressed deep concerns about the environmental impacts and

possible nuisance in the form of foul and offensive odors, dust, feathers, and other airborne emissions intruding into his property and interfering or prohibiting him and his wife from enjoying it as they currently do. Mr. Still was also concerned about the inadequacy of the CNMP, the Composting Plan and the Department's evaluation of those documents and approval of the Sumerel Permit. He also voiced a concern that should the Sumerel facility go into operation it would immediately cause a drastic devaluation of his property.

Petitioner Terry Orr testified that he and his wife Christine also live on Poole Town Road. The Orrs live at 1174 Poole Town Road and their residence is located 3,600 feet from the footprint of the proposed facility. The Orrs also own a pond located approximately 2,000 feet northeast of the proposed facility. Mr. Orr testified that he uses the pond property nearly every day for hiking, fishing and other recreation. He expressed serious concern that nuisance odors would interfere with the use and enjoyment of his property. Mr. Orr was also very concerned that the airborne emissions and water runoff would have detrimental environmental impacts on his pond, which is interconnected with upslope water bodies that are in close proximity to and downslope from the proposed Sumerel site.

Finally, Petitioner Christine Orr testified about her concerns over the proposed Sumerel operation. Mrs. Orr testified that she likes to go out in her yard with the family dogs on a regular basis. She went on to say that she regularly enjoys sitting on her front porch, reading a book, and enjoying the quiet. She said "that's my weekend thing." As with Mr. Still and her husband, Mrs. Orr expressed serious concerns about the proposed Sumerel operation. She believes it will prohibit her from enjoying her property as she currently does by generating nuisance odors, vectors, and various emissions harmful to the surrounding environment. Mrs. Orr said the proposed operation was not traditional farming in any sense and more akin to an industrial factory.

A. Odor and Vector Abatement Plans

The Sumerel CNMP contains three sections addressing odor and vector abatement. Section 7.2, labeled "Vector Control and Abatement," provides a list of actions for the Sumerels to take in order to address vector issues generally and specifically. Section 7.3, labeled "Air Quality," provides information regarding odor. Finally, Section 7.6 of the CNMP, which is labeled "Site Specific Vector and Odor Abatement Plan," contains additional odor and vector

abatement procedures. Section 7.2 contains the following detailed set of general and specific actions that the Sumerels are to take to address vectors:

Removing all excess building materials.
Removal of any excess feed from the houses or around bins.
Keeping grass and weeds mowed.
Keeping all buildings free of trash and debris.
The proper use and servicing of bait stations.
Proper and timely disposal of dead animals.
Keeping all manure cleaned up caused by spillage from around the houses. Keep all temporary stored manure covered and dry.
Any spillage or feed should be cleaned as soon as possible and all feed will be kept dry.
Covers on feed storage bins should be used. Drainage away from all feed storage containers should be provided to reduce moisture accumulation.

Actions to be taken for the abatement of an ***insect*** problem:
Mow vegetation around the facility.
Clean up any spilled feed.
Repair or replace equipment that is spilling feed.
Use covers to prevent feed from getting wet.
Dispose of any wet or contaminated feed.
Check for leaks from waterers, etc. and repair as needed.
Remove any garbage or trash from the facility.
Remove and dispose of all dead animals immediately and appropriately.
Use approved baits, poisons, etc. as appropriate.

Actions to be taken for the abatement of a ***rodent*** problem:
Mow vegetation around facility.
Clean up any spilled feed.
Repair or replace equipment that is spilling feed.
Use covers to prevent feed from getting wet.
Dispose of any wet or contaminated feed.
Remove all excess building materials.
Remove any garbage or trash from the facility.
Check for damage or leaks from waterers, etc. and repairs as needed.
Remove and dispose of all dead animals immediately and appropriately.
Use approved baits, poisons, etc. as appropriate.

Actions to be taken for the abatement of ***scavenging animal*** problems:
Remove and dispose of all dead animate immediately and appropriately.
Mow vegetation around facility
Clean up any spilled feed.
Repair or replace equipment that is spilling feed.
Use covers to prevent feed from getting wet.
Dispose of any wet or contaminated feed.

Remove all excess building materials.
Remove any garbage or trash from the facility.
Check for digging activities that could damage or weaken buildings and repair as needed.
Contact the proper officials for additional control measures.

For more details on specifics (rats, filth, flies, etc.) information may be obtained for the Clemson Agricultural Extension Offices or the NCRS office. A source of information is also available from Clemson's South Carolina Confined Animal Manure Manager's program, in Chapter 10 of the applicable species, available at: http://www.clemson.educ/camm/
(emphasis added).

Section 7.3 contains the following information:

NRCS does not have specific technical criteria for these consideration that are required for CNMPs. However, the following items may be considered when addressing Air Quality, most Air Quality issues are associated with odor.

Air quality in and around structures, waste storage areas, and treatment sites may be impaired by excessive dust, gaseous emissions such as ammonia, and odors. Poor air quality may impact the health of workers, animals, and persons living in the surrounding areas. Ammonia emissions from animal operations may be deposited to surface waters, increasing the nutrient load to these regions. Proper siting of structures and waste storage facilities can enhance dispersion and dilution of odorous gases. Enclosing waste storage or treatment facilities can reduce gaseous emissions from AFOs in areas with residential development in the region.

For an odor to be detected downwind, odorous compounds must be (a) formed, (b) released to the atmosphere, and (c) transported to the receptor site. These three steps provide the basis for most odor control. If any of the steps is inhibited, the odor will diminish.

Growing and Storage Facilities

Odor problems can be prevented or reduced through adequate drainage, runoff management, proper care to keep animals and animal facilities clean and dry, and appropriate animal by-product removal, handling, and transport.

Locate animal by-product management facilities and utilization areas as far as practical from neighboring residences, recreational areas, or other conflicting land uses. Avoid sites where radical shifts in air movement occur between day and night, such as those near large bodies of water or steep topography. A component's location in relation to surrounding topography may also strongly influence the transfer of odor because of daily changes in temperature and

resulting airflow. To provide optimum conditions, prevailing winds should carry odors away from nearby residences.

Providing conditions or design features that alter the microclimate around specific components can further mitigate odor. An abundance of sunlight and good ventilation helps keep livestock and poultry areas dry and relatively odor free. Southern exposure with adequate slope to provide drainage for runoff is a preferred condition. Keeping animal by-products aerated and at appropriate moisture and temperature levels slows the development of anaerobic conditions and reduces odor.

Mitigation of Odor

Odor-causing substances from animal by-products are frequently attracted to dust particles in the air. Collecting or limiting the transport of dust aids in reducing odor. Vegetation is very effective in trapping dust particles. For example, pine trees planted downwind trap odor-laden dust particles and can provide a visual barrier to the animal operation. In addition, vegetation, landform, and structures can channel wind to carry odors away from nearby residences.

Chemical additives for the control or reduction of odors may be added to the bedding in the house or during removal.

Section 7.6 of the CNMP, which is labeled "Site Specific Vector and Odor Abatement Plan" contains the following information:

Odor & Vector Abatement Plan
Columbia Farms

Columbia Farms has approved the following treatments in the event that an odor problem is identified at the farm:

PI T Poultry Liter Treatment
Disinfectants

Columbia Farms has approved the following pesticide treatments in the event than a vector problem is identified on the farm:

Beneficial Insect Treatment for flies (wasps)
Larvidex
Phenolx
Rabon 50 Wettable Powder Insecticide
Rat Baits (Brands rotated for resistance prevention)

Section 7.2 lists specific actions that the Sumerels are to take if there are vectors. In addition, the Vector Abatement Plan contains separate sections containing items for specific

vectors such as insects, rodents, and scavenging animals. Similarly, Section 7.3 provides information addressing the locations of areas that can cause odors. For example, the Section contains information about how vegetation can be used to control odor and how chemical additives can be added to bedding to control odor. Finally, with regard to odor, Section 7.6 identified the specific chemical approved by the integrator for use in the bedding material, which is also known as litter. With regard to vectors, that Section specified the rodenticide and insecticides authorized by Columbia Farms for use at the proposed facility.

Petitioners, however, claim that the information contained in CNMP Section 2, Vector Control and Abatement Vector Control, and CNMP 7.6, Site Specific Vector and Odor Abatement Plan, fails to meet the regulatory requirements in Part 200.150(A) and Part 200.160(A) because they are best management practices (BMPs) and not "site specific" requirements. Specifically, Petitioners assert that the Department's permit reviewer acknowledged that the vector control requirements in the regulations do in fact require a site specific vector abatement plan. Petitioners also assert that the professional engineer and drafter of the CNMP testified that Section 7.2 was not a site-specific plan but rather general BMPs an operator may use in the event a particular issue listed arose and that Section 7.6 labeled "Site Specific Vector and Odor Plan" was *integrator* rather than *site* specific and would be the same for any facility in which Columbia Farms acted as the integrator.

Petitioners' claims are not supported by the record. Ms. Shealy testified that Section 7.6 contains the site specific odor and vector abatement plans and that they comply with the regulatory requirements. Further, she testified that if Mr. Chaplin identified any problems with the CNMP she made the necessary correction to them and did not recollect being notified about a problem with Section 7.6. In pertinent part, Part 200.150 provides that "[t]he Animal Facility Management Plan shall contain an odor abatement plan for the animal facility, lagoon, treatment system, manure storage pond, and manure utilization areas, which ***may*** consist of" five enumerated criteria. 4 S.C. Code Ann. Regs. 61-43 Part 200.150(A) (emphasis added). Similarly, Part 200.160 provides that a "Vector Abatement Plan shall at a minimum consist of . . . [a] list of ***specific actions to be taken*** by the producer ***if*** vectors are identified as a problem." 4 S.C. Code Ann. Regs. 61-43 Part 200.160(A)(2) (emphasis added). By providing that the odor plan may consist of certain criteria and that the vector plan shall consist of a list of specific action to be taken, the regulations do not mandate "site specific" criteria limited in application to

only the proposed facility and no other facility. Rather, they require plans that are capable of controlling odor and vectors.

While challenging the Odor and Vector Abatement Plans based on the ground that they purportedly fail to comply with Part 200.150(A) and Part 200.160(A), respectively, Petitioners have offered no testimony or documentary evidence to establish whether the plans are effective in spite of the purported regulatory error. In fact, Respondents elicited testimony from one of Petitioners' witnesses that significantly undercuts Petitioners' claim. Dr. Carmen Parkhurst, Ph. D., is a professor of Poultry Science at North Carolina State University. The Court qualified Dr. Parkhurst as an expert in animal feeding operations, poultry science and waste management. In response to questioning by the Department, Dr. Parkhurst stated that, while he believed that it needed to be better defined, if the Sumerels followed the Vector Abatement Plan it was his expert opinion that the requirements would not be harmful and that they would deal with the vector issues. This testimony stands without contradiction and severely undercuts Petitioners' claim.

Further, Petitioners' assertion that the Department permit reviewer, Mr. Chaplin, acknowledged that the vector control requirements in the regulations do in fact require a site specific vector abatement plan, is misplaced. As noted above, Part 200.160(A)(2) does not require a "site specific" criteria that would be applicable to only one particular site and no other. Although in the cited testimony, Mr. Chaplin does state "[t]hat's correct" in response to a question about whether Part 200.160(A) "requires a site specific in that it has to identify what Mr. and Mrs. Sumerel are going to do to address each one of these problems specifically, not a list of potential best practices?" However, in that response, Mr. Chaplin also stated "[i]t says if vectors are identified as a problem. So they be able to run their facility and they don't have any vectors [sic]." This statement, without more, is incapable of constituting a Department interpretation that the Court is bound to follow. Moreover, given that Petitioners' own expert stated that the application of the Vector Abatement Plan would not be harmful and would achieve the goal of dealing with vectors, the Court finds that Petitioners' have failed to present sufficient evidence to show that the Vector Abatement Plans is inadequate. Accordingly, Petitioners have failed to establish that the Odor and Vector Abatement Plans in the CNMP are inadequate.

B. Water Impacts

Petitioners contend that the Department failed to adequately consider and evaluate the potential impacts of the Sumerel operation to the waters of the State. Specifically, Petitioners assert that the Department's review was inadequate because it was limited to determining whether the Site was suitable for mortality disposal by burial and because it did not consider the grading and stormwater management runoff.

The Department's review of water quality issues, set forth in the Agricultural Permitting Review Checklist Summary, was prepared contemporaneously by Mr. Chaplin and was admitted into evidence as Joint Exhibit 5 without objection. According to that document, Mr. Chaplin's conducted the following review:

1) Source Water Protection – checked ground water public supply well overlay and determined that the no public supply well was in the vicinity but a well, identified as G30169, is located 1.86 miles away. No additional setback distance is necessary because the regulatory minimum distance is 200 feet;

2) Impaired Water review - reviewed the 2004 303(d) State impaired water body list to distances from the proposed facility, manure treatment/storage structure, and manure utilization areas. Determinations – Proposed facility is located 21.01 miles from the Enoree River which is impaired for copper and zinc; Manure Utilization Areas – not applicable because the proposed facility will manage manure disposal with a broker; and that "Given the distance to headwaters (402 feet) from the facility footprint and this being a no discharge facility, no additional setbacks are required."

3) Stream classification – freshwater –"no additional setbacks are required."

4) Nonpoint sources – In Hydro Unit Code 0306010802 there are no other permitted facilities and there are 20 manure utilization areas. "No additional setbacks are required."

5) Topography maps for the facility site and 100-year floodplain map for facility site (JE 1, DHEC 112-13) – "Given the water resources reviews and the animal facility management plan states best management practices will be utilized, thus no anticipated increase in pollution to the waters of the state is not expected."

6) "Groundwater Review of the proposed burial sites, manure utilization areas, geography, soil types on the site, aquifer vulnerability and manure storage/treatment structures. ***Recommendations or Response***: As per memo dated October 22, 2012 from the Division of on-site wastewater management, zone of saturation was greater than 22 inches, however, the burial site is located within the SWPA. Therefore burial will not be allowed."

(emphasis in original).

Although Petitioners acknowledge that the Department correctly determined that the Site was not suitable for mortality burial, and acknowledge that the Department conducted 1) water quality reviews to determine the location of public supply wells, 2) 303(d) impaired water body list, and 3) reviewed and noted the stream classifications for the water bodies in the drainage route, Petitioners nevertheless claim that the Department should have considered the grading and stormwater runoff from the Site as part of the permitting process. To support their argument, Petitioners presented the testimony of Dr. David Hargett, Ph. D., who was qualified as an expert environmental science consultant and in water impacts. Specifically, Dr. Hargett noted that the necessary grading for the Sumerel facility would result in approximately 300,000 or more square feet (or some 6 acres) of land on the site disturbed and graded. Dr. Hargett testified that this massive grading endeavor will create "an industrial footprint with a high degree of imperviousness, a high degree of runoff." He went on to testify that this runoff would go downslope where there are multiple waters of the State and waters of the United States that are at risk from this operational runoff. Dr. Hargett opined that it was within the Department's purview to ensure these waters could handle the additional stresses presented by the Sumerel operation including manure contaminated runoff, ammonia emissions and other water transported and airborne emissions from the facility.

In response to Dr. Hargett's assertion, Respondents presented testimonial and documentary evidence regarding grading and stormwater runoff issues. Mr. Chaplin, testifying on behalf of the Department, stated that the animal facility permitting regulations contained in 4 S.C. Code Ann. Regs. 61-43 do not address stormwater. All stormwater issues are addressed in a separate permitting process conducted by the stormwater permitting section. In addition, Mr. Chaplin stated that since the proposed facility is a no-discharge facility and does not have manure utilization areas, the only expected runoff is from stormwater. Similarly, Ms. Shealy and Mr. Fulmer testified that the stormwater permitting process is separate from the agricultural permitting process.

Moreover, Dr. Hargett's testimony is contradicted by the testimony of Petitioners' second expert witness, Dr. Carmen Parkhurst, Ph. D. In response to questioning by the Department, Dr. Parkhurst stated as follows:

> Q: Okay. You're aware that in South Carolina grading, land grading and all those issues are covered in a separate permit?
> A: Yes, sir.

Q: Okay. So you would agree that the Department's permit and the plans that were submitted here would not necessarily – it would not be required of them to have those documents because they're not going to be reviewed by the reviewer in this case, correct?
A: That's correct.
Q: Okay. That doesn't mean they can't grade that site successfully?
A: Yes.
Q: Okay.
A: ***My only concern with the grading was that it was going to be costly.***
Q: Well, it may be costly, but you would agree that cost real only impacts the permittee and –
A: Yes, sir.
Q: -- whether they're willing to spend that money, correct?
A: Yes, sir.
Q: ***But you would agree that if they're willing to spend their money and they can make an adequate plan and it's reviewed by the Department and they follow it, that site could be turned into a perfectly safe and functioning poultry farm?***
A: ***Yes, sir.***

(emphasis added).

Further, Respondents established that the Sumerels were notified of the need to obtain a separate stormwater permit. Mr. Chaplin testified that he sent an e-mail along with an attachment entitled "New Compliance Requirements for SC DHEC Stormwater Permit" to the Sumerels. These documents were received into evidence, without objection, as Respondents Exhibit 1. Additionally, the Permit, which was entered into evidence as Joint Exhibit 3, provides in Special Condition 3 that "[y]ou are responsible for obtaining any other local permits that may be required for this project, including a building permit and **stormwater permit** in some counties." (emphasis in original). Finally, Mr. Sumerel, who will operate the facility, testified that he was aware that he will have to obtain a separate stormwater permit before he could grade the site and that he intended to apply for the required permit.

Part 200.70 provides that the Department, *inter alia*, "shall evaluate" the proposed site the following criteria to determine if additional distances are necessary: proximity to 100-year floodplain; location in the watershed; classification or impairment of adjacent waters; proximity to a State Designated Focus Area, Outstanding Resource Water, and State Approved Source Water Protection Area; proximity to other known point source discharges and potential water quality nonpoint sources; runoff prevention; and aquifer protection. 4 S.C Code Ann. Regs. Part

200.70(F). Mr. Chaplin's Checklist clearly shows that the Department considered each of the regulatory required water quality impacts and determined that the setback distances for the proposed facility were adequate to prevent an increase in water pollution. While Dr. Hargett passionately testified for why stormwater runoff and grading issues should be considered as a part of the water quality review for the proposed facility; that testimony was more than contradicted by Petitioners other expert, Dr. Parkhurst. Dr. Parkhurst acknowledged that grading and stormwater concerns are for poultry facilities in South Carolina are considered and reviewed in a separate permitting process. Despite this fact, unlike Dr. Hargett, Dr. Parkhurst had no reservations with the Department's review of grading and stormwater issues in a separate permitting process. Indeed, Dr. Parkhurst stated that his "*only concern* with the grading was that it was going to be *costly*" and Dr. Parkhurst agreed that if the Sumerel's were willing to spend the money necessary the Department could permit a "perfectly *safe* and functioning poultry farm." (emphasis added).

Further, the Court finds unpersuasive Dr. Hargett's statements that it was within the Department's purview to ensure these waters could handle the additional stresses presented by the Sumerel operation including manure contaminated runoff, ammonia emissions and other water transported and airborne emissions from the facility. In raising these as potential issues, Dr. Hargett failed to provide the Court with information necessary to ascertain if the alleged issues would cause an increase in pollution of the waters and air of the State. For example, Dr Hargett stated "[m]y experience in working with similar sites is that it's well documented that ammonia from concentrated animal feeding operations does affect water quality in surrounding receiving waters." However, Dr. Hargett was not offered or qualified as an expert on air quality issues, e.g., the level of ammonia emission from an animal feeding operation. Moreover, even if he had been qualified as such an expert, his testimony would be of no value because, at a minimum, he did not establish that there is a regulatory standard for ammonia in freshwater in South Carolina and, if so, what was the standard. Indeed, the Court notes that when Petitioners questioned Mr. Smutz, who was qualified as an expert, without objection, in the field of meteorology and agricultural permitting air quality issues, about ammonia emissions, he stated that since there are no state or federal standard and that without knowing at what concentration a substance is harmful it is impossible to determine when there would be an increase in pollution.

Since Mr. Smutz was qualified as an expert and none of his testimony was contradicted by Dr. Hargett, the Court finds no probative value in Dr. Hargett's statement.

Accordingly, based upon the evidence presented, the Court finds that Petitioners have not established that the Department did not conduct an adequate evaluation of potential water impacts posed by the Sumerel facility.

C. Average Live Animal Weight

Petitioners contend that the proposed Sumerel poultry operation is not a small facility subject to the 200 foot setback distance proscribed in Part 200.80(A)(5), but a large facility subject to the 400 foot property setback under Part 200.80(A)(6). Petitioners' claim the CNMP utilizes an outdated exit weight of 8.75 lbs. to arrive at an incorrect normal production animal live weight for the facility.

The CNMP is based on a normal production animal live weight for the facility of 493,200 pounds. This calculation is based upon a .25 lb. entry weight and 8.75 lb. exit or "process" weight yielding a 4.5 lb. average animal live weight: (8.75 exit weight + .25 entry weight)/2 = 4.5 average live weight). The CNMP specifies that there will be 109,600 birds on site at any one time thus yielding the 493,200 lb. normal production animal live weight: (109,600 x 4.5 normal production animal live weight = 493,200 pounds).[2] Based upon this calculation the Sumerel facility was designated a "small" operation under the regulations subject to the 200 foot property line setback.

Petitioners presented the testimony of Dr. Carmen Parkhurst, Ph. D. Dr. Parkhurst testified that the exit weight of broilers is determined by the length of the grow cycle. He testified that the 8.75 exit weight utilized in the CNMP was a dated and inaccurate number and that chickens tend to get bigger over time through genetic selection. To support his claim, Dr. Parkhurst pointed to his own recent study completed on March 1, 2014, in which he grew 80,000 birds over a sixty (60) day cycle. In that study, he alleged that the average exit weight of the birds in his study was 9.37 lbs. Based on these factors, Dr. Parkhurst testified that over the course of the designated sixty-three (63) day grow cycle the average exit weight of the birds grown at the Sumerel facility would likely be over nine pounds rather than the 8.75 lb. average utilized in the CNMP.

[2] See p. 25 for further explanation of this calculation.

In response, Respondents offered the testimony of Mr. Fulmer and Joy Shealy of Shealy Engineering, LLC. Mr. Fulmer testified that the CNMP provides "[t]he birds will be brought into the houses as chicks and are confined for a period of sixty-three (63) days or *until they reach an exit weight of eight and three quarter (8.75) pounds.*" (emphasis added). Ms. Shealy testified that the integrator determines the average exit weight of the birds and informs the grower. Ms. Shealy stated that she and Mr. Fulmer got the average exit weight figure from the grower, and in this case, she believed Mr. Sumerel got the figure from Columbia Farms.

In addition to the testimony set forth above, the Court also received testimony from the Sumerels that is relevant to this issue. Mrs. Sumerel testified that the property upon which the proposed facility will be constructed was given to her husband and herself by her mother-in-law. The mother-in-law retains property abutting the proposed facility on the north and east. Mrs. Sumerel also testified that her mother-in-law fully supports their construction and operation of a poultry facility next to her property. In his testimony, Mr. Sumerel stated that his mother owns ninety (90) acres running along the northern, eastern, and southeastern boundaries of the proposed facility.

Considering the evidence adduced during the merits hearing, the Court finds that Petitioners have not met their burden with regard to live animal weight. Dr. Parkhurst's testimony established that each integrator, the company that owns the birds grown by the farmer, sets their own exit weight for the farms' flocks, and that the exit weight depends on the market and internal corporate factors for each integrator. Petitioners did not establish with credible evidence that the exit weight would exceed the amount calculated in the CNMP. Since it is the Petitioners' burden to establish that the calculations in the CNMP are incorrect, the Court finds that Petitioners' failure to ascertain from the integrator what exit weight they were requiring for the Sumerel facility is fatal to their claim.

D. Hay Bale Composting System

As discussed earlier, as part of the Department's review of the Sumerel application package, Mr. Chaplin requested that the Division of On-Site Wastewater, Bureau of Environmental Health to determine whether mortality could be disposed of by burial at the Site. This review was performed by Mr. Burriss, who sent a memorandum to Mr. Chaplin detailing the fieldwork performed to determine if the proposed mortality burial site was suitable. Based on

this information, Mr. Chaplin concluded that the proposed burial site was not suitable for mortality disposal.

In May 2013, the Sumerels submitted amendments to their facility plans. The amendments, which included the submission of a Composting Plan, changed the mortality disposal method from burial to hay bale composting, incineration, and landfill disposal. The amendments also included changes to the CNMP, which included incorporation of the new mortality disposal methods. Mr. Chaplin testified that composting of animal mortality is permitted under Part 200 regulations. Although permitted by regulation, Mr. Chaplin did not want to render a decision on whether it could be used in this case without seeking expert advice, since he had not observed a hay bale composting system in operation. Mr. Chaplin contacted Mr. Steven Henry, an employee of the National Resources Conservation Service (NRCS), an agency under the United States Department of Agriculture (USDA) for information on the system. The Department accepts for processing plans designed by a registered South Carolina professional engineer or an employee of the USDA, NRCS. Based on his discussions with Mr. Henry, Mr. Chaplin determined that hay bale composting systems were an appropriate way to compost dead animals.

The Composting Plan was prepared by Ms. Shealy and contains detailed information regarding construction and operation of the hay bale composting system. According to the Composting Plan, the composter will be located north of the location of the poultry houses. Based on the United States Geological Survey (USGS) Map included in the Composting Plan, the composter will be located at least 500 feet from the nearest water body. Hay bale composting is designed primarily for poultry broiler mortality disposal but is also used to dispose of swine, turkey, and bovine (cows and cattle) mortality. The composter works by loading the material in alternating layers of manure and the dead birds as indicated in Figure 2-15 entitled the *Dead bird bin compositing schematic*. Specifically, the diagram specifies from bottom to top the following: a concrete pad; first layer consisting of manure, straw, chickens, and manure; and then successive layers topped with a litter cover layer.

Regarding the operation of the Composter, Mr. Sumerel testified that the manure needed for the composter will come from the poultry houses and will be stored outside under a tarp at the facility. Mr. Sumerel also confirmed that composter would be built on top of either a compacted clay or concrete base.

Based on this information, Mr. Chaplin determined that the Compositing Plan was appropriate for the disposal of the mortality form the proposed facility and that on June 12, 2014, Mr. Chaplin determined that the Permit should be issued with conditions. Mr. Chaplin testified that the PSI performed by Ms. Matthews was not necessary for him to reach his determination on whether to authorize the hay bale composting system.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Court concludes the following as a matter of law:

The ALC has jurisdiction over this contested case matter pursuant to S.C. Code Ann. § 1-23-380 (Supp. 2013), S.C. Code Ann. § 44-1-60 (Supp. 2013), and 4 S.C. Code Ann. Regs. 61-43, Part 200.70(G). In reviewing this matter, the Court serves as the finder of fact and makes a *de novo* determination regarding the matters in controversy. Hill v. S.C. Dep't of Health & Envtl. Control, 389 S.C. 1, 9, 698 S.E.2d 612, 616 (2010) (citing Brown v. S.C. Dep't of Health & Envtl. Control, 348 S.C. 507, 512, 560 S.E.2d 410, 413 (2002)). The standard of proof to be used by the Court in weighing the evidence and making a decision on the merits during a contested case proceeding is the preponderance of the evidence. S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2013); CarMax Auto Superstores W. Coast, Inc. v. S.C. Dep't of Revenue, 397 S.C. 604, 609, 725 S.E.2d 711, 713-14 (Ct. App. 2012) (citations removed). In addition, Petitioner bears the burden of proof proving his case by the preponderance of the evidence. Young v. S.C. Dep't of Health & Envtl. Control, 383 S.C. 452, 459, 680 S.E.2d 784, 759 (Ct. App. 2009). Further, it is appropriate for the Court, while evaluating the evidence, to give due consideration to an "agency's expertise, technical competence and specialized knowledge." S.C. Code Ann. § 1-23-330(4) (Supp. 2013) ("The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.").

Pursuant to the Administrative Procedures Act, the South Carolina Rules of Evidence are applicable to this hearing. S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2013). Under Rule 702, SCRE, "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." An expert is granted wide latitude in determining the basis of his or her opinion, and where an expert's testimony is based upon facts sufficient to form an opinion, the trier of

fact must weigh its probative value. Small v. Pioneer Mach., Inc., 329 S.C. 448, 470, 494 S.E.2d 835, 846 (Ct. App. 1997). The trier of fact may give an expert's testimony the weight he or she determines it deserves. Florence County Dep't of Soc. Servs. v. Ward, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992). Additionally, the trier of fact may accept the testimony of one expert over that of another. S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 220-21, 417 S.E.2d 586, 589 (1992). However, expert testimony is limited to issues of fact as issues of law is generally inadmissible. Vortex Sports & Entm't, Inc. v. Ware, 378 S.C. 197, 207, 662 S.E.2d 444, 450 (Ct. App. 2008). "Regulations are interpreted using the same rules of constructions as statutes." Murphy v. S.C. Dep't of Health & Envtl. Control, 396 S.C. 633, 639, 723 S.E.2d 191, 195 (2012). "In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole." Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). "When interpreting a regulation, [a Court looks] for the plain, ordinary meaning of the words of the regulation, without resort to subtle or forced construction to limit or expand [its] operation." Converse Power Corp. v. S.C. Dep't of Health & Envtl. Control, 350 S.C. 39, 47, 564 S.E.2d 341, 346 (Ct. App. 2002). "The true guide to statutory construction is not the phraseology of an isolated section of provision, but the language of the statute as a whole considered in light of the manifest purpose." Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 260, 626 S.E.2d 6, 10 (2005). "The construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons." Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006).

The Permitting Process

All animal facilities in South Carolina are governed by the regulations governing the Standards for the Permitting of Agricultural Animals Facilities. These regulations, which are codified at 4 S.C. Code Ann. Regs. 61-43, were promulgated by the Department pursuant to the Pollution Control Act. See 4 S.C. Code Ann. Regs. 61-43 Part 100.200, Part 200.200, Part 400.130, and Part 500.60. Under this comprehensive regulatory scheme, the regulations governing the permitting of poultry facilities are found in Part 200, Animal Facilities other than Swine. 4 S.C. Code Ann. Regs. 61-43 Part 200. All permits issued under this Part are no-discharge permits. 4 S.C. Code Ann. Regs. 61-43 Part 200.20(B). As a no-discharge permit,

manure generated by the facility is not discharged into the environment. Pursuant to Part 200, an applicant is required to first have a PSI inspected by the Department. 4 S.C. Code Ann. Regs. 61-43 Part 200.50(A); Part 200.70(D). The purpose of the PSI is to determine if a new animal facility or an addition to an existing facility is capable of being placed at the location. If the proposed site is approved, the applicant is notified in writing and the applicant is able to finalize facility plans and the application.

Part 200.50 sets forth the requirements for the submission of Animal Facility Management Plan to the Department for review. An application package must include the following, if applicable:

1. A complete application form;
2. An Animal Facility Management Plan prepared by the qualified Natural Resource Conservation Service (NRCS) personnel or a South Carolina registered professional engineer;
3. Groundwater monitoring well details;
4. Odor Abatement Plan
5. Vector Abatement Plan;
6. Dead Animal Disposal Plan;
7. Soil Monitoring Plan;
8. Plans for other manure storage or treatment structures;
9. Documentation that the applicant has sent Notice of Intent to Build or Expand forms to all parties entitled to such notice;
10. An Emergency Plan;
11. Written agreements for the reduction of setbacks;
12. Application and other required fees.

4 S.C. Code Ann. Regs. 61-43 Part 200.50(B). Prior to submission of the application package, the applicant is required under the regulation to notify "all property owners within 1320 feet of the proposed location of the facility (footprint of construction) of the applicant's intent to build an animal facility." 4 S.C. Code Ann. Regs. 61-43 Part 200.60(A). Once the Department receives the application, the Department shall "post up to four notices on the perimeter of the property or in close proximity to the property, in visible locations as determined by the Department." 4 S.C. Code Ann. Regs. 61-43 Part 200.60(A). The Department reviews all comments received

regarding the application and may hold a public meeting to discuss and seek resolution of public concerns about Sumerel Farm if twenty (20) or more comments are received from different people. 4 S.C. Code Ann. Regs. 61-43 Part 200.60(D).

Part 200.70 contains the decision-making requirements for the Department. 4 S.C. Code Ann. Regs. 61-43, Part 200.70. All decisions made by the Department are subject to the mandate to "act on all permits to prevent, so far ***as reasonably possible considering relevant standards under state and federal laws***, an ***increase in pollution of the waters and air*** of the State from any new or enlarged sources." 4 S.C. Code Ann. Regs. 61-43 Part 200.70(E) (emphasis added). Specifically, Department is required to consider the following non-exclusive factors, if applicable:

1. Proximity to 100-year floodplain;
2. Geography and soil types on the site;
3. Location in a watershed;
4. Classification or impairment of adjacent water;
5. Proximity to State Designated Focus Area; Outstanding Resource Water; Heritage Corridor; Historic Preservation District; State Approved Source Water Protection Area; state or national park or forest; state or federal research area; and privately-owned wildlife refuge, park, or trust property;
6. Proximity to other point source discharges and potential nonpoint sources;
7. Slope of the land;
8. Animal manure application method and aerosols;
9. Runoff prevention;
10. Adjacent groundwater usage;
11. Down-wind receptors; and
12. Aquifer vulnerability.

4 S.C. Code Ann. Regs. 61-43 Part 200.70(F).

In addition, the facility must meet all the applicable siting criteria contained in 4 S.C. Code Ann. Regs. 61-43 Part 200.80, which are minimum distances that the Department may, on a case-by-case basis, increase. S.C. Code Ann. § 46-45-80 (Supp. 2013); see 4 S.C. Code Ann. Regs. 61-43 Part 200.70(F).

Of particular note in this case is the separation distance for facilities with a normal live production weight of 500,000 pounds or less. Specifically, Part 200.80 provides that:

> [t]he separation distance required between the animal facility or growing areas (pens or barns not including range areas) and the lot line of real property owned by another person is 200 feet or 1000 feet from the nearest residence, whichever is greater, when the normal production animal live weight at any given time is 500,000 pounds or less.

4 S.C. Code Ann. Regs 61-43 Part 200.80(A)(5). "'Normal production animal live weight at any given time' means the maximum number of animals at the facility at any one time multiplied by the average live weight of those animals." 4 S.C. Code Ann. Regs. 61-43 Part 50(WW). "'Average animal live weight' means the sum of the average exit weight of the animal from the facility and the average entry weight divided by two, as shown by the following formula: Average animal live weight = (Average Exit Weight + Average Entry Weight)/2." 4 S.C. Code Ann. Regs. 61-43 Part 50(K). The 200 foot property line setback distance can be reduced by a written waiver of the affected property owner. 4 S.C. Code Ann. Regs. Part 200.80(G).

A. Odor and Vector Abatement Plans

Petitioners claim that the Odor and Vector Abatement Plans contained in the CNMP do not comply with the regulatory requirements for such plans. The regulatory requirements governing odor and vector abatement plans are located in Parts 200.50, 200.150 and 200.160. Part 200.50, which contains the requirements for animal feeding operation management plan, provides in pertinent part that:

> B. A producer who proposes to build a new animal facility or expand an existing animal facility shall make application for a permit under this part using an application form as designated by the Department. The following information shall be included in the package.
>
> * * *
>
> 4. The Animal Facility Management Plan shall contain an odor abatement plan for the animal facility, lagoon, treatment system, manure storage pond, and manure utilization areas. For more specific details, see Section 200.150 (Odor Control Requirements).
>
> 5. A Vector Abatement Plan shall be included for the animal facility, lagoon, treatment system or manure storage pond, and manure utilization areas. For more specific details see Section 200.160 (Vector Control Requirements).

4 S.C. Code Ann. Regs. 61-43 Part 200.50(B)(4) and (5).

Part 200.150 provides in pertinent part that:

> The Animal Facility management Plan shall contain an odor abatement plan for the animal facility, lagoon, treatment system, manure storage pond, and manure utilization areas, which ***may*** consist of the following:

1. Operation and maintenance practices which are used to eliminate or minimize undesirable odor levels in the form of a Best Management Plan for Odor Control;
2. Use of treatment processes for the reduction of undesirable odor levels;
3. Additional setbacks from property lines beyond the minimum setbacks given in this part;
4. Other methods as may be appropriate; or
5. Any combination of these methods.

4 S.C. Code Ann. Regs. 61-43 Part 200.150(A) (*emphasis added*).

Part 200.160 provides in pertinent part that:

A. The Vector Abatement Plan shall at a minimum consist of the following:

1. ***Normal management practices*** used at the animal facility, lagoon, treatment system, manure storage pond, and manure utilization *areas* to ensure there is no accumulation of organic or inorganic materials to the extent and in such a manner as to create a harborage for rodents or other vectors that may be dangerous to public health.

2. A ***list of specific actions to be taken*** by the producer if vectors are identified as a problem at the animal facility, lagoon, treatment system, manure storage pond, or any manure utilization area. These actions should be listed for each vector problem, e.g., actions to be taken for fly problems, actions to be taken for rodent problems, etc.

4 S.C. Code Ann. Regs. 61-43 Part 200.160(A)(*emphasis added*).

Taken together, the language of the various regulations can be summed up as requiring that every animal facility management plan must have: an odor abatement plan for the animal facility, lagoon treatment system, manure storage pond, and manure utilization areas, as applicable, which may consist of, but not required, the five enumerated criteria; and a vector abatement plan that contains BMPs and a list of specific actions to be taken for specific identified vectors.

Petitioners nevertheless claim the information in the foregoing Sections consist of BMPs and not "site specific" requirements as required under the regulations. The best evidence of the intent of the regulation is its language and "[w]here the [regulation's] language is plan and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Reviewing each regulation under this standard does not

support Petitioners' claim. Part 200.150(A) provides that the odor abatement plan must contain a plan that addresses the appropriate components of the facility such as the animal facility, lagoon, and manure utilization area. The Odor Abatement Plan contained in Section 7.3 and 7.6 complies with the regulatory standard. It provides information on how to control odors in growing and storage areas through the use of general information such as the use of vegetation and chemical treatment and specifically identifies the chemical approved by the integrator, who own the broilers, for use around the birds.

Similarly, Part 200.160(B) provides that the vector abatement plan must contain BMPs to be used and a list of specific actions to be taken if vectors are identified. The Vector Abatement Plan contained in Sections 7.2 and 7.6 complies with these requirements. Section 7.2 complies with Part 200.160(A)(1) in that it contains numerous BMPs, categories by vector type, i.e., insect, rodent, and scavenging animal, to be used if such vectors become a problem. Section 7.6 complies with Part 200.160(A)(2) in that it lists specific rodenticides and insecticides that are to be used in the event of specific vectors. Since the regulation merely asks for the plan to contain a list of the actions to be taken and does not mandate the inclusion of information such as the precise number of rodenticide bait traps and their locations, which would clearly be "site specific," it is clear that Vector Abatement Plan complies with the regulation. Thus, the express language of the regulation does not support Petitioners' claim.

Petitioners claim that to interpret the regulations as set forth above would be to say that a Facility Management Plan may contain general BMPs and integrator, rather than site specific abatement measures. "When interpreting a regulation, [a Court looks] for the plain, ordinary meaning of the words of the regulation, without resort to subtle or forced construction to limit or expand [its] operation." Converse Power Corp., 350 S.C. at 47, 564 S.E.2d at 346. Further, "[t]he true guide to statutory construction is not the phraseology of an isolated section of provision, but the language of the statute as a whole considered in light of the manifest purpose." Floyd, 367 S.C. at 260, 626 S.E.2d at 10. With regard to odor abatement, Part 200.150 expressly mandates that facility operators are to use BMPs normally associated with proper operation. 4 S.C. Code Ann. Regs. 61-43 Part 200.150(B) ("Producers ***shall utilize Best Management Practices normally associated with the proper operation and maintenance*** of an animal facility, lagoon, treatment system, manure storage pond, and any manure utilization area to ensure an undesirable level of odor does not exist.") (emphasis added). Further, Part 200.150 expressly provides that

although a producer cannot "cause, allow, or permit emission into the ambient air" of any substance or substances "in quantities that an undesirable level of odor is determined to result," and that after such a determination the Department may specific abatement or control practices. 4 S.C. Code Ann. Regs. 61-43 Part 200.150(C), (D), and (E). With regard to vector abatement, the regulation does not mandate BMPs but provides a substantial list of BMPs that the Department may require. 4 S.C. Code Ann. Regs. 61-43 Part 200.160(D). Since Part 200.150(B) mandates BMPs and only mandates specify criteria after an operating facility has been found to be emitting undesirable levels of odor, and Part 200.160(D) provides a list of BMPs that the Department can require and which the Sumerel Vector Abatement Plan incorporated, the Court finds ample support in the Odor Abatement Plan and Vector Abatement Plan contained in the CNMP fully comply with the requirements set forth in Part 200.150 and Part 200.160, respectively.

Finally, the Court is persuaded by the testimony of Dr. Parkhurst when he was cross-examined about the Vector Abatement Plan. Dr. Parkhurst stated that, while he believed that it should be better defined, if the Sumerels followed the Vector Abatement Plan, it was his expert opinion that the BMPs would not be harmful and that they would deal with the vector issues. This Count finds this concession important since Petitioners have characterized the Vector Abatement Plan as not being protective of the public and environment. Accordingly, because the express language of Part 200.150 and Part 200.160 do not mandate "site specific" odor and vector abatement plans and because the Odor Abatement and Vector Abatement Plans in the Sumerel CNMP contain all of the required actions and most of the recommended actions, the Court concludes that Petitioners' claims are unfounded.

B. Water Impacts

Petitioners contend that the Department failed to uphold the charge of Part 200.70, which mandates that "[t]he Department shall act on all permits to prevent, so far as reasonably possible considering relevant standards under state and federal laws, an increase in pollution of the waters and air of the State from any new or enlarged sources." 4 S.C. Code Ann. Regs. 61-43 Part 200.70(E). Petitioners' argue that the Department did not consider all of the relevant information necessary to adequately evaluate potential impacts of the Sumerel operation upon the surrounding waters of the State and therefore the agency's determination that the proposed operation presents no detrimental water impacts was clearly erroneous, affected by an error of law, made upon unlawful procedures and arbitrary and capricious. The Court does not agree and

finds that the Department adequately evaluated whether the Sumerel operation would cause an increase in pollution to the waters of the State as required under the applicable regulations.

In evaluating a permit application under Part 200, the Department is required to consider the non-exclusive list of consideration set out in Part 200.70(F). The requirements of that provision are as follows:

> The setback limits given in this part are minimum siting requirements . . . . On a case-by-case basis the Department may require additional separation distances applicable to animal facilities . . . . The Department shall evaluate the proposed site including, but not limited to, the following factors when determining if additional distances are necessary:

1) Proximity to 100-year floodplain;
2) Geography and soil types on the site;
3) Location in a watershed;
4) Classification or impairment of adjacent water;
5) Proximity to State Designated Focus Area; Outstanding Resource Water; Heritage Corridor; Historic Preservation District; State Approved Source Water Protection Area; state or national park or forest; state or federal research area; and privately-owned wildlife refuge, park, or trust property;
6) Proximity to other point source discharges and potential nonpoint sources;
7) Slope of the land;
8) Animal manure application method and aerosols;
9) Runoff prevention;
10) Adjacent groundwater usage;
11) Down-wind receptors; and
12) Aquifer vulnerability.

4 S.C. Code Ann. Regs. 61-43 Part 200.70(F).

The plain and clear language of this subsection requires that the Department take the factors listed in subsection (F)(1)-(12) into account when evaluating an animal feeding operation permit application such as the one at issue. It is within the Department's discretion as to whether, after consideration of those factors and others, the facility requires additional setbacks. Further, with regard to the following particularly sensitive areas, the regulations mandate that the Department shall evaluate them for more stringent requirements: 1) Source water protection; 2) 303(d) Impaired Waterbodies List; 3) Proximity to Outstanding Resource Waters; and 4) Aquifer Vulnerability Area. 4 S.C. Code Ann. Regs. 61-43 Part 200.140(C). Based upon the evidence presented in this case, the Court finds that the Department fulfilled its obligations under the regulations.

The Department's review of water quality issues, set forth in the Agricultural Permitting Review Checklist Summary, was admitted into evidence as Joint Exhibit 5 without objection. The Review Checklist Summary set forth each of the criteria contained in Part 200.70(F) and requires the reviewer to input the steps taken to obtain the relevant information and to provide a determination as to whether "additional requirements or setbacks" were required. A review of the Review Checklist Summary indicates that Mr. Chaplin reviewed each of the twelve (12) criteria set forth in Part 200.70(F) and rendered setback determinations on all relevant criteria. Further, Mr. Chaplin testified that he completed the form contemporaneous to his review of the criteria, and neither the form nor Mr. Chaplin's testimony on this fact was challenged by the Petitioners. Accordingly, the Court finds that the Department complied with the requirements contained in Part 200.70(F).

Instead of challenging the review of the twelve (12) mandated criteria set forth in Part 200.70(F), Petitioners challenge the water quality review on the grounds that the Department did not consider the grading necessary to prepare the Site for construction and stormwater runoff. According to Dr. Hargett, this grading will create large areas of impermeable surface, thereby increasing runoff at the site. The Department countered this argument by presenting evidence establishing that issue regarding grading of a proposed facility and stormwater runoff are considered and reviewed by the Department in a separate permitting process.

Mr. Chaplin, testifying on behalf of the Department, stated that the animal facility permitting regulations contained in 4 S.C. Code Ann. Regs. 61-43 do not address stormwater. All stormwater issues are addressed in a separate permitting process conducted by the stormwater permitting section. In addition, Mr. Chaplin stated that since the proposed facility is a no-discharge facility and that it had not manure utilization areas, the only expected runoff is from stormwater. Similarly, Ms. Shealy and Mr. Fulmer testified that the stormwater permitting process is separate from the agricultural permitting process.

It is well established that "[t]he construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons." Sloan, 370 S.C. at 469, 636 S.E.2d at 607. The Department's reviewer, Mr. Chaplin, testified that the animal facility permitting regulations contained in 4 S.C. Code Ann. Regs. 61-43 do not address stormwater. However, Petitioners assert that stormwater is covered because "runoff prevention" is one of the mandatory review criteria enumerated in Part

200.70(F). 4 S.C. Code Ann. Regs. 61-43 Part 200.70(F)(9). Also, Petitioners posit that "Runoff" is a defined by regulation as "rainwater or other liquid that drains over land on any part of a land surface and runs off of the land surface." 4 S.C. Code Ann. Regs. 61-43 Part 50(FFF). After reviewing the Part 200, the Court is convinced that Department's interpretation is not contrary to the plain language of the regulation and would not lead to an absurd result.

As discussed in the permitting process section, Part 200 contains Standards for the Permitting of Agricultural Animal Facilities (other than swine).[3] The "part applies to: a. [a]ll new animal facilities; b. [a]ll expansions of existing animal facilities; c. [n]ew manure utilization areas for existing animal facilities . . . and all land where animal manure and other animal by-products are applied." 4 S.C. Code Ann. Regs. 61-43 Part 200.10(B)(1) and (3). A "manure utilization area" is defined as "land on which animal manure (including swine manure) is spread as a fertilizer and is synonymous with land application site or land application area." 4 S.C. Code Ann. Regs. 61-43 Part 50(SS).

If an applicant seeks a permit for a facility that will apply manure, the Animal Facility Management Plan is required to include "[c]oncentration of constituents in liquid animal manure" or "[c]oncentration of constituents in dry animal manure." 4 S.C. Code Ann. Regs. 61-43 Part 200.50(B)(2)(f) and (g). Part 200 also requires that such Animal Facility Management Plan include the following: "[a] crop management plan which includes the time of year of the animal manure application and how it relates to crop type, crop planting, and harvesting scheduled (if applicable) for all manure utilization areas;" and "[f]acility and manure utilization information" 4 S.C. Code Ann. Regs. 61-43 Part 200.50(B)(2)(h) and (i). In addition to these requirements, Part 200 contains the following regulatory provisions: Part 200.100 (Manure Utilization Area Requirement); Part 200.110 (Spray Application System Requirements); and Part 200.120 (Frequency of Monitoring for Animal Manure). 4 S.C. Code Ann. Regs. 61-43 Parts 200.100; 200.110; and 200.120. Runoff as it relates to manure utilization areas is discussed in the following subsections of these regulations: Part 200.100(B)(9) ("fields that are high in phosphorous may also be required to incorporate additional runoff control or soil conservation features as directed by the Department"); Part 200.110(D)(1) ("As determined by soil conditions, the hydraulic application rate may be reduced below the agronomic rate to ensure no surface ponding, runoff, or excessive nutrient migration to the groundwater occurs."); and Part

[3] Part 100 governs the standards for swine and in most respects its provisions are identical to Part 200.

200.110(F) ("Conservation measures, such as terracing, strip cropping, etc., may be required in specific areas determined by the Department as necessary to prevent potential surface runoff from entering or leaving the manure utilization areas. The Department may consider alternate methods of runoff controls that may be proposed by the applicant, such as berms."). 4 S.C. Code Ann. Regs. Parts 200.100(B)(9); 200.110(D)(1); and 200.110(F).

These provisions clearly indicate that when runoff is referred to in the Part 200 regulations it is in the context of discharge of manure into the environment. Nothing in the regulations indicate that grading and general stormwater runoff is considered. Indeed, information on these issues is not required to be included in the Animal Facility Management Plan. See 4 S.C. Code Ann. Regs. 61-43 Part 200.50. Further, the regulations do not contain any separate provisions like those for manure utilization fields and spray fields. Accordingly, the Court finds that interpretation that grading and stormwater issues are not reviewed under the Part 200 regulations is fully supported by the regulations when considered in their entirety.

C. Average Live Animal Weight

Petitioners contend that the 8.75 lb. average exit weight figure utilized in the Sumerel Plan is dated and inaccurate and that the birds will have an exit weight of at least nine (9) lbs. Based upon this figure, according to the Petitioners, the Sumerel operation is a "large animal feeding facility" subject to the 400 foot property line setbacks which cannot be accommodated on the proposed site.

The Court disagrees with Petitioners position on this issue and finds the testimony of Petitioners' expert unpersuasive and sufficiently challenged by the Respondents' witnesses. Dr. Parkhurst testified that the average exit weight of a broiler chicken over a sixty-three (63) day flock cycle would be at least nine (9) lbs. He pointed to his own very recent study in which he grew 80,000 birds over a sixty (60) day cycle which yielded an average exit weight of 9.37 lbs. per bird. But, Dr. Parkhurst did not present information regarding the conditions under which the flock was grown. For example the size of the barn and the type of feed provided to the birds. However, even if this information was presented, the Court would still have found Dr. Parkhurst's testimony unpersuasive since Dr. Parkhurst presented no testimony contradicting the average exit weight being required by Columbia Farms. Dr. Parkhurst testified that each integrator sets their own exit weight for their flocks based on factors including market forces and internal corporate factors.

In the Court's view, Dr. Parkhurst's testimony fails to show by a preponderance of the evidence that the average exit weight is inaccurate. Since the Permit mandates that the facility must be operated in accord with the CNMP, the fact that it requires removal of the birds when the average live exit weight reaches 8.75 pounds is a binding condition of the permit and is enforceable by the Department. Accordingly, the Court finds that the preponderance of the reliable evidence established that the 8.75 lbs. average exit weight figure utilized for the Sumerel CNMP is accurate and the proposed facility is correctly permitted as a small animal facility.

D. The Department's Review of the Application

Petitioners contend the Permit is invalid because the application was purportedly incomplete. To support this contention, the Petitioners set forth a litany of alleged deficiencies. Specifically they allege as follows: 1) nowhere within the CNMP and the Composting Plan indicates or establishes where a manure stacking shed for storage of such material would be located; 2) the Composting Plan fails to specify a clay of concrete pad or which model incinerator will be used; 3) the Composting Plan does not contain diagrams indicating how a hay bale composting system works, and 4) the Composting Plan lacks an adequate Odor and Vector Abatement Plan. "An adequate *de novo* review renders harmless a procedural due process claim of the lower administrative body." Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Office, 346 S.C. 158, 174, 551 S.E.2d 263, 274 (2001); see also Waste Mgmt. of Carolinas, Inc. v. S.C. Dep't of Health & Envtl. Contol, et al., 2008 WL 4659522 at * 3, Docket No. 07-ALJ-07-0429-CC (Sept. 4, 2008) ("since the ALC hears these cases de novo, after an evidentiary hearing on the merits of this case, the Court can factually and legally address these issues, and decide whether a permit should be issued according to the proper legal standards."). In this case, all parties were noticed and in fact appeared for a merits hearing that lasted two days. Each side was accorded latitude to present their case and each party made their case. Therefore, any procedural insufficiencies with the CNMP and the Composting Plan can be corrected by this Court based on the Court's view of the record before it.

With regard to the stacking shed, Mr. Chaplin testified that Part 200 does not have a requirement for a stacking shed, and that a producer can stack manure outside of the barns for up to three days without being covered. He also testified that because of cost many permittees wait until after they have constructed their facility and are in operation before applying for a stacking

shed permit because of NRCS's cost sharing program. Given these factors, the Court finds that the fact that neither the CNMP nor the Composting Plan contains information regarding the stacking shed is immaterial to the permit since it is not required by regulation.

With regard to whether a pad should be required under the hay bale composter, the Court finds that the Permit should specify that the composter must be placed upon a clay or concrete pad in accord with Part 200.100(B)(21) ("If the manure is stockpiled more than three (3) days, the manure shall be stored on a concrete pad or other approved pad (such as plastic or clay lined) and covered with an acceptable cover to prevent odors, vector attraction, and runoff."). Further, the Court finds that the Sumerels are not required to identify the model of incinerator that they intend to use. Part 200 provides that if they do not use a model already approved by the Department, they will have to apply for a permit from the Department Bureau of Air Quality before they could install and operate an incinerator. 4 S.C. Code Ann. Regs. 61-43 Part 200.40(F) and Part 200.140(C).

With regard to diagrams contained in the Composting Plan, the Court finds that the purpose of the illustrations is to provide a graphic representation of how the composting system should work. In reviewing the diagram in Figure 2-15, the Court finds that there is no indication that the illustration is not a hay bale composting system. In addition to the concrete pad and layers of manure and dead poultry, the illustration indicates that the poultry are to be placed on a layer of straw, which in turn is on top of a layer of manure. Further, the illustration indicates that the top-most layer is a layer of litter which acts as a cover. During her testimony, Ms. Shealy stated that the diagram illustrates the layering recommendation that is applicable to all types of composter, including hay bale composters. Based on the representations of composting systems described during the trial, the Court finds that this illustration does not appear to be that of a drum system. Therefore, the Court finds the illustrations adequate for their intended purpose.

Finally, with regard to the Odor and Vector Abatement Plans, the Court has previously discussed this in depth with regard to the CNMP. With regard to the Composting Plan, the Court finds the plans contained in the document more than adequate since Part 200.130, which governs the requirements for dead animal disposal has no requirements for such plans. See 4 S.C. Code Ann. Regs. 61-43 Part 200.50(B)(4) and (5).

Accordingly, the Court finds for the reasons set forth above, the procedural defects asserted by Petitioners are insufficient grounds upon which to deny the Permit.

E. Impact Upon Petitioners' Substantial Rights

Finally, Petitioners claim that allowing the Sumerel facility to be constructed and to operate will harm their quality of life and constitute a nuisance. These claims are unspecified and are cumulative to the specific issues presented above. The Court finds that these claims are at best speculative, as the facility has not been constructed or placed in operation. Further, the Court notes that the legislative purpose for the promulgation of the Standards for Permitting of Agricultural Animal Facilities is to set objective criteria for the Department and for courts reviewing Department permitting decisions to balance the competing interests of the public and the farming. Based upon the evidence presented at trial, the Court finds that the proposed Sumerel operation will not have detrimental effects upon Petitioners' substantial rights, including the quiet use and enjoyment of their property.

ORDER

Based upon the forgoing Findings of Fact and Conclusions of Law, the Court finds that Petitioners have failed to meet their burden of proof and have not shown by a preponderance of the evidence that the Department issued Permit No. 19647-AG in violation of 4 S.C. Code Ann. Regs. Part 200 or that the Department's decision: 1) constituted a violation of constitutional or statutory provisions; 2) was made upon unlawful procedure; 3) was affected by error of law; 4) is clearly erroneous in view of the reliable, probative, and substantial evidence; and/or 5) was arbitrary and capricious and an abuse of discretion; and 6) prejudiced Petitioners' substantial rights.

I further find and conclude that the Department has fully, correctly and completely complied with all statutory and regulatory prerequisites to the issuance of the subject permit.

Therefore based upon the foregoing,

IT IS HEREBY ORDERED that the issuance of Bureau of Water Agricultural Permit ND0088307, Permit Number 19,647-AG to Respondents Lisa Sumerel and Sumerel Poultry Farm by the South Carolina Department of Health and Environmental Control is **AFFIRMED.**

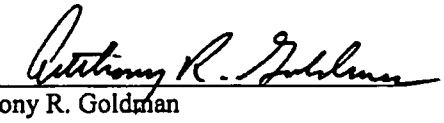
AND IT IS SO ORDERED.

John D. McLeod
Administrative Law Judge

January 12, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Anthony R. Goldman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



January 12, 2015
Columbia, S.C.

Anthony R. Goldman
Judicial Law Clerk

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Rick Still, Donice Still, Christine Orr and Terry Orr, Petitioners, vs. South Carolina Department of Health and Environmental Control and Lisa Sumerel and Sumerel Poultry Farm, Respondents.	Docket No. 13-ALJ-07-0395-CC **MOTION TO RECONSIDER**

COPY

The Petitioners, Rick and Donice Still and Christine and Terry Orr (*hereinafter collectively* "Petitioners") by and through their undersigned attorney, file this motion and hereby move this Court pursuant to Rule 29(d) of South Carolina Rules of Procedure for the Administrative Law Court and Rule 59(e) of the South Carolina Rules of Civil Procedure, to reconsider, alter, or amend the Court's Final Order and Decision entered January 12, 2015 by the Honorable John D. McLeod. (Exhibit A).

Petitioners' motion is made upon the following grounds:

1. The Court's findings of fact and conclusions of law on the issue of live animal weight is contradicted by consideration of the record as a whole and affected by an error of law.

2. The Court's conclusion that failure to ask Columbia Farms what live animal weight it requires was fatally undermines Petitioners' position on the issue was in err.

3. The significantly greater weight of reliable probative evidence on the issue of live animal weight was offered by Petitioners' through the expert testimony of Dr. Parkhurst who opined that the process (exit) weight for the Sumerel Poultry farm would be at least 9 lbs.

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SC ADMIN. LAW COURT

4. Joy Shealy's testimony on the issue of average live weight in the CNMP constitutes double hearsay that cannot be relied upon in rendering a decision. SCRE 805.

5. The Court's determination that the Sumerel Poultry Farm is a "small animal feeding operation" is contradicted by the regulatory definition of what constitutes a "small animal feeding operation" under S.C. Reg. 61-43 Part 50(HHH).

6. The Court's exclusion of Dr. Parkhurst' s AgraMetrics testimony was erroneous and prejudicial to the Petitioners as it provided further evidence of the inaccuracy of the 8.75 lbs. process weight figure utilized in the CNMP.

7. The Court's finding that DHEC considered mandated factors under S.C. Reg. 61-43 Part 200.70(F) is based on erroneous finding that the Review Checklist reflected consideration of all factors as nothing in Review Checklist shows Department considered the "slope of the land" in its evaluation. *See* S.C. Reg. 61-43 Part 200(F)(7).

8. Dr. Parkhurst' s testimony that the site once graded could be a suitable operation was not an opinion as to water impacts and does not undermine Dr. Hargett's expert opinions as to potential water impacts of the Sumerel operation.

Petitioners make this Motion pursuant to Rule 29(d) South Carolina Rules of Procedure for the Administrative Law Court and Rule 59 of the South Carolina Rules of Civil Procedure and respectfully requests that this Court reverse its ruling and issue an Amended Order ordering that DHEC's decision to issue Permit No. 19647-AG be reversed and the Permit denied.

This motion will be based upon the pleadings, depositions, affidavits, applicable law, and such other documentation or memoranda as may be submitted prior to any hearing on the motion.

(signature page to follow)

Respectfully submitted,

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Rick Still, Donice Still, Christine Orr and Terry Orr, Petitioners, vs. South Carolina Department of Health and Environmental Control and Lisa Sumerel and Sumerel Poultry Farm, Respondents.	Docket No. 13-ALJ-07-0395-CC **MEMORANDUM IN SUPPORT OF MOTION TO RECONSIDER**

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JAN 22 2015
SC ADMIN. LAW COURT

The Petitioners, Rick and Donice Still and Christine and Terry Orr (*hereinafter collectively* "Petitioners") by and through their undersigned attorney, hereby submit this Memorandum in Support of Petitioners' Motion to Reconsider the Court's Final Order and Decision entered January 12, 2015 by the Honorable John D. McLeod.

A. Average Live Animal Weight

The standard of proof used by the Court in weighing the evidence and making a decision on the merits during a contested case proceeding is the preponderance of the evidence. S.C. Code Ann. §§ 1-23-330(1), 600(A)(5) (Supp. 2008). Petitioners have the burden of proving their assertions that the Department's decisions were in error under the statutory and regulatory standards. *See Leventis v. South Carolina Dep't of Health and Envtl. Control*, 340 S.C. 118, 132-33, 530 S.E.2d 643, 651 (Ct. App. 2000). "Findings of fact based upon a 'preponderance' of the evidence are those reflected by the greatest 'weight, amount, credibility or truth' as reflected by the whole of the evidence before the court." *South Carolina Coastal Conservation League v. South Carolina Dept. Health and Envt'l Control*, 2003 WL 22873168 at *18 (Jan. 9, 2033) *quoting Frazier v. Frazier*, 228 S.C. 149, 89 S.E.2d 225, 235 (1955). The preponderance of the

evidence is "[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other." BLACK'S LAW DICTIONARY (9th ed. 2009). "The preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in the mind the belief that what is sought to be proved is more likely true than not true." SANDERS § 9.5 *Quantum of Evidence in Civil Cases* (1999) *citing Frazier v. Frazier*, 228 S.C. 149 (1955). In general, "expert opinion evidence is to be considered or weighed by the triers of the facts like any other testimony or evidence . . . the triers of fact cannot, and are not required to, arbitrarily or lightly disregard, or capriciously reject, the testimony of experts or skilled witnesses, and make an unsupported finding to the contrary of the opinion." 32A C.J.S. EVIDENCE § 727, at 82-83 (1996).

The Court erred in concluding that "the preponderance of reliable evidence established that the 8.75 lbs. average exit weight figure utilized for the Sumerel CNMP is accurate and the proposed facility is correctly permitted as a small facility." (Order at 33).

The Petitioners provided expert testimony of Dr. Carmen Parkhurst who testified that the 8.75 average live weight figure utilized in the Sumerel CNMP was inaccurately low. He offered his expert opinion that the average process weight across *all integrators* is at least 9 pounds and that *all integrators* grow birds weighing within hundredths of a pound of each other. (Tr. pp. 328-29). Respondents did not provide expert testimony or any reliable evidence to contradict Dr. Parkhurst' s expert opinion on this issue. Rather they provided double hearsay testimony from Joy Shealy who could not testify as to the source of the 8.75 figure other than stating that she got

it from her associate Leon Fulmer who obtained it from Mr. Sumerel who "she believed" got it from Columbia Farms. Ms. Shealy's assumption based upon double hearsay testimony pales in comparison to Dr. Parkhurst' s detailed expert opinion on the issue.

The Court's Final Order found that Petitioners failed to show the 8.75 average live weight figure utilized in the CNMP was inaccurate surmising:

> Dr. Parkhurst' s testimony established that each integrator, the company that owns the birds grown by the farmer, sets their own exit weight for the farms' flocks, and that the exit weight depends on the market and internal corporate factors for each integrator....Since it is the Petitioners' burden to establish that the calculations in the CNMP are incorrect, the Court finds that Petitioners' failure to ascertain from the integrator what exit weight they are requiring for the Sumerel facility is fatal to their claim.

(Order at 19).

The Court's conclusion regarding exit weight and the basis for it ignores the record as a whole and is not based upon the greater weight of reliable probative evidence. The Court's reasoning that Dr. Parkhurst testified the integrator sets the exit weight and he did not ask Columbia Farms what it required for its process/exit weight ignores his testimony as a whole. Namely, Dr. Parkhurst testified that the average process weight across *all integrators* is at least 9 pounds and that *all integrators* grow birds weighing within hundredths of a pound of each other. (Tr. pp. 328-29)("What one integrator has the other ones within a few hundredths of a point of being the same."). Therefore Petitioners did in fact offer testimony on Columbia Farms exit weight via the expert testimony of Dr. Parkhurst which was based upon reliable and identifiable sources rather than double hearsay testimony offered by Respondents.

In addition, Petitioners respectfully disagree with the conclusion that Petitioners' position is fatally undermined because they did not ask Columbia Farms what exit weight they require and presumably offer that figure to the Court. (Order at 19). Petitioners respectfully disagree

that not submitting what would have been blatant hearsay testimony to the Court negates Dr. Parkhurst' s expert opinion on the issue. His expert opinion that the process weight of the birds would be at least 9 lbs. was based upon clearly articulated facts and his knowledge and experience from decades in poultry science; including the results of his own recently completed study. (Tr. pp. 290-94, 324-26, 328-30). Dr. Parkhurst had no need to speak with Columbia Farms about this issue as he is more than equipped with the knowledge to offer his expert opinion on process weight. His testimony concerning process weight is much more reliable and probative evidence than a statement from Columbia Farms, who as the integrator has an interest in the permit being issued. Even if Dr. Parkhurst had asked and been given a response from Columbia Farms President his testifying to that figure would have been inadmissible hearsay testimony. Therefore, Dr. Parkhurst' s testimony on this seminal issue should not be ignored because he did not speak with the Columbia Farms President.

Furthermore, a Columbia Farms representative's statement of what exit weight it requires would be inconsequential as Dr. Parkhurst (as Petitioners' expert) opined that the 8.75 average exit weight in the Sumerel CNMP was inaccurately low. That expert opinion was based upon Dr. Parkhurst' s extensive experience in and knowledge of the industry developed over his long career. Dr. Parkhurst testified that a 63 day flock cycle would yield at least a 9 lbs. bird. He also testified that the average process weight across *all integrators* is at least 9 pounds and that *all integrators* grow birds weighing within hundredths of a pound of each other. (Tr. pp. 328-29)("What one integrator has the other ones within a few hundredths of a point of being the same."). Assuming Columbia Farms told Dr. Parkhurst that it requires an 8.75 lbs. exit weight, his expert opinion would remain unchanged. The conclusion that Petitioners' choosing not to ascertain what Columbia Farms representatives say its required exit weight is fatally undermines

scientific evidence based expert testimony was in err. It is not Petitioners' obligation to seek out and obtain statements from the integrator, who has an interest in the permit being upheld, that would potentially rebut their expert's testimony. Furthermore, it was not shown that Columbia Farms actually provided that figure. Ms. Shealy as the professional engineer who signed off on the CNMP herself could not identify the origin of the 8.75 figure beyond presuming Mr. Sumerel obtained it from Columbia Farms.

Also the testimony of Joy Shealy regarding Columbia Fars exit weight constitutes double hearsay making it patently unreliable and an inappropriate basis for findings of the Court. S.C. R. Evid. 805, 802-804. The Court's Order states that "Ms. Shealy testified that the integrator determines the average exit weight of the birds and informs the grower. Ms. Shealy stated that she and Mr. Fulmer got the average exit weight figure from the grower, and in this case, she believed Mr. Sumerel got the figure from Columbia Farms." (Order at 19);(Tr. p. 466-67)("I do not get it specifically and directly from Columbia Farms...I got it from Mr. Sumerel or my – Leon got it from Mr. Sumerel, but they get that information from their desired integrator."). Ms. Shealy, Mr. Fulmer, nor the Respondents could say how up to date the 8.75 exit weight figure was. Such an important and impactful piece of information needs to come from a reliable and identifiable source. Third hand/double hearsay testimony is the poster child of unreliableness and should not form the basis for any of the Court's findings; certainly not on this seminal and determinative issue. This is especially true when Ms. Shealy's testimony is weighed against Dr. Parkhurst' s. Ms. Shealy's testimony on average live weight constitutes double hearsay based upon her assumption that Mr. Sumerel got the figure from Columbia Farms. In contrast, Dr. Parkhurst' s testimony that the average process weight across *all integrators* is at least 9 pounds and that *all integrators* grow birds weighing within hundredths of a pound of each other is based

upon reliable and identifiable sources, including his decades of experience and own recently completed study.

Therefore, the Court erred in concluding that "the preponderance of reliable evidence established that the 8.75 lbs. average exit weight figure utilized for the Sumerel CNMP is accurate and the propose facility is correctly permitted as a small facility." (Order at 33). The most reliable evidence of average live weight was Dr. Parkhurst' s expert testimony which stated the 8.75 figure utilized was inaccurately low. Respondents provided essentially nothing on this issue to contradict Petitioners' position beyond Ms. Shealy's presumption that Mr. Sumerel obtained the figure from Columbia Farms.

In addition, the Court's exclusion of Dr. Parkhurst' s testimony regarding the AgraMetrics report was in err and prejudicial to the Petitioners as that testimony provided further evidence of the inaccuracy of the 8.75 lbs. process weight figure utilized in the CNMP.

The Sumerel CNMP contains a "Basic Operation Description" which provides a summary type overview of the Sumerel operation including a sentence that reads "[t]he birds will be brought into the houses as chicks and are confined for a period of 63 days or until they reach an exit weight of eight and three quarter (8.75) pounds." (Joint Exh. 1 at 1). On cross examination Petitioners explored the issue further with Mr. Fulmer. Mr. Fulmer testified that "the [the integrator] *don't necessarily dictate the exact weight*, but they will determine *exactly when* they want the birds pulled from the farm, which normally will then dictate the live weight coming out." (Tr. p. 416)(*emphasis added*). On cross examination Petitioners' attorney pressed Mr. Fulmer on the issue, asking for details on how an integrator would determine the average weight of a flock had reached the 8.75 mark and whether and how they would pull the birds before the end of the scheduled grow cycle. (Tr. pp. 416-420). Mr. Fulmer provided insufficient

detail or explanation of how this would be the case in general and for the Sumerel facility. Regardless, the capacity of a facility determines whether it is a "small" or "large" animal facility per the regulatory definitions of those terms. "'Large Animal Facility' means an animal facility that has a capacity for more than 500,000 pounds of normal production animal live weight at any one time." S.C. Reg. 61-43 Part 50(NN). "'Small Animal Facility' means an animal facility that has a capacity for 500,000 pounds of normal production animal live weight or less at any one time." S.C. Reg. 61-43 Part 50(HHH). Per the regulatory definition the Sumerel operation has the capacity for over 500,000 lbs. of normal production weight as it is slated to house 109,6000 birds at any one time. (J.E. 1 at DHEC 20). Therefore, whether the Sumerels actually have the birds hauled off when they reach 8.75 lbs. is inconsequential as the operation remains a "large animal facility" per Part 50(NN) because of its capacity.

B. Water Impacts

The Court's Order concludes that Dr. Parkhurst' s testimony that if the necessary grading for the Sumerel operation is done it could be suitable facility undermines Dr. Hargett's testimony on this issue was in err. Dr. Hargett was the only witness qualified as expert on water impacts by the Court. (Tr. pp. 128-29). His testimony is determinative on the issue of water impacts. Dr. Parkhurst was qualified as expert in animal feeding operations, poultry science and waste management. (Tr. pp. 274-76). The testimony cited by the Court is Dr. Parkhurst opining that if the Sumerels are willing to spend the money on grading then the site could be a "safe and functioning poultry farm." (Tr. pp. 311-12; Order at 16-17). This was not an opinion that grading would or would not have impacts on the receiving waters but that grading could provide for a functioning poultry facility. Dr. Parkhurst' s testimony therefore does not undermine Dr. Hargett's as to water impacts of the Sumerel operation.

C. Permitting Process

The applicable regulation lists mandated factors the Department must consider in evaluating a proposed animal feeding operation site including taking into account the "slope of the land." S.C. Reg. 61-43 Part 200.70(F)(7). The Court ruled that Petitioners' failed to show DHEC did not consider mandated factors under 200.70(F). The Court based this conclusion upon its reasoning that the Department's Review Checklist shows DHEC considered each of the regulatory required water quality impacts and determined no additional setbacks were necessary. (Order at 17, 29-30). The Department's Review Checklist does not show it considered the mandated "slope of the land" factor listed under 200.70(F)(7) as a required consideration. (J.E. 5). This is an impactful factor that, as Petitioner's water impact expert testified, is necessarily altered by extensive grading necessary for facility and therefore grading plans are necessary to take into account.

For the foregoing reasons, Petitioners respectfully ask that the Court reverse its original ruling and issue an Amended Order ordering that DHEC's decision to issue Permit No. 19647-AG be reversed and the Permit denied.

(signature page to follow)

Respectfully submitted,

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Rick Still, Donice Still, Christine Orr and Terry Orr, Petitioners, v. South Carolina Department of Health and Environmental Control, Lisa Sumerel, and Sumerel Poultry Farm, Respondents.	DOCKET NO. 13-ALJ-07-0395-CC **CERTIFICATE OF SERVICE**

This is to certify that I did cause on this 21st day of January 2015, a copy of the **Petitioners' Motion to Reconsider and Memorandum in Support of Motion to Reconsider** to be served in the above-entitled matter on the person(s) listed below by enclosing a copy of same in an envelope with sufficient postage thereon prepaid in the United States mail, addressed as follows:

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Columbia, SC 29201

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FILED
JAN 22 2015
SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Rick Still, Donice Still, Christine Orr and Terry Orr, Petitioners, vs. South Carolina Department of Health and Environmental Control and Lisa Sumerel and Sumerel Poultry Farm, Respondents.	Docket No. 13-ALJ-07-0395-CC **Respondent South Carolina Department of Health and Environmental Control's *Response to Petitioners' Motion for Reconsideration***

Respondent South Carolina Department of Health and Environmental Control ("SCDHEC" or "Department"), through its undersigned counsel, hereby responds to the Petitioners' *Motion for Reconsideration* of the Final Order and Decision ("FOD"), which was dated and filed on January 12, 2015. In its motion, Petitioners seeking to have this Court reconsider, alter, or amend the FOD citing in its motion eight alleged errors in the FOD. Most of these claims were raised in Petitioners' Proposed Final Order and Decision; however, one issue is being raised for the first time in this motion. In the Memorandum of Law in Support of their motion, Petitioners place the eight alleged errors into three categories: 1) average live animal weight; 2) water impacts; and 3) the permitting process. As will be shown below, each of the claims raised by Petitioners are without merit and do not establish a basis to alter, amend, or modify the FOD.

I. Average Live Animal Weight

Petitioners allege that the conclusion in the FOD that the exit weight of each broiler flock will be 8.75 pounds as listed in the Comprehensive Nutrient Management Plan ("CNMP") is against the weight of the evidence presented during the trial. Specifically, they allege that the figure is inaccurate because their expert Dr. Carmen Parkhurst testified that he believed broiler are

now being grown to at least nine pounds and that the 8.75 pound figure is based upon double hearsay in violation of Rules 802-805, South Carolina Rules of Evidence ("SCRE"). Neither of these allegations has merit.

With regard to Dr. Parkhurst's testimony on the exit weight of the flock, Petitioners' make several arguments. First, they claim that Dr. Parkhurst testimony is more probative because he purportedly testified that the "average process weight across *all integrators* is at least 9 pounds and that *all integrators* grow birds weighing within hundredths of a pound of each other." Petitioners' Memorandum of Law p. 3 (emphasis in original). This claim is belied by other statements made by Dr. Parkhurst on direct and cross-examination. Specifically, on direct Dr. Parkhurst engaged in the following colleague:

> Q. And what does the plan say that processing weight is? And you can - - if you want a reference it's DHEC 20 had a calculation on there.
>
> A. All right. I see it.
>
> Q. And what is the plan that was submitted to DHEC say the processing or exit weight?
>
> A. It appears that it's 8.75.
>
> Q. Do you believe that's an accurate processing weight?
>
> A. It's my opinion that this plan is a **little bit dated**. Chickens tend to get bigger over time through genetic selection. As an example, I just completed on March 1st a study with 80,000 birds and for another integrator, and the average was 9.37. And that was the average of the birds sold that week.
>
> Q. So in your expert opinion and expertise, the process weight is going up to be on average what?
>
> A. It's going to continue to go up, and I suspect with new houses and - - that people are going to get above nine pounds average weight.

Q. **And can you say with certainty it's going to go up over nine pounds based on new technology and progression?**

A. **I can't say with certainty. I think it's most likely that the will or they will or they're not going to be in the top third of the growers.**

(Tr. pp. 291-92 (emphasis added).

Similarly, on cross examination Dr. Parkhurst made the following statements:

Q. And you would agree that different integrators - - and integrators are the companies that actually own the birds - - grow their - - or they want their farmers to grow birds of various sizes, correct?

A. That's correct.

Q. **And various sizes within a category of birds like broilers? Not all integrators are their broilers going to be at basically the same weight; wouldn't you agree with that?**

A. **It depends on the end market.**

Q. **It would depend on the market, and it would also depend on corporate issues for each individual integrator, correct?**

A. **That is correct.**

Q. So Columbia Farms may want an eight pound bird, Perdue may want a ten pound bird; isn't that correct?

A. That's possible.

* * *

Q. Isn't it true that the calculations that were submitted in the plan are the ceiling for the amount of birds, the total, the maximum amount limited available for them; is that correct?

A. That is correct as - - as in the permit.

Q. And they could operate with less than the maximum?

A. Yes, sir.

(Tr. pp. 315-16) (emphasis added).

Q. Okay. And the average live weight you have stated you think then could be higher, correct?

A. That is correct.

Q. But you don't know for certain?

A. **I do not know for certain.**

(Tr. p. 328) (emphasis added).

These colloquy show that Petitioners' assertions that Dr. Parkhurst's testimony established that the exit weight listed in the CNMP is inaccurately low and that there is no need for Dr. Parkhurst to have made inquiries with Columbia Farms which are not supported by the Record. Dr. Parkhurst's statement that all integrators are making nine plus pound birds is based on two factors, whether the integrator is in the top third of the industry and corporate issues affecting individual integrators. (Tr. p. 292). Despite articulating the importance of these factors to determining the exit weight an individual integrator might set, nowhere in Dr. Parkhurst's testimony does he identify whether Columbia Farms is in the top third of growers. If Columbia Farms is not within the top third of integrators, it is unlikely to request that its farmers grow their flocks to nine pounds or more. In addition, without having obtained data specifically about Columbia Farms' and what size bird they were requesting farmers to produce in 2012, the year in which the CNMP was prepared, and in at the time of trial, Dr. Parkhurst correctly stated that he could not state the exit weight Columbia Farms was asking for its farmers to grow the birds, to do so would be mere speculation.

Moreover, contrary to Petitioners' assertion that if Dr. Parkhurst had made inquiries at

Columbia Farms about the exit weight figure it would have been inadmissible hearsay is an erroneous statement of the hearsay rule. Rule 803, SCRE lists 23 exceptions of which at least two, (6) records of regularly conducted activity and (17) market reports and commercial publications, might be applicable depending on the form in which Dr. Parkhurst obtained the information. Further, Rule 703, SCRE expressly permits an expert to testify based upon evidence not ordinarily admitted, e.g., hearsay, if the evidence is the type that expertise in the field would reasonably rely upon to form an opinion or inference.

Finally, as noted by Dr. Parkhurst, the plans do not reflect the production exit weight of the birds at the time of trial but rather at the time that the CNMP was submitted to the Department for review almost two years earlier in September 2012. (*See* Joint Exhibit ("JE") 1 pp. 13, 14, 20). Therefore, the Court correctly determined that the evidence presented during the trial supported its conclusion that each integrator sets the exit weight of the birds depending on market and internal corporate factors, and that without testimony by Petitioners to the contrary, the 8.75 weight was appropriate to establish that the Sumerel facility was a small facility under the Department's regulations.

Finally, Petitioners' double hearsay claim is meritless because it is an unpreserved claim and because before the preparer of the CNMP, Joy Shealy, P.E., had testified, the 8.75 pound figure had been admitted into evidence. "It is axiomatic that an issue cannot be raised for the first time in a post-trail motion." *Bank of New York v. Sumter County*, 387 S.C. 147, 189, 691 S.E.2d 473, 479 (2010) citing *Dixon v. Dixon*, 362 S.C. 388, 399, 608 S.E.2d 849, 854 (2005). Here, Ms. Shealy, in response to questioning by Petitioners' counsel, testified that the information about the 8.75 pound exit weight figure came from her employee and partner, Leon Fulmer, who received the information from the proposed operator of the farm, Michael Sumerel. (Tr. 466-67). The

record shows that at no time during Petitioners' counsel's colloquy with Ms. Shealy on this issue did counsel raise an objection to the testimony on the ground that it was barred by Rules 802-803, SCRE or any other ground. (Tr. 466-69). Indeed, Petitioners' counsel did not object to any testimony provided by Ms. Shealy. (*See* Tr. 457-72, 478-480). Since Petitioners did not raise a timely and contemporaneous objection to the hearsay objection to Ms. Shealy's testimony, they are barred from doing so in their Motion to Reconsider. *See Bank of New York*, 87 S.C. at 189, 691 S.E.2d at 479.

Moreover, the 8.75 pound figure was already admitted into evidence before Ms. Shealy testified. During questioning of Chrissy Matthews, Petitioners' attorney sought admission of JE 1. Page 17 of the CNMP and the attached Standard Application Form which expressly indicate that the facility will consist of four houses with each house containing 27,400 broilers that will enter the houses at 0.25 pounds each and will exit at 8.75 pounds. (JE 1, DHEC 20, 31). Joint Exhibit 1 was admitted into evidence without objection or any conditions or limitations. (Tr. p. 20). Nothing prevented Petitioners' counsel from requesting that Court admit the document without limitations, particularly since it was obviously the position of Petitioners to attack the accuracy of the figure reflecting the size of birds that Columbia Farms wanted the Sumerels to grow. By admitting the exhibit without objection, Petitioners waived their right to challenge the 8.75 pound figure on the grounds that it does not accurately reflect the exit weight that Columbia Farms wanted the Sumerel to grow the birds. *Cogdill v. Watson*, 289 S.C. 531, 536, 347 S.E.2d 126, 130 (Ct. App. 1986) ("failure to make an objection at the time evidence is offered constitutes a waiver of the right to object") citing *McCreight v. MacDougall*, 248 S.C. 222, 226, 149 S.E.2d 621, 622 (1966). Accordingly, this claim is meritless.

Similarly, Petitioners' third claim that the Court's exclusion of the Dr. Parhurst's testimony

based on the AgraMetrics report is in error and is not support by the facts presented to the Court. In a sidebar with the Court, the Department explained that it objected to the report on the ground that Petitioners failed to turn over the report in discovery despite the fact that Department's Requests for production expressly requested, in pertinent part, "[a]ll documents provided to or used by any expert, whether or not Petitioners intend to call that person as witness regarding the following:

> c. relied upon by said expert and/or anyone acting pursuant to said expert's direction in forming said expert's opinion in this matter; and
>
> d. considered, consulted, reviewed, relied, or used by said expert and/or anyone acting pursuant to said expert's direction with regard to this case.

(Respondent SCDHEC's Request for Production of Documents to Petitioners, dated April 8, 2014, ¶¶ 6 (c) and (d)).[1][2] The Department further argued that because Petitioners failed to turn over the report or disclose its existence in the Privilege log it prejudiced by not being prepared for cross-examination. Based on the Department's arguments and Petitioners' explanation, the Court "sustained the [Department's] objection in respect to the third-part studies, which think we've earlier referred to as being in the possession of Columbia Farms, but I overrule the objection as to whatever he [(Dr. Parkhurst)] may tell from his own experience and knowledge as an expert." (Tr. p. 307).

In raising this claim against the Court's exclusion of testimony based on the failure to turn over discovery, Petitioners cite no fact or law supporting their position. Instead, merely claim that the Court's decision was prejudicial to them because it purportedly bolstered their claim that the exit weight was inaccurate. (Motion for Reconsideration p. 6). Petitioners' claim of prejudice is

1 A copy of the Department Requests for Production is attached hereto as Exhibit 1.
2 The Department present copy of its Document Requests during the sidebar.

meritless since the exclusion of the evidence was to address a violations of its duty to provide documents or to acknowledge their existence and to explain the grounds for withholding them. Moreover, the Court's ruling did not exclude all evidence by Dr. Parkhurst on the subject, instead it limited it to evidence that was wholly reliant upon the information contained in the report, which had not been turned over to the Department. Indeed, the party that was prejudiced in this matter was not Petitioners, rather it was the Department, who was caught off guard by testimony based substantially on the information contained in the report, which the Department requested, was entitled to receive, and was improperly withheld. Therefore, this claim is without merit.

Finally, Petitioners' fourth claim that the Court erred in determining that the Sumerel Farm is a small facility because the regulatory definition of a large facility is determined by its "capacity" is without merit. Specifically, Petitioners' claim that the farm is a large facility by focusing on the term "capacity" in the regulatory definition for "Large Animal Facility" and "Small Animal Facility." "'Large Animal Facility' means an animal facility (excluding swine facilities) that has a capacity of more than 500,000 pounds of normal production animal weight at any one time." 4 S.C. Code Ann. Regs. 61-43 Part 50(NN) (2012). "'Small Animal Facility' means an animal facility (excluding swine facilities) that has a capacity of less than 500,000 pounds of normal production animal weight at any one time." 4 S.C. Code Ann. Regs. 61-43 Part50(HHH) (2012). Petitioners claim that the Sumerel Farm is a large facility because although the CNMP limits the number of birds to a maximum of 109,600 birds at one time, the facility nevertheless has the capacity to have a flock with a live animal weight greater than 500,000 pounds. This argument, however, omits the fact that the Department has interpreted the undefined term "capacity" as the the sum of the authorized exit weight of each bird times the total number of birds, which in this case is 8.75 pounds x 109, 600 = 493,200 pounds. (*See* JE 3 p. DHEC 1). Accordingly, since

the maximum normal live weight is under the 500,000 pound threshold, the Sumerel Poultry Farm's capacity makes it a regulatory Small Animal Facility.

II. Water Impacts

Petitioners claim that the Court's conclusion that Dr. Parkhurst's testimony undermined the testimony of Dr. Hargett is without merit. Petitioners qualified Dr. Parkhurst, *inter alia*, as an expert in all aspects of the operation of poultry facilities. (Tr. pp 274-76). As an expert in poultry facilities and their operation, Dr. Parkhurst has the experience to render an opinion on whether the Sumerel Poultry Farm site could be graded in such a way as to allow it to operate within the confines of the regulations. In fact, Dr. Parkhurst accompanied Dr. Hargett during the inspection visit of the site in July 2014. Also, it is important to note that Dr. Hargett never testified that the site could not be graded so that stormwater runoff is controlled. Rather, he expressed concern about the large amount of cut and fill that would be needed to grade the site. (Tr. pp. 139-41).

Moreover, the fact that the expertise of Petitioners' experts overlap on this issue does not render the Court's decision invalid. As noted by the Court in the FOD, "[t]he trier of fact may give an expert's testimony the weight he or she determines it deserves," citing *Florence County Dep't of Soc. Servs. v. Ward*, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992), and "the trier of fact may accept the testimony of expert over that of another," *S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co.*, 308 S.C. 216, 220-21, 417 S.E.2d 586, 589 (1992). Accordingly, Petitioners claim is without merit and should be rejected by the Court.

III. Permitting Process

Petitioners contend that the FOD is in error because the Department allegedly did not consider slope in evaluating the proposed animal feeding operation site. Specifically, Petitioners claim that contrary to the FOD, the Review Checklist filled out by the Department's reviewer,

William Chaplin, failed to show that the Department considered slope of the land in it water quality review as required by the regulation. This argument misconstrues the testimony presented by Mr. Chaplin on the subject of runoff and water quality as follows:

> Q. In doing your evaluation does the Department know where the water runoff is going to go in this operation?
>
> A. There are topo maps included with the plan, but as far as where the water's going to run off, it's difficult to tell because the site's going to be graded at some point prior to them building these houses.

(Tr. p. 207)

> Q. As part of 61-43, is the Department charged with looking at stormwater in issuance of an agricultural permit?
>
> A. No, sir.
>
> Q. Okay. Does the Department, in fact, look at stormwater for permitted agricultural facilities before they're built?
>
> A. A stormwater permit is required prior to construction, and when I mail out a permit, I mail out a stormwater information sheet, and I also mail out a NOI for the drilling of their wells on the property.
>
> * * *
>
> Q. And that before they actually engage in construction, they have to apply for and obtain stormwater coverage under the stormwater general permit; isn't that correct?
>
> A. Correct.
>
> Q. And that permit is not reviewed by you; isn't that correct?
>
> A. That is correct.
> Q. It is reviewed by a different section, correct?
>
> A. It is.
>
> Q. The stormwater permitting section?

A. Yes sir.

Q. And that section has different review time period, correct?

A. I am not familiar with that, but I know they do have a tighter time frame than I do.

(Tr. pp. 223-26).

Q. Now there are no manure utilization areas, correct?

A. No, there are not.

Q. Okay. So the only expected runoff would be stormwater, correct?

A. Yes, that is correct.

Q. And stormwater will be addressed in a separate permit, correct?

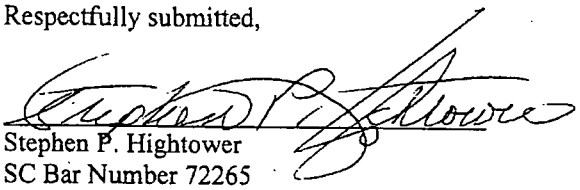
A. Correct.

(Tr. p. 248). Cumulatively, this testimony shows, that since this facility had no manure utilization areas, a fact not disputed by Petitioners, Mr. Chaplin did not consider runoff since the only runoff this facility would produce is from stormwater. Stormwater runoff is not reviewed by the Agricultural Permitting Section as part of its review of facility applications. Rather it is reviewed by a different section within the Department normally after the issuance of the agricultural permit at the time the permittee seeks permission to construct the facility. At that time, the Department reviews grading information and stormwater runoff information and determines where the facility can be granted coverage under the State's stormwater general permit. Thus, the FOD accurately reflects the evidence contained in the Record. Accordingly, Petitioner's claim is without merit.

CONCLUSION

For the forgoing reasons and the reasons set forth in the Final Order and Decision, Petitioners Motion for Reconsideration should be denied.

Respectfully submitted,



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February 5, 2015
Columbia, South Carolina

EXHIBIT 1

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Rick Still, Donice Still, Christine Orr and Terry Orr, Petitioners, vs. South Carolina Department of Health and Environmental Control and Lisa Sumerel and Sumerel Poultry Farm, Respondents.	Docket No. 13-ALJ-07-0395-CC **Respondent South Carolina Department of Health and Environmental Control's *Request for Production of Documents to Petitioners***

TO: JOSEPH O. SMITH, ATORNEY FOR PETITIONERS:

Pursuant to Rules 26 and 34, South Carolina Rules of Civil Procedure and Rule 21, Rules of Procedure of the Administrative Law Court, the Respondent South Carolina Department of Health and Environmental Control ("DHEC" or the "Department") requests that the Petitioners serve a written response to this Request for Production of Documents within thirty (30) days and produce copies of the documents and things hereinafter described to undersigned counsel at the Office of the General Counsel, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201-1708. This request shall be deemed continuing and shall require supplemental response if the Petitioner obtain further documents or materials before the time of trial.

DEFINITIONS

1. "You," "your," and/or "Petitioners" refers to Petitioners collectively: Rick Still, Donice Still, and Christine Terry Orr, and their current or former agents, attorneys, representatives and all other persons who have acted or purported to act on its behalf pursuant to

contract or otherwise in any of the matters covered by this matter, whether or not it is contended that such entity or person had authority to act on behalf thereof.

2. "SCDHEC" or the "Department" refers to Respondent South Carolina Department of Health and Environmental Control.

3. Respondents Sumerel refers to Respondent Lisa Sumerel and Sumerel Poultry Farm collectively.

4. Facility refers to Respondent Sumerel Poultry Farm.

5. The term "matter" refers to Petitioners' individual or collective objection or opposition to the decision dated June 14, 2013, to issue Permit Number 19,647-AG to Sumerel Poultry Farm for the construction of four (4) new poultry broiler houses, located at Poole Town Road, Laurens, South Carolina.

5. The terms "concerning," "concerns," or "related to" means relating to, referring to, constituting, comprising, containing, setting forth, showing, disclosing, describing, explaining, summarizing, mentioning, or in any way referencing, directly or indirectly.

6. "Document" means written, printed, typed, recorded or graphic matter if every type and description, however and by whomever prepared, produced, reproduced, disseminated or mated, whether electronically stored or in hard copy, now or formerly in Petitioners' possession, custody or control, including but not limited to letters, correspondence, electronic mail, telegrams, memoranda, records, minutes, contracts, agreements, interoffice communications, microfilm, microfiche, bulletins, circulars, pamphlets, studies, reports, diagrams, maps, plats, sketches, notices, diaries, calendars, summaries, books, messages, instructions, or work assignments, notes, notebooks, drafts, data sheets, data compilations, worksheets, computer data compilations, statistics, speeches, other writings and tape, magnetic,

photographic, electronic, and sound recordings. The term "Document" shall include each copy which is not identical to the original or to any other produced copy.

7. "Person" or "persons" as used herein means all individuals and entities, including all natural persons, corporations, partnerships, ventures or other business associations, societies, associations-in-fact, all federal, foreign, state, local or other governmental entities, and all legal entities, including all members, officers, employees, agents, representatives, attorneys, successors, predecessors, assigns, divisions, affiliates, and subsidiaries.

8. "Permit" refers to Permit Number 19,647-AG issued to Sumerel Poultry Farm for the construction of four (4) new poultry broiler houses.

9 "And" and "or" shall also be construed either disjunctively or conjunctively as necessary to bring within the scope of this request all documents that might otherwise be construed to be outside its scope.

10 Whenever the term "all" is used herein, it shall also be construed to mean "any" and "each," and vise-versa.

11 Whenever the term "including" is used herein, it shall be construed to mean "including, but not limited to."

12 The use of the singular shall also be than to include the plural, and vice-versa, so as to bring within this request documents that might otherwise be excluded.

13 Whenever a verb is used in one tense, it shall also be taken to include all other tenses, so as to bring within this request documents that might otherwise be excluded.

INSTRUCTIONS

1. In responding to these Requests for Production of Documents, please furnish documents available to, under the control of, or in the possession of you or your representatives,

servants or agents, including your attorney or any agent or investigator for you or your attorney, unless privileged.

2. All documents produced pursuant to these requests shall be produced in separate groups of documents responsive to each request and marked so as to indicate which request(s) the documents are responsive to, and to the greatest extent possible in the form and order in which they were kept or maintained until produced.

3. If any document is withheld under any claim of privilege, each such document for which a privilege is claimed shall be identified on a log to be turned over to the Department pursuant to this Request for Documents. The log shall contain the following information for each document claimed to be privileged:

a. the date;

b. the author:

c. the name, title, company, address, and telephone number of the custodian of the document;

d. recipient:

e. the intended recipient (if different than recipient);

f. the number of copies of the document known to have sent;

g. the name, title, company, address, and telephone number of person known to have received or have been told of the contents of such document;

h. the subject matter of such document;

i. the facts relied upon to support claim of privilege; and

j. the basis on which the privilege is or will be claimed to apply.

k. These Requests shall be deemed to be continuing in nature and as such shall

obligate Petitioners to provide additional or supplemental responses and/or documents to the Department within fifteen days of receipt of the information of the existence of documents relevant to any and all requests contained in this or subsequent Documents Requests. If the existence of the information becomes available during the hearing on the merits of this the matter, Petitioners must immediately notify the Department of the existence and the substance of the documents and provide copies as soon as possible thereafter. Further, if the information or document is material to the issues in the case, Petitioners shall consent to the continuance of the hearing and any other remedy necessary for the Department to make use the information or document during the hearing.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All documents showing or establishing that the Department's decision to issue the Permit was arbitrary, capricious, an abuse of discretion, clearly erroneous, unsupported by the substantial evidence, in violation of constitutional or statutory provision, made upon unlawful procedure or affected by other error of law, is in violation of state and/or federal environmental laws and regulations, and/or is in violation of the law of nuisance.

2. All documents showing or establish that the Comprehensive Nutrient Management Plan is deficient.

3. All documents showing or establishing that the Dead Animal Plan is deficient.

4. All documents showing or establishing that the proposed facility fails to comply with applicable regulatory requirements.

5. All documents showing or establishing that the operation of the Facility will have detrimental effect on the health of the surrounding environment and/or nearby residents.

6. All documents provided to or used by any expert, whether or not Petitioners intend to call that person as a witness regarding the following:

a. prepared by said expert and/or anyone acting pursuant to said expert's direction and sent to any Petitioners or representative thereof, and/or Petitioners' counsel;

b. prepared by any Petitioners or representative thereof, and/or Petitioners' counsel and sent to said expert and/or anyone acting pursuant to said expert's direction;

c. relied upon by said expert and/or anyone acting pursuant to said expert's direction in forming said expert's opinions in this matter; and

d. considered, consulted, reviewed, relied, or used by said expert and/or anyone acting pursuant to said expert's direction with regard to this case.

Documents responsive to the request include, but are not limited, to any and all findings, memoranda, opinions, and/or reports, whether draft, preliminary, or final and all drafts or revesions.

7. All documents showing or evidencing correspondence between Petitioners Rick and Donice Still regarding in any way the Respondent Sumerel Poultry Farm, Respondent Sumerel, and/or Mike Sumerel and third parties, including but not limited to correspondence with:

a. Christine Orr;

b. Terry Orr;

c. Lisa Sumerel;

d. Mike Sumerel;

e. Columbia Farms;

f. local governmental agencies and officials, and politicians;

g. state governmental agencies and officials, and politicians;

h. medical professionals, including but not limited to, doctors, nurses, pharmacists; and

i. any one solicited or retained to be an expert or to provide assistance or information on how to challenge the issuance of the Permit.

8. All documents showing or evidencing correspondence between Petitioners Christine and Terry Orr regarding in any way the Respondent Sumerel Poultry Farm, Respondent Sumerel, and/or Mike Sumerel and third parties, including but not limited to correspondence with:

a. Rick Still;

b. Donice Still;

c. Lisa Sumerel;

d. Mike Sumerel;

e. Columbia Farms;

f. local governmental agencies and officials, and politicians;

g. state governmental agencies and officials, and politicians;

h. medical professionals, including but not limited to, doctors, nurses, pharmacists; and

i. any one solicited or retained to be an expert or to provide assistance or information on how to challenge the issuance of the Permit.

9. All medical records of Petitioner Christine Orr related to any medical issue alleged to be impacted by the location and operation of the Facility.

10. All documents consulted or used in any way to respond to the SCDHEC's Interrogatories to Petitioners.

Stephen P. Hightower
S.C. Bar No. 72265
Staff Attorney
Office of General Counsel
South Carolina Department of Health
and Environmental Control
2600 Bull Street
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April 8, 2014
Columbia South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Rick Still, Donice Still, Christine Orr and Terry Orr, Petitioners, vs. South Carolina Department of Health and Environmental Control and Lisa Sumerel and Sumerel Poultry Farm, Respondents.	)	Docket No. 13-ALJ-07-0395-CC **CERTIFICATE OF SERVICE**

I, Donna K. Hellerman, Legal Assistant for the South Carolina Department of Health and Environmental Control, hereby certify that I have on this **5th day of February, 2015,** served a copy of (1) Respondent ***South Carolina Department of Health and Environmental Control's Response to the Petitioner's Motion for Reconsideration*** upon all parties and counsel of record in the above-captioned case, via United States Mail, First Class, postage prepaid, addressed as follows:

Joseph O. Smith, Esquire
Roe Cassidy Coates & Price PA
Post Office Box 10529
Greenville, South Carolina 29603

Thomas E. Hite, III, Esquire
Hite & Stone
Post Office Box 805
Abbeville, South Carolina 29620

Donna K. Hellerman

February 5, 2015
Columbia, South Carolina

Roe Cassidy
Coates & Price PA

JOSEPH O. "JOSH" SMITH
(864) 404-3140
JSMITH@ROECASSIDY.COM

February 6, 2015

VIA ELECTRONIC MAIL

The Honorable John D. McLeod
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201
agoldman@scalc.net

Re: Still, et al. v. South Carolina Department of Health and Environmental Control, Lisa Sumerel and Sumerel Poultry Farm
Docket No. 13-ALJ-07-0395-CC

Dear Judge McLeod:

I did not intend to submit anything further to the Court in this matter however find myself forced to do so in order to address an unwarranted and inaccurate attack on my professional conduct and credibility.

In DHEC's Response to Petitioners Motion for Reconsideration, the Department accuses me of intentionally and improperly withholding the AgraMetrics report mentioned by Dr. Parkhurst during cross examination. (*See* pgs. 6-8 DHEC Response). This is simply false and flatly contradicted by the record. During DHEC's cross examination of Dr. Parkhurst he mentioned the AgraMetrics report as a source that supported his position on the average live weight issue. During that exchange it was made clear that Dr. Parkhurst had not provided that report to me prior to trial:

Q. An you say that there's some document out there that says this number is not representative of what is – it should be; is that not correct?

A. That is correct. And I also stated that I had just completed a study and had...the average weight was 9.37 and that was the same range as all of the birds killed that week for a large integrator.

Q. **Did you made that study available to your attorney?**

A. **I did not.**

Q. **Why not?**

A. **I didn't see the need to.**

(Trans. at 304-05)

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FEB 06 2015
SC ADMIN. LAW COURT

1052 North Church Street
Greenville SC 29601

PO Box 10529
Greenville SC 29603

p 864 349 2600
f 864 349 0303

DHEC goes on to say that the Court's sustaining of the Department's objection to admitting the AgraMetrics testimony was "to address a violations [*sic*] of [Petitioners'] duty to provide documents or to acknowledge their existence and to explain the grounds for withholding them." (*See* pg. 8 DHEC Response). This accusation is again clearly contradicted by the record which reflects both parties position on admitting the AgraMetrics report and the Court's ruling; none of which mentions or even alludes to improper withholding of evidence. (*See* Trans. at 305-07 attached).

There is absolutely nothing in reality or the record to support these unwarranted accusations. The transcript does not support the Department's accusations or its characterization of the basis for the Court's decision to exclude the AgraMetrics testimony. (*See* Trial Trans. pgs. 305-08 attached). Upon Dr. Parkhurst mentioning the AgraMetrics report DHEC counsel requested we go off the record to have a sidebar on the issue. During that sidebar I made it clear to the Court and DHEC that I learned of the AgraMetrics report for the first time when Dr. Parkhurst mentioned it on the stand. Later that same day I again addressed the issue with Mr. Hightower one on one to make it clear that I learned of the AgraMetrics report at the same time he did. Had I known of the report at any time before then I would have disclosed and produced it to Respondents and attempted to admit it as an exhibit at trial. Doing so would have been helpful to Petitioners' position on the weight issue and there would be no useful purpose in withholding it. It is offensive and disturbing that DHEC is now is attempting to utilize the sidebar exchange that was off the record - per its request - to not simply oppose a motion but to attack opposing counsel's professional ethics. In retrospect it was unwise to accommodate the Department's request that we go off the record to discuss this issue or trust that one's professional ethics would not come under attack when an expert mentions a report counsel has never heard of for the first time on the witness stand.

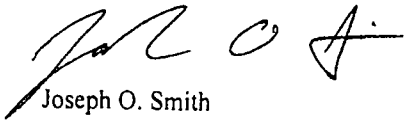
The Department's incorrect assertions may simply be a result of one party's view and recollection of a single exchange during the course of a two day long trial rather than deliberate misrepresentation to the Court. I sincerely hope, and would like to believe, it is the former. Regardless, the record is clear that Dr. Parkhurst did not disclose the AgraMetrics report to me prior to trial which makes DHEC's accusations of intentionally withholding it impossible. Therefore I respectfully request that these untrue accusations attacking my professional conduct and integrity be stricken from the record.

I appreciate the opportunity to address this issue and sincerely hope I never have to write a letter like this ever again. Should the Court require anything further I am happy to provide it.

With high regards, I am,

Sincerely,

ROE CASSIDY COATES & PRICE, P.A.



Joseph O. Smith

cc: Stephen P. Hightower w/ enclosures (via email)
Thomas E. Hite, III w/ enclosures (via email)

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Q: So since it's not being discharged into the waters of the United States, it's not a discharging operation under the Clean Water Act; isn't that correct?
A: With this exception, if you are storing manure and it rains on it and someone, you are discharging.
Q: But that's if you're improperly storing the manure. We're talking about whether or not the system as designed and is operated properly, it is not intended to discharge manure or any waste stream from manure into waters in the United States; isn't that correct?
A: That is correct.
Q: Okay. You talked about -- I believe you said the Clean Air Act was passed in 2008. Did I understand ---
A: I said that. I don't have it in front of me.
Q: Okay. You do know the Clean Air Act has been around for about 40 years?
MR. SMITH: Objection, Your Honor. He didn't ask the question.
Q: I've asked do you know -- I think it's ---
A: I said ---
Q: --- a yes or no.

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A: Sir, I said -- I spoke to the Clean Water Act.
Q: You said Clean Water Act?
THE COURT: That's correct, he said Clean Water Act.
MR. HIGHTOWER: Okay.
Q: Well, the 2002 EPA study was dealing with air emissions. Why would the Department looking at air emissions look at areas regarding the Clean Water Act?
A: At this moment, I can't think of an answer.
Q: As far as you know, are there any EPA, which stands for the United States Environmental Protection Agency, final studies regarding emissions, air emissions from poultry facilities other than the 2002 study?
A: I cannot quote any, sir.
Q: Okay. You were asked about, I believe it is called the live production weight, and I think it was the 8.75 pound number ---
A: Yes, sir.
Q: --- which was located on Bates stamp page DHEC 20, which is in Joint Exhibit 1.
A: Yes, sir.
Q: Okay. And you thought that that number was somehow inaccurate, correct?
A: I think it's low.

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Q: Where would one get that number from? Is there -- let me rephrase that. Is there some readily available source that says this is what is considered to be the live average weight for a broiler chicken in 2014?
A: I don't know whether you could access it or not, but there is a company called AgraMetrics that gets the data from literally every company in the US and generates a weekly average body weight of poultry.
Q: Did you do that?
A: Yes, I've seen that, sir.
Q: You've seen it and it says currently 8.75 pounds is not correct?
A: It doesn't say it's not correct; the average is just higher than that.
Q: Do you have -- where could we get this document that shows this?
A: Any company like Columbia Farms gets it on a weekly basis, and I usually see it through one of the companies.
Q: But you chose not to make this an exhibit in this case, correct?
A: I didn't see any need to, sir.
Q: But you are saying that this number's

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incorrect, and you're saying that there is a source to find this, but you haven't made it available so that ---
MR. SMITH: Objection. Compound, Your Honor.
THE COURT: I was distracted.
MR. HIGHTOWER: Sorry.
THE COURT: It was. It was compound; back up and split it up.
MR. HIGHTOWER: I'll go back.
Q: You had access -- you have access to this data, correct?
A: I can get it, yes, sir.
Q: And you knew you were coming here today to testify, correct?
A: Yes, sir.
Q: Okay. And you knew that you had an issue with the average live weight as indicated in the plan, correct?
A: Yes, sir.
Q: And you say that there's some document out there that says that this number is not representative of what is -- it should be; is that not correct?
A: That is correct. And I also stated that I had just completed a study and had the weights of

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March 1, 2014, that the average weight was 9.37 and that was the same range as all of the birds killed that week for a large integrator.
Q: Did you make that study available to your attorney?
A: I did not.
Q: Why not?
A: I didn't see the need to.
Q: You're relying on it in testifying here today?
A: I used it as a reference point, yes, sir.
MR. HIGHTOWER: Your Honor can we go off the record for a second?
THE COURT: Off the record.
(Off the Record)
THE COURT: You state your objection, you state your response and then I'll rule on the record.
MR. SMITH: Okay. And just so we're clear, we're good with him testifying about his own research and his own findings, his own -- I mean, if ---
THE COURT: General knowledge that he's obtained ---
MR. HIGHTOWER: His general knowledge I'm fine with.
MR. SMITH: Okay.
THE COURT: All right. State your objection.
MR. HIGHTOWER: Okay. Thank you, Your Honor. Your Honor, the Department's objection is to the

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witness' reliance upon information from a third party, specifically some kind of clearinghouse that gathers information from all integrators about the live weights that they are observing when they get the birds to their facilities and that that information then being available for people to find out, and therefore, could have been used in this plan as a substitute, whatever that current number would be for the 8.75 number that is listed in Joint Exhibit 1, DHEC Bates stamp number 20.
THE COURT: Your response, Mr. Smith.
MR. SMITH: Thank you, Your Honor. We believe it's all admissible and that he, as an expert, formed his opinion based on information he gathered from other sources, which if it were to be a hearsay objection of some sort is obviously an exception to the hearsay rule in offering an expert opinion. It's a reliable source. Dr. Parkhurst also has provided testimony, and we believe it's admissible, of his own studies and own knowledge and experience and opinion, and it's expert opinion, as to the current and accurate live process or exit weight.

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THE COURT: I sustain the objection in respect to the third-party studies, which I think we've earlier referred to as being in possession of Columbia Farms, but I overrule the objection as to whatever he may tell from his own experience and knowledge as an expert.
MR. SMITH: Thank you, Your Honor.
MR. HIGHTOWER: Thank you, Your Honor.
Q: You stated that you've heard of hay bale compounding, correct?
A: Yes, sir.
Q: Okay. Do you have any objection in composting in general?
A: No, sir.
Q: It's just hay bale composting?
A: I think there are better methods.
Q: And the reason why is because of what specifically?
A: One thing, there's no cover. It's open where animals can get in it, and once they open it, you do not have anaerobic breakdown, you have aerobic, and there's going to be odor, access to flies and so on in the system.
Q: Okay. So if you ultimately put a structure over it, would you then have a problem with it?

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A: No, sir.
Q: Okay. And you're aware that the permit allows for incineration?
A: Yes, sir.
Q: And you have no problem with incineration, do you?
A: Not with a double stage incinerator.
Q: Okay. So if the permittee determines that hay bale composting is just too difficult and decides to do incineration, you would have no objection to the plan based on ---
A: I would not, sir.
Q: Your million pound weight that you've talked about which you believe will be the weight of the birds at time when they are taken out of the ---
A: Yes, sir.
Q: --- barns.
A: Yes, sir.
Q: That's based solely on your belief that the 8.75 number is not the most current number; is that not correct?
A: Well, the plan says you're going to have 109,600 chickens, correct?
Q: That is correct. Well, that's the maximum

From: Chris Whitehead
To: Josh Smith; hightosp@dhec.sc.gov
Subject: The Study
Date: Wednesday, February 11, 2015 1:23:55 PM

Mr. Smith:
Mr. Hightower:

Judge McLeod says that he is satisfied that Mr. Smith had no knowledge of the study and Mr. Hightower's assertion as an advocate should be disregarded as overcome by the record.

Judge McLeod considers this matter at an end.

Christopher Whitehead
Staff Counsel for Judge McLeod
South Carolina Administrative Law Court
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Transcript of the Testimony of
RICK STILL, ET AL. V. SC DHEC

Date: August 25, 2014

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 13-ALJ-07-0395-CC

Rick Still, Donice Still, Christine Orr and Terry Orr,

Petitioners,

v.

South Carolina Department of Health and Environmental Control, Lisa Sumerel and Sumerel Poultry Farm,

Respondents.

ADMINISTRATIVE HEARING

****

Monday, August 25, 2014
10:00 a.m. - 5:14 p.m.
Tuesday, August 26, 2014
10:01 a.m. - 5:08 p.m.

The hearing before the Honorable John D. McLeod was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 25th and 26th days of August, 2014, before Andrea R. Taylor, Court Reporter and Notary Public in and for the State of South Carolina.

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APPEARANCES

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Lisa Sumerel and Sumerel Poultry Farm

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(Dead Animal Disposal Plan)
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(Permit)
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(DHEC Chronology of the Sumerel Farm Permit Issuance)
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Petitioner's Exhibit Number 1 133
(Photographs)
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(Chaplin Reminder)

(The original exhibits were retained by The Court.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.

THE COURT: My name is John McLeod. My law clerk is Anthony Goldman. The court reporter is Ms. Andie Taylor.

COURT REPORTER: Good morning.

THE COURT: Good morning to you. Glad to have you here. This is Docket 13-ALJ-07-0395-CC, Rick Still, Donice Still, Christine Orr and Terry Orr vs. South Carolina DHEC, Lisa Sumerel and Sumerel Poultry Farm. Am I pronouncing that correctly?

MR. HITE: Yes, sir, Your Honor.

THE COURT: My clerk informs me that we have a preliminary matter to take up with respect to documentary evidence you didn't agree on or didn't let me know about. Why didn't y'all let me know about it?

MR. SMITH: Sir, we had a conference call last week amongst ourselves and came up with a lot of joint exhibits we agreed upon so we could make this easier for everybody, the Court included.

THE COURT: I thought there was some there was still a dispute about.

MR. SMITH: There are some we agreed amongst ourselves we might enter in as the case proceeds as needed, and we figured the Court would take up those issues if and when they're presented.

THE COURT: Well the whole purpose of the order was to eliminate anything that would slow us down, but we'll try it that way and see.

MR. SMITH: Okay. Thank you, Your Honor.

THE COURT: You are Mr. Smith?

MR. SMITH: Yes, Your Honor.

THE COURT: And you are Mr. Hite?

MR. HITE: Yes, sir.

THE COURT: And I know Mr. Hightower.

MR. HIGHTOWER: Yes, Your Honor.

THE COURT: Proceed, Mr. Smith. Do you want to make opening statements?

MR. SMITH: I can do one very briefly, thank you, if it pleases the Court.

THE COURT: Yes.

MR. SMITH: Thank you.

OPENING STATEMENT BY MR. SMITH:

MR. SMITH: My name is Josh Smith, and I'm here on behalf of the Petitioners, Rick and Donice Still, Terry and Christine Orr that are all here with us today.

THE COURT: Good to have you here today.

MR. SMITH: And I'll just give the Court a brief

rundown and history of this one and the issues that we think are pertinent and the evidence to be established in this case. This is a challenge to an agricultural permit for the operation of four poultry houses, broiler poultry, ones that are raised to take off to slaughter for meat as opposed to layers. I'm sure the Court has heard these type cases before and is somewhat familiar with those differences. In April 2012, the Respondents, the Sumerels, applied for a permit with DHEC to operate these poultry houses. Columbia Farms is the integrator on these. DHEC started there -- or excuse me -- they went out and did the preliminary site inspection and gave the Sumerels approval to proceed. They went out and got Joy Shealy, Shealy Engineering, to do the comprehensive nutrient management plan and the dead animal disposal plan, the facility plans that's required by the permits and the regs, submitted those to DHEC in October 2012, I believe. And DHEC started it's admin review. They exchanged these four memos to the air bureau or the air quality folks. They sent their form memo over to the water folks to do

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what were supposed to be evaluations of the environmental impacts of the operation to determine if it will increase the pollution to the surrounding environment or cause harm to nearby residents. Now, my folks -- and I'll show the demonstrative later; won't burden the Court with that right now -- live in close proximity to the Sumerel operation. And there actually is a second very close operation that will be part of this case in that it provides context, and we think it was a necessary consideration for the Department to evaluate these things, you'll hear the Duckett operation, which is the same size and essentially sandwiches in my client's residence and their adjacent land on the back side of the Sumerel place. Now, we had opposition to these -- to this permit obviously, got together 70 something signatures in opposition, went through the whole public hearing, and then DHEC finished its technical review, permitted the operation, and right before, excuse me -- I'll take one step back. Right before the operation was permitted, the Sumerels submitted amendments to their plans, primarily their

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dead animal disposal plan, which is a big deal in these type of operations because you can do different methods: burial, incineration, and composting. Now they've changed theirs from burial because the water folks, the only evaluation the water folks do, according to DHEC's deposition testimony, is they look at whether or not the burial is going to work. So, and they went out and said burial is not going to work. They changed to composting. Did not do any re-evaluation. They get letters from State representatives, as the evidence will show, that say what's going on with these permits, then, voila, they're permitted three weeks later. And then almost two weeks after the permit's issued, the Sumerels request a preliminary site inspection for the compost or incineration. DHEC goes out weeks after the permit's issued. does a preliminary site inspection for the compost or incineration, and gives them approval for that. All in all, we think through the evidence that's going to be submitted and the testimony presented to the Court will show that the plan, the comprehensive plan as submitted to DHEC is

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inadequate. It's a boilerplate form plan. It fails to comply with the regulations as far as certain particulars, and it's just inadequate as a whole. Also, the evidence will show that DHEC's evaluation of the plan and the environmental health impacts of this facility was wholly inadequate, and not only inadequate, didn't even comply with their own regulations. And I believe the evidence will show that these operations can cause and present environmental threat and be a nuisance by odor, noise, and also increasing vectors in the area, none of which DHEC's allowed to permit as a nuisance. Thank you.

THE COURT: Thank you, sir.

MR. HIGHTOWER: Good morning, Your Honor.

THE COURT: Good morning.

OPENING STATEMENT BY MR. HIGHTOWER:

MR. HIGHTOWER: This case is about the Department's issuance of agricultural permit 19-6-47 to Lisa Sumerel for the purposes of construction and operating a four barn poultry facility that will be actually operated by her husband, Michael Sumerel. The Department issued this permit in accordance with the applicable

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statues and regulations. The evidence will show that on April 23, 2016, the Sumerels requested a preliminary site inspection ---

THE COURT: 2016?

MR. HIGHTOWER: No, oh, I'm sorry. 2012. If I said 2016, then I misspoke. Sorry, Your Honor. But on April 23, 2012, the Sumerels requested a preliminary site inspection for the property that's located adjacent to their home, which is located on Poole Town Road in Laurens County. Ms. Chrissy Matthews, who is the regional inspector, came out and conducted an inspection. She went to the site; she observed the site. She had maps that have been provided by the applicant, which is something that they're required to do, and based on her observations and later using GIS, which is the geological information system for Laurens County, she was able to measure and see that the site was suitable for a large poultry facility.

THE COURT: Wait just a minute now.

MR. HIGHTOWER: Yes, Your Honor.

THE COURT: I have to interrupt, but isn't it geographic?

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MR. HIGHTOWER: It may be geographic and I'm -- I thought it was -- geographic would be fine, Your Honor. And I can check that out to make sure that I actually give the Court the correct statement of what the system is, but it is commonly known as GIS. Most of the counties in South Carolina have that system online, Laurens County is one of those. And that based on her review, this facility could actually be at a larger size than it is, but the Sumerels did not request that. But it should be noted that the large facility setbacks, which are 400 feet from property lines, would have been made -- maintained. The Sumerels then went ahead with the process of having an engineer design a facility for them. They did that and submitted to the Department a comprehensive nutrient management plan along with their application, as required by the statute. They also notified all of the landowners who own property within 1,320 feet of the facility as required by the statute, and the nutrient plan contains receipts showing that these owners were, in fact, notified. Mr. William Chaplin, who is the supervisor of the agricultural permitting

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section, actually conducted the review of this facility. Mr. Chaplin looked and verified siting distances; verified that the petitioners who live, respectively, 1,650 and 3,600 feet away from the facility, the Stills live -- are the closest and the Orrs live at the further distance. The review also determined, and this review included requesting assistance from the air -- the Bureau of Air Quality and the onsite wastewater section to determine whether or not there should be other requirements or additional setback distances. The Bureau of Air Quality determined that this type of facility, because it is a dry poultry facility, it would not emit any regulated air pollutant into the environment, and therefore, there was no requirement or need, in fact, to increase any siting distances or to put any special conditions on the facility. The onsite wastewater facility section did determine that the site was not suitable for disposal of mortality by burial. Based on that, in May of 2013, approximately a month before a decision was actually made on the facility, the Sumerels' engineer, Ms. Joy Shealy, submitted

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to the Department a dead animal composting plan -- excuse me, disposal plan, and in that plan proposed that the daily mortality should be disposed of through either composting or incineration. But composting would be the preferred method. Mr. Chaplin, who was aware about composting but not about this particular choice, and that was hay bale composting, contacted an engineer at the National Resource Conservation Service, which is part of the United States Department of Agriculture, in order to get information about this and to find out whether or not this practice is something that is safe and would be effective for disposal of mortality from a poultry facility. Based on his discussions with the engineer and his own knowledge, Mr. Chaplin determined that hay bale composting would be a proper and safe method of disposal. In fact, it would produce, as a byproduct, good soil that could be used for other purposes. The soil would be free of pathogens; would be excellent for gardening or any other needs along those lines. Based on all of this information, the Department, on June 12, 2013, issued its decision, and that

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was to issue permit 19-6-47 to Ms. Sumerel. The Department did receive a request after the permit was received from the Sumerels about a preliminary site inspection, and that was carried out. A preliminary site inspection, as the testimony will show, was not necessary for looking at the composting site. The purpose of the preliminary site inspection is to see generally whether or not some type of agricultural facility could be located on the site that is proposed by the person requesting it. It is not a technical, highly technical determination. That had already been done by the reviewer, Mr. Chaplin. For all of these reasons, the Department believes that the Court should uphold its issuance of permit 19-6-47. Thank you.

THE COURT: Thank you, sir. Mr. Hite.

OPENING STATEMENT BY MR. HITE:

MR. HITE: May it please the Court, Your Honor.

THE COURT: Yes, sir.

MR. HITE: Thank you. As you said Thomas Hite, III, here from Abbeville, South Carolina, and I represent Mike and Lisa Sumerel and the Sumerel Poultry Farm.

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THE COURT: Good to have you here.
MR. HITE: They've come from Laurens County. Mike and Lisa, long, long time residents of Laurens County. They live out on Poole Town Road, which is a very rural farming area of Laurens County. I've been out to the site. I've been out to their house several times, and it's beautiful farmland, as you'll get to see, I'm sure, some pictures of it today. The case today is about the permitting and their right to be able to use their farming property as a farm. What the evidence will show, and Joy Shealy, whose plans and whose testimony are fire tested, I believe she may have even testified in this Court before, as well as Leon Fulmer, who works with Ms. Shealy, visited the site and he'll -- he's prepared to testify, and he'll testify that the plans that were presented to DHEC, as well as Mr. and Mrs. Sumerel are adequate and that the permit should have been issued as it was. The important issues that they're going to bring up or that they want to talk about with you is that, you know, there was pressure from members of the House of Representatives that, you know, calls

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to DHEC to scurry quickly and prepare a permit that wasn't adequate. But that's just not the case. That's just side shows that don't really have anything to do with the specific issues of the permit. If we analyze this permit from a specific regulation basis, it meets those regulations. And the evidence will show that Joy Shealy's plan is adequate and is more than adequate, and it supplies all the issues as the regulations require. We also -- they're going to bring up or they're going to make an issue out of the composting. In fact, the permit or the plan calls for composting or incineration. And my clients are willing to do either, whichever one is most satisfactory to DHEC, and they're always going to acquire or do whatever DHEC requires of them to maintain a proper facility. They're here prepared to testify today, Your Honor, and we thank you for your time, and we believe that the evidence will show that the DHEC permit was properly issued. Thank you.
THE COURT: Thank you, Mr. Hite. Mr. Smith.
MR. SMITH: Thank you, Your Honor. Let's go ahead and call Chrissy Matthews, please.

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CHRISSY MATTHEWS, having been duly sworn, testifies as follows:
MS. MATTHEWS - DIRECT EXAMINATION BY MR. SMITH:
Q: Good morning, Ms. Matthews. How are you today?
A: Good.
Q: I understand you work for DHEC, correct?
A: I do.
Q: And what's your role within the agency?
A: I work in the regional office in the Greenwood office and perform inspections for agricultural facilities, routine inspections, compliance, preliminary site inspections. I also work with the construction of stormwater program and respond to compliance and perform routine inspections as well.
Q: And how long have you been with the agency?
A: Eight years.
Q: And just tell us a little bit what's your background and education and experience.
A: I received a bachelor in science and biology from Lander University and masters of science in environmental studies from College of Charleston.
Q: And after your masters, did you go straight to work for DHEC?

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A: Pretty much. There was a small break in there, but.
Q: Okay. Well, how long have you been with DHEC?
A: Eight years.
Q: All right. For the Sumerel permit, tell me what you did.
A: Well, I went out to do a preliminary site inspection, and basically looked at the site to see if it could be suitable for some poultry houses, broiler houses. Basically just looked to see if the setbacks could be met on that piece of property.
Q: And what size was the Sumerels wanting to do when you first went out there?
A: Can I look at my notes?
Q: Absolutely. And I can make this easier. I'll take care of some housekeeping matters real quick. There's a joint exhibit admitting a few things to make our discussion easier. Joint Exhibit 1 which is the Comprehensive Nutrient Management Plan. It's been pre-marked.
THE COURT: That's Joint Exhibit Number 1 will be admitted in evidence without objection.
(Joint Exhibit Number 1 was admitted into evidence.)
MR. SMITH: Thank you, Your Honor. Joint Exhibit

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Number 6, which is the Preliminary Site Inspection Checklist which has again been pre-marked as Exhibit 6.
THE COURT: Joint Exhibit 6 admitted without objection.
(Joint Exhibit Number 6 was admitted into evidence.)
MR. SMITH: And then Exhibit Number 3, which is the actual agricultural permit we're here to discuss.
THE COURT: Joint Exhibit 3 admitted without objection.
(Joint Exhibit Number 3 was admitted into evidence.)
MR. SMITH: And finally, Joint Exhibit Number 12, which is the Preliminary Site Inspection request.
THE COURT: Joint Exhibit 12 admitted without objection.
(Joint Exhibit Number 12 was admitted into evidence.)
MR. SMITH: Thank you, Your Honor.
A: When I went out there, I did not record the size of the houses. They have changed over time. I do not remember the exact size of them at that -- at that time, but I believe I assumed that for four houses, the setback would be 400 feet.

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Q: You said you assumed it would be 400 feet for four houses?
A: Based on -- based on previous experience with those.
Q: You anticipated my next question. And the setbacks are determined due to the weight, the average -- the Department calls the average live weight of the chickens, correct?
A: That's correct.
Q: And how is that calculated if you know?
A: I do not know.
Q: We'll get Mr. Chaplin to take care of that. Did you fill out this what's joint marked Exhibit 6, this Preliminary Site Inspection Checklist?
A: I did.
MR. SMITH: If the Court would like a copy, we have one for the Court. Also, will hand the Court 3 and 12 that are up there, and finally, a copy of the plan. It's been written on. This one's marked, one like that, if that's acceptable to the Court. It's not my handwriting; my paralegal put it on there.
THE COURT: Thank you.
Q: And this preliminary site inspection checklist,

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Number 6, where did you get this? Is this a DHEC document?
A: It's not an official form; it's just one we can use to ---
Q: Help you evaluate the site?
A: Yes.
Q: And you note on here that they're looking at four houses?
A: Yes.
Q: So you assume that the average live weight would be over a half million pounds, correct?
A: Correct.
Q: And when it's over half a million pounds, that's going to give you that 400 foot setback, right?
A: That's right.
Q: Now, when you went out there, how did you determine that that setback could be met?
A: I didn't actually determine it at the site. When I returned to the office, I pulled up the Laurens County GIS website, and there's a measurement tool on there. So I measured from the property lines inward just to see if there would be enough room for the houses.
Q: And how did you plot the houses on there when

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you did this GIS analysis?
A: Well, at the time we didn't know exactly where the houses would be located. So I just used the size of a footprint of the houses just to see if they could fit in there in in any way. They weren't actually plotted at a specific location.
Q: So you tried different configurations ---
A: Correct.
Q: --- is what you're telling me?
A: Correct.
Q: Could you look to Exhibit Number 1 for me. And when I say Bates stamped, Ms. Matthews, I'm not sure if you're familiar with it. Look at the bottom right corner. It will be the number on the bottom right corner, okay?
A: Okay.
Q: If you can flip with me to what's been marked DHEC 107, and let me know when you're there, please.
A: Okay.
Q: And tell me what you see here?
A: That is where the houses will be located showing a setback of 200 feet.
Q: So would it be fair to say these houses are

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right up against the 200 foot setback the way they're configured in this map?
A: Yes.
Q: You obviously had them configured somewhat differently, I guess, for the 400?
A: Let me check something. It appears the online GIS property map is actually larger than this map.
Q: Okay.
A: It shows a larger piece of property.
Q: And you were just going off the information you had at the time, which was the GIS map, correct?
A: Yes.
Q: And you didn't know how the barns were going to be oriented?
A: Correct.
Q: And what determination did you make?
A: That they could proceed with having a plan prepared. It appeared that they would be suitable, the property would be suitable.
Q: This is a little bit out of time, but since you're on the stand now, you heard opening test -- opening statements about the preliminary site inspection request after the permit was

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issued. Did the Department receive a preliminary site inspection request for the composter after the permit was issued?
A: Yes. I had the -- I went out to do the preliminary site inspection request -- I mean, do the preliminary site inspection for the composter, and he filled it out at the time I was out there.
Q: Okay. And you've just pointed to what's been marked as Exhibit Number 12, correct?
A: Yes.
Q: So it was filled out June 24, 2013?
A: Yes.
Q: And that's when the Department's got it marked as received?
A: Yes.
Q: And what did you -- what did you do that day when you went out for the preliminary site inspection for the composter?
A: I just looked at the property to see if anything had changed since the time I was there before.
Q: Did Mr. Sumerel walk the property with you?
A: He took me to the general area that it could be located. We didn't know the exact area, but we

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drove out to the middle and looked and nothing had changed since the previous time I was out there.
Q: So you had no idea when you were out there exactly where they were going to site this composter?
A: I'd already received the plan for the composter so I -- I could see where it was going to be based on the map. It's just hard to figure out in the middle of the field the exact location.
Q: So you had looked at the amendments to the plan when you went out to do the preliminary site inspection for the composter?
A: Yes.
Q: And what did you determine that day?
A: That it -- that it appeared suitable.
Q: And what's the purpose of doing these preliminary site inspections?
A: To see if setbacks could be met and if the houses could fit.
Q: Does that serve a very useful purpose in your mind?
A: Not really.
Q: Is it just so the Department can stamp something as approved to give them some cover?

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MR. HIGHTOWER: Objection.
THE COURT: Overruled.
Q: You can answer.
A: I believe it's to lay eyes on the site. A lot of -- a lot of what is -- a lot of the preliminary site inspection can be determined using maps, but it's to see the actual site itself.
Q: Is it unusual to do a preliminary site inspection after a permit's been issued?
A: Not necessarily. When a -- if someone would like to add a composter or add a stacking shed, we do a preliminary site inspection. It's usually after the houses are built and they're in operation but ---
Q: So -- oh, go ahead. Excuse me.
A: But we have -- we do them for additions.
Q: So it'd be -- wait, you say you do them for additions to a permit that's already been issued?
A: Yes.
Q: So someone who, for example, did a burial of dead animal disposal now wants to change to a composting, then you go out and do a preliminary site inspection for that change,

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correct?
A: If it's -- yes, if it's -- they're building something, not just they -- not any change, but something that would get a new construction permit.
Q: Right. And in that situation, they wouldn't be permitted yet to do the composting, would they?
A: No.
Q: And in this situation, if you look at the permit itself, which I thought we put up there, Number 3, they were permitted already to do the composting under the ---
A: Yes, they were.
Q: -- permit, correct?
A: Yes.
Q: Thank you, Ms. Matthews. I have nothing further.
MS. MATTHEWS - CROSS-EXAMINATION BY MR. HIGHTOWER:
Q: Good morning, Ms. Mathews.
A: Good morning.
Q: Isn't it true that preliminary site inspections are required by the regulations when an applicant seeks to construct something new at a site?
A: That's correct.

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Q: Okay. So whether or not you feel that -- personally that a site inspection maybe doesn't provide much information, it's required by law; isn't that correct?
A: That's correct.
Q: Now, it's required for new facilities, correct?
A: Correct.
Q: And it's required if you're going to add something to an existing facility?
A: That's correct.
Q: You could also go out on the site any other time if requested for -- strike that. You stated that you did not know the configuration of the facility at the time that you went out for the initial preliminary site inspection on, I believe it was, April 23, 2012, correct?
A: That's correct.
Q: Now, is that unusual?
A: No.
Q: Isn't it a fact that the purpose of the preliminary site inspection is to see if an applicant could possibly put a facility there, and then they're supposed to have an engineer draw plans that actually would mark out where the setbacks are?

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A: That's correct.
Q: So your preliminary site inspection is not intended to be a final determiner of whether or not a facility can be placed at a particular location?
A: No.
Q: Now, you stated you used the measuring tool in GIS to determine distances, correct?
A: That's right.
Q: And is that an accepted practice for you to use GIS?
A: Yeah.
Q: When you were out at the site, if you look to the east and to the south, would there have been a large mature forest, if you will?
A: Yes, sir.
Q: Okay. And you observed that the first time you went out there and the second time you went out?
A: That's correct.
Q: Okay. Now, based on your observations, your use of GIS in your own experience going out and doing preliminary site inspections, isn't it true that on April 27th approximately -- or excuse me, on or about April 27, 2012, you

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determined that the site was a generally suitable for, or at least I should say appeared suitable for an animal feeding operation governed by 61-43 Part 200?
A: That's right.
Q: Okay. And you memorialized that into a document; isn't that correct?
A: That's correct.
MR. HIGHTOWER: One moment, Your Honor.
Q: I'm going to hand you what is marked Joint Exhibit Number 7. That's the preliminary site inspection approval letter that you were referring to; is that correct?
A: That's correct.
Q: And you were the person that drafted this letter, correct?
A: Yes.
Q: And looking at it today that is, in fact, what you drafted, correct?
A: Yes.
MR. HIGHTOWER: Your Honor, at this time we ask that Joint Exhibit 7 be admitted.
THE COURT: Joint Exhibit Number 7 admitted without objection.
MR. HIGHTOWER: Thank you.

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(Joint Exhibit Number 7 was admitted into evidence.)
MR. HIGHTOWER: No further questions.
THE COURT: Mr. Hite.
MR. HITE: Your Honor, just briefly. May I approach the witness?
THE COURT: You may.
MS. MATTHEWS - CROSS-EXAMINATION BY MR. HITE:
Q: Chrissy, I want to pull out the map that you had attached to your checklist, if I could. Is this ---
MR. HITE: Your Honor, we are looking at Exhibit 6, the map attached to that.
Q: Chrissy, is that the map that you took out to the Sumerel property that day?
A: That's actually the map I printed from GIS when I returned to the office.
Q: And would it surprise you that all of this property on this tract of land is my client, Mike Sumerel's, mother? Would that surprise you that that property is ---
A: No.
Q: But it's in the family?
A: Yes.
Q: And his mother gave him all the property that he would need to build these houses?

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A: I think he said that. I really don't remember.
Q: But would that surprise you?
A: No, it would not.
Q: And that's why your -- your assessment that 400 feet would meet -- the houses would have met the standard for 400 feet?
A: Yes.
Q: And then the picture of the map that Mr. Smith showed you.
A: Yes.
Q: DHEC 107, that shows a new property line; is that correct?
A: That's correct.
Q: Okay. And that would lead you to believe that his mother and Mr. Sumerel came to an agreement. He cut off the amount of property that he would have needed to build these and construct these houses. Isn't that true?
A: That's true.
Q: And just as you said, a preliminary site inspection is just that, preliminary; is that correct?
A: That's correct.
Q: And DHEC has to go through a bunch of other hurdles and a bunch of other requirements to

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make sure that the permit is issued properly; is that correct?
A: Yes.
MR. HITE: No further questions Your Honor.
THE COURT: Before we proceed, I want to be clear on these property lines. Give me just a moment. DHEC 107 shows -- is the property that's to be used for the houses and the setbacks?
MR. SMITH: Yes, sir.
THE COURT: Are you representing to me that all of the abutting premises are owned by Mr. Sumerel's relatives?
MR. HITE: No, sir, Your Honor. Just the northeastern side of the property where there's a straight line, if you can tell, Your Honor, there's a straight line cut across.
THE COURT: Well, I take it that DHEC 107 is oriented with north at the top and then we have then rotated, I believe, then the one that's attached to the preliminary site inspection -- let's refer to the DHEC 107, and orient me.
MR. SMITH: Yes, yes, Your Honor. You are correct on 107 showing the property lines that Mr. Sumerel has to do this operation and that's what the setbacks are based off of. The

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property, and correct if I'm wrong, Tombo -- Mr. Hite, excuse me, to the north -- what's the northeast there, that water property, the water you see right there on 107 --
THE COURT: Yes, sir.
MR. SMITH: --- that is still the Sumerels. Now, if you continue, you can see the outline of the edge of another water body right there.
THE COURT: Yes.
MR. SMITH: That is my client, the Orrs' lake. And if you look at ---
THE COURT: That sort of looks like it's across the road.
MR. SMITH: Yes, sir. And this is a wider shot here. What was attached to Ms. Matthews' preliminary site inspection, and I'm going to try to show the Court that here is the Orrs' property and it extends up this way. And this is the Stills' property, right here. I'm showing the Stills' property here. This is the Orrs extending up this way. That's a ten-acre lake up like that. It's out of the shot. Fair, guys?
MR. HITE: That's fair.
THE COURT: Yeah, I think I understand.

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MR. HITE: I'm not even sure if it's in the -- I don't think their property is even in the DHEC 170 -- or 107.
MR. SMITH: The Orrs, part of that lake sticks into 107 at the northeast corner.
THE COURT: I've got the picture. Thank you.
MR. SMITH: If the Court really wants, if there's no objection, this is demonstrative to orient. It's a much wider shot. Are y'all fine with this?
MR. HIGHTOWER: Yeah.
MR. SMITH: Your Honor ---
THE COURT: If possible, let's have one that we refer to so it'll be uniform throughout.
MR. SMITH: Yes, sir.
MR. HIGHTOWER: Here's a smaller one.
MR. SMITH: That's a wider shot. That's the Duckett farm referred to earlier. That's Sumerel. This is the Stills right here, this dot is their home; that's their property. That's the Orrs' lake I referred to earlier, so.
THE COURT: All right. I understand now.
MR. SMITH: All right.
THE COURT: North is at the top of that.
MR. SMITH: Yes, sir, it's north, south, east, west.

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This will be Petitioners' demonstrative exhibit for one of my experts later on today.
MR. HITE: I have no further questions for this witness.
MR. SMITH: Very brief re-direct.
THE COURT: Re-direct.
MR. SMITH: Yes, sir.
MS. MATTHEWS - RE-DIRECT EXAMINATION BY MR. SMITH:
Q: Ms. Matthews, Mr. Hightower just referred to what he characterized as a large mature forest to the southeast; do you remember that?
A: Yes.
THE COURT: I think he said south and east.
MR. SMITH: South and east, yes, Your Honor. Thank you.
Q: To the south and east of the proposed site; do you recall that?
A: Yes.
Q: How large is that forest?
A: I'm not sure. We did not walk through the forest.
Q: Do you know if it's a forest or just a thick tree line?
A: According to the map, it appears that it goes back but we -- I couldn't see the end of the

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tree line.
Q: And as far as you doing your preliminary site inspection, is it fair to say you're just determining approximately whether the property line setbacks and the other regulatory mandated setbacks are there?
A: Yes.
Q: So consideration of things like vegetative buffers and downslope waters, that's not your consideration, is it?
A: No, it's not.
Q: Thank you.
MS. MATTHEWS - RECROSS-EXAMINATION BY MR. HIGHTOWER:
Q: Ms. Matthews, the fact that it is not a requirement of a preliminary site inspection to note information does not mean that you don't, in fact, see things and make note of them; isn't that correct?
A: That's correct.
Q: So the fact that you noted that there is a thick band of trees to the south and east of the property when you went out to the site in 2012 and in 2013 is an observation you made?
A: It's an observation.
Q: Okay. And, in fact, when you looked at the

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property in GIS on its maps, it also reflects that there are a thick band of trees or forest, if you will, in those locations; isn't that correct?
A: That's correct.
Q: Thank you.
MR. HITE: No questions, Your Honor.
MR. SMITH: Nothing further, Your Honor.
THE COURT: Thank you. You may step down, Ms. Matthews. Your witness.
MR. SMITH: Thank you. Call Lisa Sumerel.
LISA SUMEREL, having been duly sworn, testifies as follows:
MS. SUMEREL - DIRECT EXAMINATION BY MR. SMITH:
Q: Good morning, Ms. Sumerel.
A: Morning.
Q: You are the permit applicant and permit holder of this permit?
A: I am.
Q: During the permitting process, did you get frustrated with the time it was taken?
A: We were getting a little bit frustrated, yes.
Q: And before we get into that, Ms. Sumerel, what -- can you give me a little background on what you do for a living and what you're doing now?

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A: I am a four-year-old kindergarten teacher. I've been teaching for 29 years.
Q: What kindergarten?
A: Ford Elementary in Laurens District 55.
Q: And you just started the school year?
A: Yes, we have, last week.
Q: Back to this permit and all that. Down the line, you're frustrated about the time that it was taking; is that fair?
A: We did. We were concerned because the property beside us was going to be sold, and we knew that if a residence was put up there, you know, it would be null and void and all of our work so far would be down the drain.
Q: Because the way -- we've looked at DHEC 107, and you're familiar with these plans, correct?
A: Right.
Q: You're right within the applicable 200-foot setback for a medium size operation; is that right?
A: That's right.
Q: So you couldn't do a large operation ---
A: No.
Q: --- on your land?
A: No, we couldn't.

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Q: So what did -- did you contact some state reps at some point and ask for some help?
A: We did.
Q: Who did you contact?
A: We contacted Mark Willis and Mike Pitts.
Q: And what did you, and I don't want you to tell the Court what they said, but what did you ask theses state representatives to do for you?
A: Well, my husband just asked if they could ---
MR. HITE: Your Honor, I'm going to object to this line of question as irrelevant.
THE COURT: I sustain the objection.
MR. SMITH: Your Honor, I have some documents I'd like to admit I think will show some relevancy of this line of questions, if I may.
THE COURT: I believe those have not been submitted to me?
MR. SMITH: These are -- yes, Your Honor. These are two petitioner's exhibit that were not agreed upon by the parties, technically three. They are two letters from state representatives to the Department, and the correspondence from Ms. Sumerel to Ms. Shealy about those letters.
THE COURT: That would be equally irrelevant, wouldn't it?

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MR. SMITH: We argue it's relevant, but if the Court takes the stance it's irrelevant and sustains the objection.
THE COURT: Yes, I sustain the objection.
MR. SMITH: Thank you, Your Honor.
Q: What's your role going to be in the operation, Ms. Sumerel?
A: I'm going to be bookkeeper and, of course, I'll help maintain the houses. But I'll be just watching over the computer part and upkeeping with the bills and things like that.
Q: And y'all aren't going to have anybody else out there helping you?
A: No, sir. My sons occasionally.
Q: What does your son do?
A: One works at GE and one works as a truck driver.
Q: What does the one at GE do, because that could be a host of things?
A: He's a welder.
Q: Okay. Tough job.
A: Uh-huh.
Q: Does he have any experience poultry farming?
A: No, he took ag classes in high school though.
Q: Your husband, he doesn't have any poultry

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farming experience, does he?
A: He doesn't. He took ag classes in high school also.
MR. SMITH: That's all I have for this witness right now. Thank you.
THE COURT: Mr. Hightower.
MS. SUMEREL - CROSS-EXAMINATION BY MR. HIGHTOWER:
Q: Ms. Sumerel, you are the permit holder, correct?
A: Yes, I am.
Q: And it's your intention to follow all regulations and requirements applicable to your facility as told to you by the Department, correct?
A: Yes, we will.
Q: And if there's something you don't know, you intend to get information from other sources, correct?
A: Yes.
Q: And there are other sources available for you to go out and answer particular questions, correct?
A: That's right.
Q: You've heard of the national -- National Resource Conservation Service, correct?

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A: Yes. We've used them several times.
Q: Okay. You've heard of the Farm Bureau, correct?
A: Right.
Q: You've heard of the Poultry Federation, correct?
A: Yes. We've been in touch with all those.
Q: Okay. And your husband grew up on a farm; isn't that correct?
A: He did, yes, sir.
Q: Okay. And your husband is actually going to be the person who's going to be operating the farm; isn't that correct?
A: Yes, he is.
Q: So the fact that you're fourth – excuse me, a four-year kindergarten teacher is not really relevant because you're not going to be doing the day-to-day management of the facility, correct?
A: That's true. When I retire, I'll help.
Q: Okay. And you do have a adult sons who can help as needed, correct?
A: Yes, they will.
Q: No further questions.
THE COURT: Mr. Hite.

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MR. HITE: Thank you, Your Honor.
MS. SUMEREL - CROSS-EXAMINATION BY MR. HITE:
Q: Lisa, you said a moment ago that YOU wouldn't have any help operating the facility?
A: Just Mike and I.
Q: But tell me a little bit about your integrator.
A: Columbia Farms. Yes, we will. We'll have a helper there with us for a year or longer, as long as it takes to teach us the right way to do it.
Q: You've met with Columbia Farms? You've talked with Columbia Farms?
A: Yes, we have.
Q: And you feel certain or you feel comfortable about Mike being able to operate the farm with Columbia Farms' help?
A: I do.
Q: And you know Mike?
A: Yes.
Q: You know him well?
A: I do.
Q: To trust him to operate your chicken farm?
A: I do.
Q: And you feel like he's got the adequate experience to handle it?

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A: I do.
Q: Do you do -- what part of the whole poultry farming business do you plan on doing?
A: I'm going to take care of the books and I will help walk through and keep the chicks moving and things like that.
Q: And how many years did you say you had in, 29?
A: Twenty-nine.
Q: How many more do you expect to teach?
A: Two to three.
Q: After that, your plans ---
A: I'll be there daily.
Q: And your sons, how old are they?
A: Will is 30 and Barry is 27.
Q: And your plan to start this process with the chicken houses was to benefit them in the future; is that correct?
A: Yes, it was.
Q: Mike's family and your family has farmland there?
A: Yes, we do.
Q: Whose farmland surrounds -- let's talk about the north -- eastern portion and eastern portions of where the houses are planned to be put in?

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A: His mother owns it.
Q: Who else lives -- how close is she to the area?
A: She's right down the road from us.
Q: All right. How far? Is she your next-door neighbor?
A: Next-door neighbor.
Q: And she's completely okay with the operation of the facility?
A: Yes, she is. Yes, she's backing us 100 percent.
Q: Y'all have a great relationship?
A: We do.
Q: And she was the one who gave Mike and you the property to plan this facility; is that correct?
A: She did.
Q: You hired Joy Shealy to prepare your plan in this case?
A: We did.
Q: And you thought Joy did a good job?
A: We do.
Q: And did you rely on her for the expertise as to layout the plan and the procedures for your facility?
A: We did.

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Q: And will you rely on that plan when you ---
A: We will.
Q: Is that plan something that Mike is familiar with?
A: Yes, he is.
Q: Is it something that you're familiar with?
A: Yes, I am.
Q: Do you feel that Leon Fulmer, who came out to the site, and Joy Shealy did all that they were supposed to do as it relates to the plan?
A: I do.
Q: Do you feel like the plan was adequate for ---
A: I do.
Q: --- DHEC's approval?
A: Uh-huh.
Q: Talk a little about the property as it relates to a vegetative buffer or trees around the field.
A: Uh-huh.
Q: Can you tell me a little bit about it?
A: Well, there are lots of trees between -- on the other side of our property line that Mike's mama has owned and she has no future plans to cut them. There's lots of grass growing, and just all kind of farming looks.

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Q: Tell the Court a little bit about the road, Poole Town Road.
A: Poole Town Road is a rural community. It's farming. It has lots of -- some people has cows on it; some people have chickens in their yard. There's a lot of hay being baled on it. Our -- Mike's family lives around us. He's got uncles that live there; his grandparents lived there before but they died. So it's family oriented for us.
Q: And are there any operations on Poole Town Road?
A: There's lots of 18-wheelers going by. There's logging on all sides of us.
Q: So it's a rural area?
A: Right.
Q: And it's a farming area?
A: It's farming, yes.
Q: Would you consider it a high populated area?
A: Not where I live, no.
Q: Are there any lines on the road -- on Poole Town Road?
A: No, there's not. There's not.
Q: There's no passing lines, nothing?
A: No.

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Q: Is it a dirt road or is it a paved road?
A: It's a gravel road. They tar and gravel it occasionally.
Q: So it's paved, but it's old?
A: Right. It's old, yeah.
Q: Let's look at ---
MR. HITE: May I approach the witness, Your Honor?
THE COURT: Yes, sir.
Q: Let's look real quickly at DHEC 107 again, okay. And I'm going to hold it up for the Court and you to look at, okay?
A: Okay.
Q: This is the buffer as it's outlined in the 200 property -- 200 foot property line setback; is that correct?
A: That's correct.
Q: Are these trees here?
A: Yes, those are trees.
Q: And do the trees go into this setback area?
A: They do.
Q: And do they go all the way up beside this ---
A: Right, in the yellow area.
Q: And at this corner here at the top right, is this to the -- directly to the right of that or directly to the east of that, is that your

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mother-in-law's property?
A: That is.
Q: That's your mother-in-law's pond there?
A: Right. That's right.
Q: Okay. And then we go up this straight line which looks to me as if a surveyor put that line there; is that true?
A: True.
Q: Yes. And everything to the east of that and to the north of that is your mother's ---
A: Right.
Q: --- your mother-in-law's property?
A: Uh-huh.
Q: And when you were mentioning property being sold, tell me which property. Was that here to the west?
A: It was the Milton Blakely estate.
Q: Okay. And is that to the west?
A: Right.
Q: Who owns that property now?
A: Robert and Billy Walker.
Q: And do y'all know them?
A: Yes, we do.
Q: What do they do for a living?
A: They are loggers.

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Q: And have they cut trees on that property?
A: They have. They have since logged it.
Q: Do you feel like there's a sufficient vegetative buffer around your parcel?
A: Yes, I do.
MR. SMITH: Objection, Your Honor. She's not qualified to make that kind of ---
THE COURT: Sustained.
Q: Are there -- when you observe the property, are there trees surrounding the facility ---
A: There are trees.
Q: --- where will the facility be?
A: Right, there are trees.
Q: I don't think I said that correct.
MR. HITE: Beg the Court's indulgence one second.
THE COURT: Yes, sir.
MR. HITE: I have no further questions, Your Honor.
THE COURT: Re-direct, Mr. Smith?
MR. SMITH: Real briefly, Your Honor.
MS. SUMEREL - RE-DIRECT EXAMINATION BY MR. SMITH:
Q: Ms. Sumerel, you testified that Columbia Farms is going to provide you help?
A: Yes.
Q: In running the facility?
A: Yes.

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Q: That's not provided for anywhere in your -- in either of your plans, is it?
A: Well, when you go with them they send somebody out to your plant -- to your site for a year or longer so you can learn how to take care of the chicks like they want you to.
Q: Understood. Is that provided for in your plan?
A: I don't know.
Q: Is it provided for in your permit? Is it a requirement of your permit? And your permit's right there (indicating).
A: It's with the integrator, as far as I know.
Q: If you look at what's marked Exhibit Number 3, I'm reading upside down, I believe it's in front of you there on the stand. It's the permit.
A: Uh-huh.
Q: Is that required in your permit?
A: I don't see it listed.
Q: And you testified it's a small road running in front of your house to your proposed factory facility, right?
A: It's a county road, yes.
Q: You understand there's going to be high 18-wheeler tractor coming back and forth to

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deliver feed and chickens, correct?
A: Right. We already have logging trucks going up and down.
Q: So is it small that it can't sustain that or is it -- is it big enough to sustain heavy 18-wheeler traffic?
MR. HIGHTOWER: Your Honor, I'm going to object. Vehicle traffic is not within the purview of the Department and is not a consideration in 61-43 Part 200.
MR. SMITH: She provided testimony about her characterization of the road and I'm just delving into that slightly further and it'll be much ---
THE COURT: Overruled.
MR. SMITH: Thank you, Your Honor.
Q: So in your opinion?
A: Well, it already has 18-wheelers going up and down on it.
Q: So it could handle the heavy amount of 18-wheeler traffic?
A: I guess so. It does. It's been doing it for years.
Q: And the type of operation you're doing, these type of poultry houses.

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A: Uh-huh.
Q: It's not traditional farming, is it?
A: I think it is these days.
Q: You think it is these days?
A: Well, there's a lot poultry farms around Laurens County, Newberry County, and Lexington County.
Q: Thank you, Ms. Sumerel. That's all I have for the witness.
THE COURT: You may step down. Next witness, Mr. Smith.
MR. SMITH: Yes, Your Honor. If you'll give me just one second ---
THE COURT: Certainly, take your time.
MR. SMITH: --- to clear off here. Call Mike Sumerel, please.
THE COURT: Be sworn, please, sir.
MIKE SUMEREL, having been duly sworn, testifies as follows:
MR. SUMEREL - DIRECT EXAMINATION BY MR. SMITH:
MR. SMITH: Mr. Sumerel, I beg your indulgence for one second while I get organized so we can get through this. And I'd like to ask the Court and if we can go ahead and admit some other joint exhibits for the purpose of this

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testimony.
THE COURT: Yes, sir. Tell you what, list them all and I'll admit them all at once.
MR. SMITH: Sounds good. What's been joint marked Exhibit Number 2, Dead Animal Composting Facility Management Plan for the Sumerel farm. Joint Exhibit Number 4, which is a DHEC document entitled Chronology of the Sumerel Farm Permit Issuance. Joint Exhibit Number 5, which is another DHEC document, Agricultural Permitting Review Checklist Summary. Joint Exhibit Number 8, which is October 11, 2012, memo from William Chaplin to Leonard Gordon in the Bureau of Environmental Health. Joint 10, which is an October 22 DHEC memorandum to Bill Chaplin from William Burriss, B-U-R-R-I-S-S. He is in the Division of Wastewater Management. Joint 9, October 16, 2012, DHEC memorandum to William Chaplin from a Stephen Smutz, excuse me, S-M-U-T-Z, air modeling section, Bureau of Air Quality. I believe this is the last one here, Your Honor. Exhibit Joint 11, which is the June 12, 2013, DHEC letter to concerned citizens about the Sumerel poultry farm permit.
THE COURT: Thank you, sir for getting that into the

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record. Exhibit, Joint Exhibits 2, 4, 5, 8, 10, 9, and 11 are admitted without objection.
(Joint Exhibit Numbers 2, 4, 5, 8, 9, 10, and 11 were admitted into evidence.)
MR. SMITH: Thank you, Your Honor. If I may approach the witness?
THE COURT: Absolutely. And let me say to both of you, you don't have to ask my permission. I try to operate a little more informally than Circuit Court.
MR. SMITH: Thank you, Your Honor. I'm trying to keep this organized in front of you.
(Off the Record)
THE COURT: Are you ready to proceed?
MR. HITE: Yes, sir, Your Honor.
THE COURT: Mr. Smith.
MR. SMITH: Thank you, Your Honor.
Q: Thank you, Mr. Sumerel, for being patient while we get through the administrative stuff. Now, tell me your farming background, Mr. Sumerel.
A: I've done it all my life. As long as I can remember I've helped Daddy with the farm.
Q: Excuse me, I couldn't hear you.
A: I said as long as I could remember I've helped Daddy with the farm.

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THE COURT: And I didn't -- I still don't understand; I'm sorry.
MR. SUMEREL: Excuse me, sir. I grew up on a farm. For as long as I can remember I've helped Daddy -- we've had cows, had pigs, we've had horses, we've had everything.
THE COURT: You helped Daddy, that's what I didn't hear.
MR. SUMEREL: My father, yes, sir.
THE COURT: I see.
Q: And currently, what kind of farming are you doing, baling hay?
A: We've got hay. We've got a couple of -- we've got a couple of donkeys and a cow right now. We don't have a lot of animals at the time.
Q: And the size of the operation you want to do, let's talk a little bit about that. You can -- if you need to refer to anything there, please do.
A: Okay.
Q: And just tell me what you're referring to and we'll go through the document; is that all right?
A: That's fine. Yes, sir.
Q: What size operation are you planning to do

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here?
A: We're doing four broiler houses. They're 52 by 500.
Q: Fifty-two by 500 feet?
A: Yes, sir.
Q: How many chickens per house?
A: I think there's possibly 26,000.
Q: How many are you allowed to do under the permit?
A: It's a total of four -- 490 some thousand and some odd pounds.
Q: Per year?
A: Per year, yes, sir.
Q: And that makes you a medium facility under the regulations; is that your understanding?
A: I think it's a small facility, yes, sir.
Q: Not a large facility?
A: No, sir, large facility is over -- over 500,000 pounds is my understanding.
Q: And is your understanding that if it was a large facility, you'd have to do a 400-foot property setback?
A: Yes, sir.
Q: And as your wife testified, you don't have the land for that, right?

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A: No, sir, we don't.
Q: You submitted an amendment to the plan, and if you'll look at Number 2, in late May of 2013; is that right?
A: Yes.
Q: It's Number 2 right in front of you, Mr. Sumerel, the dead animal disposal plan.
A: Okay. Yes, sir. Yes, sir. Yes, sir. I'm sorry.
Q: That's fine. You get a lot of ---
A: Number 2. There's a lot of papers up here.
Q: You submitted that in late May of 2013, correct?
A: Yes, sir.
Q: And tell me what the -- what these amendments were.
A: Well, we did -- we couldn't -- we could not -- we were planning on doing a burial, and we could no longer burial, so we had to do another method of disposing of our mortality.
Q: And what does the amendment propose as the new disposal method?
A: Composting facility. Composting facility. We were going to do composting.
Q: And what type of composting does this plan call

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for?
A: A hay bale type composter.
Q: And can you describe that somewhat for the Court ---
A: It's a ---
Q: --- in your understanding.
A: Yes, sir. We either pour or have it on a clay pad. We put a line of hay bales and then we put other hay bales against those bales making bins and so forth; the size of whatever our loader bucket on our loader is. And a we put -- like I say, you've got the hard compacter or cement preferably. And then you put the layer of compost, or layer of chicken manure, then you put dead chickens, then you cover it. Then you have to cover it with wood chips or some form of, you know, there's several different things you can use besides that. And, like you say, you monitor it. You have to have moisture. It has to have a moisture level. You have to monitor the moisture level, so forth. You have check your temperature, checked on it. You have to turn it over. If the temperature gets too hot, you have to turn it to keep it from catching on fire.

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THE COURT: Excuse me, Mr. Sumerel. And you'll have to forgive me. It may be your normal manner of speaking, but you're going a little fast. If you can ---
MR. SUMEREL: Okay.
THE COURT: --- slow it down for me and the court reporter, please.
A: Okay. I'm sorry. Okay. And that's pretty much -- pretty much it. Like I say. I'm not -- I'm not trained in it yet. I will be when we do it.
Q: And you have the plan in front of you and also the permit, which is Joint Exhibit 3. And I want you to show me in either the plan or the permit where it calls for or requires you to do that pad you talked about.
A: It's in the -- it's in the regulations of, you know, of what it calls for. I'm not sure exactly where it is, but it's, you know, I've read it.
Q: You've read it somewhere?
A: Yes, sir. As far as -- as far as what we have to do. We have to, you know, grade a site and all for it. It has to be a grade each site that water runs away from It has to have a

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berm around it to catch the water of any runoff or anything.
Q: Right. And you mentioned grading plans. Those aren't done yet, are they?
A: No, sir.
Q: So this permit DHEC did not consider any of that kind of stuff, did they, as far as you know, because the plan is not in place?
A: No, sir. No, sir, not yet.
Q: I want to take a step back with you real quick, okay? When Ms. Matthews came out to do the first preliminary site inspection, tell me about what y'all did that day.
A: Well, Leon Fulmer came, not Ms. Matthews. Excuse me, excuse me, I'm sorry. My mistake.
Q: Sure.
A: Oh, no, I'm sorry. Too many people. Yes, sir. We just -- well, you know, carried her over to the side and showed her what we were, you know, what we proposed to do or whatever. And we were just determining if we could, you know, if our site was suitable or not at the time.
Q: And how did -- so you walked around, determined if suitable. Did you provide them any information that day?

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A: I provided the county -- the county map for her.
Q: You said a county map. Where did you get the county map?
A: From the courthouse in Laurens County.
Q: And it showed property lines?
A: It showed the property lines. And at that time, my Mama owned the property.
Q: So that's why on Ms. Matthews' checklist it -- the map attached to that probably -- that's why it showed the larger property?
A: Yes, sir.
Q: Is that fair?
A: Yes, sir.
Q: When did your mama deed over the property to you?
A: I don't remember. Sometime -- sometime in 2012. I don't remember when it was.
Q: Sometime between the preliminary site inspection and probably the permit ---
A: Yes.
Q: --- being issued?
A: Yes, sir.
Q: And how long was Ms. Matthews out there that day?

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A: I would think about an hour, hour and a half.
Q: You walked around the property. Did y'all go to your house and talk about requirements or anything like that?
A: She talked to me over there in the field about it, yes, sir. She gave me a folder with everything we had to do in it.
Q: And what did you proceed to do after that?
A: We talked to -- that's when we contacted Joy Shealy, I believe, at that time about doing a plan for us.
Q: And why did you pick Ms. Shealy?
A: She was just highly recommended to us by other farmers that had used her in the past, and she was on the list of contacts that I believe Chrissy had given me and Columbia Farms had also given me.
Q: And you mentioned Columbia Farms. Did you approach them about doing this operation?
A: Yes, sir.
Q: How did you become interested in doing a poultry farm?
A: We just -- we're -- several different things. We want to do some type of farming. We were both getting ready to retire and we wanted to

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do, you know, we farmed small scale all of our, you know, pretty much all my life. We wanted to do something bigger and something that would bring us in an extra income and also create something to leave our children.
Q: And this is a much larger scale than a traditional small farm operation?
A: Yes, sir.
Q: And after you hired Ms. Shealy -- am I saying her name correct?
A: I think so, yes, sir.
Q: Who did she send out to come visit the site?
A: Leon Fulmer.
Q: She never came out there, did she?
A: No, sir.
Q: What did Leon do when he came out there?
A: There again, we just talked about what we wanted to do, and at that time, we hadn't determined what property Mama was going to deed to me at that time. That's what we were doing was determining where would be the best area of what we had to do it with and all. And so we walked over and looked at where we were going to put them at the present time. We also looked at the other areas of the farm to see

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where it would, you know, seat best or to whatever and all -- and pretty much it.
Q: So the property -- and we've seen now the map of what we kept referring to as DHEC 107, which I'm not sure if you have the plan in front of you, do you?
A: I don't see it. I was looking for ---
Q: It would be -- let's see, maybe I can get it from the court reporter. It would be Number 1.
COURT REPORTER: Y'all haven't given me anything yet.
MR. SMITH: Okay.
Q: The question being, did Mr. Fulmer determine the property lines as far as the portion -- the parcel your mom deeded over to you to do the operation?
A: Yes, sir. He -- we determined, you know, through that and through conversations back and forth with him over the next few weeks as to where we would best be suited for them.
Q: And what I'm going to show you is that DHEC 107 document. You familiar with that?
A: Yes, sir.
Q: And that shows the lines Mr. Fulmer determined ---

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A: Yes, sir.
Q: --- as far as property lines?
A: Yes, sir.
Q: And that's an accurate reflection of where you plan to put the barns?
A: Yes, sir.
Q: And accurate reflection of the 200-foot setback noted by the yellow lines?
A: Yes, sir.
Q: And you're right -- you're right near the 200 feet, correct?
A: Yes, sir.
Q: And as you said before, you can't go to 400 feet?
A: Yeah. No, sir.
Q: Now, when Mr. Fulmer came out, you said you didn't know the property lines. How did -- did you do any surveying, take any measurements?
A: Didn't really need to. We knew -- we knew where the -- the property beside us had just been surveyed and, of course, the property of my Mama's didn't really, you know, wasn't a concern as far as to what, you know, we just needed to know what she was going to give me.
Q: And that's fair. Did Mr. Fulmer ever come out

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after that first visit to visit the site?
A: No, sir.
Q: And you said Ms. Shealy never came out to the site?
A: No, sir.
Q: There was an issue, if you recall in your deposition I asked you about there was something about maps used by Joy Shealy, the maps that you might have given to them at some point not having the correct property lines on them?
A: I remember us discussing that, but I don't really -- I don't think we ever determined what you were really talking about.
Q: Fair enough. Do you know if the map of the correct property lines was ever provided to Ms. Shealy so she could do your plan?
A: I assume it was. The stuff she sent us back came from the GIS, you know, from the county.
Q: So you assume she got the map right?
A: Well, I think the first map we gave her was right as far as that goes.
Q: Now, you wanted to do you said burial initially as the dead animal disposal method?
A: True.

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Q: Because it's the cheapest and easiest?
A: Yeah. Well, it's not necessarily the cheapest, but it's probably the easiest, yes, sir.
Q: And there's nothing wrong with that. DHEC came out and evaluated that part of the plan; did they not?
A: Yes, sir, they did.
Q: And what determination did they make?
A: They made a deter- -- because we were in a water table or something another, and like I said, that's them there, but you know, we could not do bury.
Q: And that's why y'all switched over to the composting method?
A: Yes, sir. Uh-huh.
Q: And in your dead animal disposal plan, it mentions incineration, right?
A: Yes, sir.
Q: You're not permitted to incinerate, are you?
A: Well, our permit was issued -- to my knowledge, it was issued to do incineration or composting either one.
Q: You can look at your permit; it's Joint Exhibit 3.
A: Yes, sir.

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Q: And look through there. Let me know if you think you're allowed to incinerate in accordance with that permit.
A: This permit is for composting, but in our plans that we submitted, our big, you know, comprehensive nutrient management plan, it lists either one.
Q: All right. So your understanding, what are you allowed to do?
A: This, composting. But, you know, like I said, we would have to -- I assume, that's just me thinking, we'd have to go back to DHEC and apply for a permit, you know, for the approved incinerator, which they have a list of approved incinerators that are no -- to my understanding, are no problem.
THE COURT: Mr. Smith, clear this up for me, please.
MR. SMITH: Sure thing.
THE COURT: I'm looking at Exhibit 3.
MR. SMITH: Yes, Your Honor.
THE COURT: And Item 3 under project description, it says hay bales bin composting systems for disposal of dead animals, and under special conditions on the next page it says disposal of daily mortality will be by

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composting/incineration. So it's in the -- I assume that's part of the permit of Exhibit 3. Which applies?
MR. SMITH: I'll have to ask Mr. Chaplin which one applies because there is a lot of confusion over it. And it's the reason I'm asking Mr. Sumerel ---
THE COURT: So you can't clear it up now, but you'll clear it up later?
MR. SMITH: Absolutely.
THE COURT: Thank you.
MR. SMITH: Mr. Chaplin, I think, can give us some clarity on that.
Q: And you just mentioned, Mr. Sumerel, on incineration, the plan has not at least identified any type of incinerator, model type or anything y'all would use on the facility?
A: No, sir. We have a -- when we were discussing all this, he had gave me a list of approved incinerators.
Q: And on the maps in your plans, there is no siting for an incinerator, is there?
A: No, sir. They're normally placed between the houses, so there's no really, you know, from what my understanding, they're usually placed

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between the houses. So there's not, you know, anything that has to be sited for.
Q: And to do your operation, you're going to have to drill a few wells, right?
A: Yes, sir.
Q: At least two?
A: Yes, sir.
Q: And there's no siting for those wells in any of your plans, is there?
A: No, sir.
Q: DHEC did not ---
MR. HIGHTOWER: Objection, Your Honor. 61-43 does not have any of requirement for the location or review of where any ground well or water or surface well, surface water intake structure would be.
MR. SMITH: 61-43 requires evaluation of potential water and other environmental impacts by the Department. Drilling site of the well I think goes to potential environmental and health impacts of the facility.
THE COURT: I think what that refers to is what may affect abutting owners perhaps.
MR. SMITH: It's any waters of the state including ground waters that might flow into the waters

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of the state and ephemeral or intermittent streams within 50 feet located downslope.
MR. HIGHTOWER: Well, Your Honor, the regulation is looking at when there is a discharge into environments. Specifically in 61-43 Part 200 and in Part 100, there are what they call manure utilization fields, areas. And that's fields where farmers who have some type of animal facility get rid of the manure by land applying it themselves. And because of that, the regulation says that in those cases, we do have to look into protection and -- of water sources. So the regulation does talk agronomic rates, how much manure you can put down, how you're supposed to incorporate it into the soil and all that. But this is a facility where the applicant is not going to dispose of any manure on his property. So those requirements are not -- were not reviewed in this case because they were not applicable to the particular facility proposed by the Sumerels.
MR. SMITH: Your Honor ---
THE COURT: I think it's a little tenuous, but I'm going to overrule the objection and allow you to continue.

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MR. SMITH: Thank you.
THE COURT: You can renew your objection if he gets out of bounds.
MR. SMITH: Thank you, Your Honor. I will say on that point, to cite the regulation, the one I mentioned, Part 200.70(E) explicitly says, "The Department shall act on all permits to prevent, so far as reasonably possible considering the relevant standards under state and federal laws, an increase in pollution of the waters and air of the state from any new or enlarged sources." So if ground water flows and things when you drill wells, those can affect the waters of the state, which if you look at 107, there's some mapped out. And I've got an expert we can come in nd testify about things like that to get more technical, but I think under three in the regulations it's clear that's a consideration.
THE COURT: Well, I'm still not sure that what you say is designed to protect your client. I think it has more to do with the wells and the owner of the property. What do you want to say about that?
MR. HIGHTOWER: Well, Your Honor, I do point out

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that as stated into the record by Mr. Smith, it is concerning pollution of waters caused by -- drilling wells in and of themselves is not polluting ground water sources. Permitting of ground -- of the installation of wells is done by another permit that's reviewed by a different section, the ground water section, not the agricultural section; therefore, again, we think that this is not relevant to this case. The Department did not -- because at this time, the applicant hasn't determined how they want to put wells in and when they do, they will go and apply for permission to put in a well and it will meet the requirements of the regulation. And I can find the number of that regulation for the Court and I will provide that information.

THE COURT: Well, again, I'm going to overrule the objection and allow him to proceed, but I want you to stay within those parameters.

MR. SMITH: Yes, sir. Yes, Your Honor. It's no problem. I think it's been established that they're not sited. And that's all. We can move on from that particular point.

Q: Now, based on the size of the operation you

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want to do, Mr. Sumerel, you're going to have over 1,000 birds there at all times, over -- excuse me, over 100,000 birds there at all times?

A: Yes, sir.

Q: Except during the annual clean out of the -- of the houses, right?

A: And in between -- in between flocks. We won't be there at all times, no, sir.

Q: How long of a flock cycle are you doing?

A: I think it's somewhere between seven and a half to eight and a half weeks.

Q: I think your planning calls for at least 63 days; does that sound right?

A: Yes, sir.

Q: And how will you be ventilating the houses?

A: Fans.

Q: What exhaust direction -- which direction is the exhaust going to go?

A: To the North. To the north.

Q: And is that designated in your plans anywhere?

A: There's a map that shows them to the -- you know, the map show them, you know, like I said you look at the site and where they're going to, they're pointing north.

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Q: I understand you're saying they're pointing north. I'm asking on the plan, and I can give you this copy if you want to reference. Where in it does it designate the exhaust direction for your ventilation fans? It's unfair for me to ---

A: I'm not -- I'm not sure. We just, you know, I'm not sure if it is designated there. That's not, you know, I can't answer that.

Q: And how does that vent system work?

A: It just -- it's all -- it's all computerized. It's all whatever the houses feed to keep them dry or the heat down or whichever you're doing. You have fans to go for moisture; you have fans for ventilation.

Q: And why is the moisture level important?

A: The moisture level is important because of the -- that's what keeps your odor down; it keeps your chickens healthy.

Q: And do you know what comes out of the ventilation fans?

A: Just the particulates from the manure and so forth and feathers and so forth of the chicken, I'd assume.

Q: You assume? You don't know?

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A: Well, that's what the -- that's what everything I've read says it'll be.

Q: For doing your composting, what's the mixture on a compost of this type?

A: It's in here. I'll have to look and tell -- I can could tell you, but it's ---

Q: Generally. I'm not going to hold you to numbers.

A: Approximately you -- whatever chickens you use. You use that amount of -- that amount of manure or whatever it's -- well, they stack -- they stack the hay bale type compost and I think it's in so many inches a layer. You put a layer of compost and then you put a layer of chickens and then you put a layer of whatever on top of.

Q: And manure is an important and ---

A: Yes, sir.

Q: --- necessary part of that mixture?

A: Yes, sir.

Q: So you're going to be handling manure on a daily basis to do your composting?

A: Yes, sir.

Q: And where are you going to get that?

A: Like I said, I told you at the deposition I

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thought we'd have to build a stacking shed. But I have since found out that I can keep a small amount onsite on a pad. It has to be covered. After three days it has to be -- stay, you know, you have to keep it covered up.
Q: So you plan now to put a pad out and store ---
A: Yes, sir.
Q: Let me ---
A: Store the amount and they, you know, it's a small amount that we need, and I will get it from a manure broker.
Q: Have you designated that broker yet?
A: Yes, sir. He's in my plans Don Bowman in Iva.
Q: So you're going to use the same broker that's going to take ---
A: Yes.
Q: Let me finish my question for the court reporter and I'll let you answer, Mr. Sumerel, if that's okay. You're going to get the manure from the same broker that's hauling off your other manure, correct?
A: Yes, sir.
Q: Are you going to use any from your own houses?
A: I won't at first; I won't have any. And then eventually we will.

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Q: So you're going to stockpile a bunch of manure on this pad?
A: Yes, sir.
Q: And where is that pad located?
A: I assume we'll put it where we were going -- you know, somewhere in the vicinity of where we're going to put the composter, which is going where the -- where the burial site was approved at.
Q: And none of this because it's new amendment is designated in your plans, is it?
A: No, sir.
Q: So DHEC couldn't have known about any of this before they issued the permit?
A: No, sir. Well, no sir. I don't guess so.
Q: And forgive me if I asked this earlier, Mr. Sumerel, you're going to have to do a massive amount of what I call grading of your property for this facility to be up and running; is that correct?
A: Yes, sir. Uh-huh.
Q: And you have to disturb over -- well, over an acre of property?
A: Yes, sir.
Q: And those plans have not been done yet, have

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they?
A: No, sir.
Q: Excuse me. Now, do you recall in your deposition we talked about the use of the land?
A: You'll have to ...
Q: You want me to be more particular?
A: Yes, sir.
Q: Do you remember I asked you how you think this land should be used?
A: You're going to have to elaborate a little farther on that. We talked about a lot.
Q: We did. We did. I asked you essentially do you think it's appropriate use of this land considering all the surrounding residences and demographics, better term ---
A: Yes, sir.
Q: --- of the area?
A: Yes, sir, I do.
Q: And do you recall you told me that it should be used as farmland because you think of it as farmland.
A: Yes, sir.
Q: And do you recall you think you should be able -- you told me you think you should be able to use your land for pretty much whatever you

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want?
A: Yes, sir. I think you should as long as it doesn't affect, you know, the quality of life for somebody else.
Q: And that's exactly what I was asking. Do you think opening up a large, concentrated feeding operation with over 100,000 birds at all times is not going to affect your nearby neighbors?
A: No, sir. It shouldn't bother them at all. As long as it's run properly and everything's fine. it shouldn't affect any -- any whatsoever.
Q: No further questions right now.
THE COURT: Thank you. Mr. Hightower.
MR. SUMEREL - CROSS-EXAMINATION BY MR. HIGHTOWER:
Q: Mr. Sumerel, you testified that you've been around farming for most of your life, correct?
A: Yes, sir.
Q: Okay. you stated that you do not have currently plans for the grading of the site, correct?
A: No, sir, we don't.
Q: And the reason why you don't have it is because that's a separate permit, isn't ---
A: Yes, sir.

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Q: --- that correct?
A: Yes, sir.
Q: That is a separate plan and detailed engineering drawings that will have to be prepared by an engineer and submitted to the Department; isn't that correct?
A: Yes, sir.
Q: And that would be something that you would do after you have a permit that says that you can in fact construct and operate the facility, correct?
A: Yes, sir.
Q: And you do intend to apply for a stormwater permit, correct?
A: Yes, sir.
Q: You're going to operate this facility, correct?
A: Yes, sir.
Q: And are you aware of what training you're supposed to take as part of the permit requirements?
A: Yes, sir.
Q: And what training is that?
A: I've got to take a CAMM class within a year of having a completed permit.
Q: Can you explain to the Court what CAMM stands

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for?
A: Oh, not sure exactly. I know it's just the manure -- the manure handling aspect of everything you can, you know.
Q: Comprehensive Animal Manure Management?
A: Yes, sir.
Q: Okay. And that is a course that is taught at Clemson University; isn't that correct?
A: Yes, sir.
Q: Okay. And you do intend within the year of the Court making a determination that you, in fact, would get a agricultural permit for the construction operation of the facility; you would take that course, correct?
A: Yes, sir.
Q: Okay. And isn't it true the only reason why you haven't done it to this point is just solely because this matter is in litigation before the Court, correct?
A: That, and I was scheduled to take it the early part of this year and I had shoulder surgery and I was, you know, couldn't take it.
Q: Okay. But the fact that you haven't taken it right now, to your understanding, is not a problem, correct?

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A: No, sir. We do not have a effective date on our permit.
Q: Okay. Now, the eastern and southern boundaries of your property, they're wooded, correct?
A: Yes, sir.
Q: Those woods, do you have any plans for those woods?
A: No, sir.
Q: Okay. So you're going to keep those woods there, correct?
A: Yes, sir. Yes, sir.
Q: Okay. You don't intend to log it or ---
A: No, sir.
Q: --- or in any way disturb that vegetation?
A: No, sir.
Q: Okay. And it's your understanding that the hay bale composting area is going to be placed on a pad, correct?
A: Yes, sir.
Q: Okay. If the Court said that you had to have a specific type of pad, either compacted clay soils or concrete, you would have no problem with that ---
A: No, sir.
Q: --- correct?

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A: No.
MR. HIGHTOWER: One moment, Your Honor. No further questions, Your Honor.
THE COURT: Mr. Hite.
MR. HITE: Thank you, Your Honor.
MR. SUMEREL - CROSS-EXAMINATION BY MR. HITE:
Q: All right. Mike, let's take a look at the map on DHEC 107 again, okay?
A: Okay.
Q: I'll just show you the pictures real quick. This is DHEC 107, as we talked about. Tell for the Court who owns the property just to the south of that?
A: Mama.
Q: Okay. And about how much of that property does your mama have?
A: Approximately 90 acres.
Q: So that's 90 acres to your north and to your east?
A: Yes, sir.
Q: And a little bit to the south?
A: Yes, sir, just a little bit.
Q: And she owns the property directly to the south, is that right? Is that her house or your house?

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A: Yeah. That's -- that's Mama's house.
THE COURT: I can't see what you're pointing to.
MR. HITE: I'm sorry.
THE COURT: I want to get a clear understanding of the ownership.
Q: I'm pointing to right here at the bottom. Whose house is that right there?
A: That's -- that's my mother's.
THE COURT: I understand that. And just upward to the east of that?
Q: The other purple dot; is that your house?
A: No, sir. That's Donice and Ricks.
Q: Okay.
MR. SMITH: The Stills' house, Your Honor, is that purple.
MR. HITE: So that's the purple one.
THE COURT: Then that southeastern boundary line there just after you leave his mother's house, who owns that?
MR. HITE: Who owns right here?
THE COURT: Yeah.
MR. SUMEREL: That's a -- I've got to get oriented where we're at here. Yeah, that's my mother's property also.
THE COURT: And then the same for this northeastern

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line, just past that adjacent to the pond?
MR. HITE: That's your mama's property?
MR. SUMEREL: Yes, sir, that's mama's property also.
THE COURT: Okay. Thanks.
Q: Mike, you're going to operate this facility?
A: Yes, sir.
Q: Is it your understanding that you're going to rely on your plans to operate that facility?
A: Yes, sir. My plan, like I said, starting off with the help of Columbia Farms.
Q: And do you believe Columbia Farms is adequate to help you with the facility?
A: Yes, sir, I do.
Q: Do you feel like you're adequate to be able to run this facility?
A: Yes, sir, I do.
Q: You said that your plans were to run a composter or incinerator; is that right?
A: Yes, sir.
Q: And your plans call for compost or incineration?
A: Yes, sir.
Q: And actually in the special conditions of your permit, it calls for composting or incineration?

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A: Yes, sir.
Q: Do you plan -- what kind of incinerator do you plan to use if and when you use ---
A: DHEC gave me a list of them and I will pick one off of that's suited for our, you know, our circumstances of what we do.
Q: So your plans are if you don't use a hay bale composter?
A: If we don't, we'll go with incinerator.
Q: And what would -- would you do whatever it was that was amenable in this case?
A: Yes, sir, be glad to.
Q: And you also said that you would agree to keep the vegetative buffer that's to your south and east?
A: Yes, sir.
Q: On your property?
A: Yes, sir.
Q: Are you willing to stipulate today that you'll maintain that?
A: Yes, sir, we'll leave it alone; we'll protect the trees.
Q: And you won't cut it down?
A: No, sir.
Q: For the life of this permit or for ---

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A: Yes.
Q: --- the life of the poultry houses?
A: Yes, sir.
Q: And you also said that you ought to be able to freely use your property as farming property; is that correct?
A: Yes, sir.
Q: As long as it doesn't impact anybody else?
A: Yes, sir.
Q: Right. But that's what DHEC regulations are for, correct?
A: Yes, sir, that's ---
Q: And the regulations are to protect other citizens, correct?
A: Yes, sir.
Q: And that's why you have to go through the permit process?
A: Yes, sir.
Q: And if you believe that you are under and within the permitting obligations, you should be able to farm your land?
A: Yes, sir.
Q: And are you a particular person?
A: Define that a little better.
Q: Okay. You build houses?

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A: Yes, sir.
Q: You're in construction?
A: Yes, sir.
Q: Do you build a house without making sure the boards aren't planned?
A: No, sir.
Q: Do you follow the code ---
A: Yes, sir.
Q: --- when you're building a house?
A: Have to.
Q: Okay. And tell a little bit about building and following a code in building.
A: Well, you have to. It's – it's rules and regulations you have to follow. You have a building inspector that you have to uphold to. And you have a homeowner; you have a specification sheet for the house; you have the homeowner you have to please; you have to do everything that's legal and by the state building code.
Q: But you don't have to know the building code frontwards and backwards?
A: No, sir. You have to be able to look it up. You have to know where to look to find it.
Q: And that's your plans for this facility?

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A: The same for this facility. I have to be able to know where to look in my plans to determine or achieve the help that I need.
Q: Leon Fulmer came out to the site?
A: Yes, sir.
Q: Who else have you had come out to the site?
A: Eric Lyles with Columbia Farms came to the site.
Q: And who else?
A: Well, all of y'all have been there and Mr. Smith came, his representatives came, or his people came and looked at it.
Q: And how long did we spend out there that day with all of Mr. Smith, Mr. Hightower, and Mr. Chaplin, I think Mr. or Dr. Hargett and Dr. Parkhurst were there as well?
A: Yes, sir.
Q: About how long were we out there that day?
A: Maybe an hour; something like that.
Q: An hour on your property?
A: Yes, sir. I would think as near I remember it was close to an hour, yes.
Q: And do you believe your facility is adequate for farming or for a poultry facility?
A: Yes, sir, I do.

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Q: And you understand that you're going to have to do some grading?
A: Yes, sir.
Q: And you understanding those costs of that grading will come later?
A: Yes, sir. Uh-huh.
Q: And you'll comply with all permits that are associated with waste water and grading?
A: Yes, sir.
Q: And you'll also, if you plan to put in or change any modifications or major modifications of your plan, you have to get DHEC approval for those?
A: That's exactly right.
Q: And you will do that?
A: Yes, sir, have to.
MR. HITE: Beg the Court's indulgence one second. No further questions, Your Honor.
THE COURT: Thank you. Re-direct, Mr. Smith.
MR. SMITH: Very briefly, Your Honor.
MR. SUMEREL - RE-DIRECT EXAMINATION BY MR. SMITH:
Q: Mr. Hite just asked you about complying with regulations.
A: Yes, sir.
Q: Do you recall in your deposition I asked you a

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similar line of question about complying with regulations?
A: Yes, sir. I think like I said, again, we talked about a lot.
Q: Do you recall our discussion and you telling me that you spread chicken litter and manure as a fertilizer on your land prior to all this coming up?
A: Yes, sir.
Q: And you understand that that wasn't in compliance with regulations?
A: At that time, it was.
Q: You said you just stopped when all this came up; is that correct?
A: Well, that's been approximately three years ago when we started all this. So it's been approximately three years ago.
Q: And you said earlier, how long have you been out on Poole Town Road?
A: All my life.
Q: How long is that?
A: Fifty-seven years, 56 years, excuse me, 56 years.
Q: Is it fair to say the characteristic of the area has change over the years?

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A: A little bit. We've had some people to move in. But pretty much it's still farm, rural farmland.
Q: And you want to build a highly concentrated factory out there?
A: I want to build chicken houses out there.
MR. SMITH: No further questions. Thank you.
THE COURT: Thank you.
MR. HITE: Your Honor, just one question.
THE COURT: As long as it's following up what ---
MR. HITE: It's following up.
MR. SUMEREL - RECROSS-EXAMINATION BY MR. HITE:
Q: Mr. Sumerel, is the property that you live in zoned farming, agricultural?
A: Yes, it is.
MR. HITE: No further questions.
THE COURT: Okay.
MR. SMITH: Can I ask one? I didn't realize that, Your Honor.
MR. SUMEREL - FURTHER RE-DIRECT EXAMINATION BY MR. SMITH:
Q: Is there zoning for your area?
A: No, sir.
Q: Thank you.
MR. HITE: To clarify that, Your Honor, may I ask

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one more?
THE COURT: As long as it's him testifying and not you.
MR. HITE - FURTHER RECROSS-EXAMINATION BY MR. HITE:
Q: How is your property when you pay taxes, how is it qualified as a tax ---
A: It's -- it's classified as farmland.
Q: Thank you.
MR. SMITH: Nothing further, Your Honor.
THE COURT: You can step down, Mr. Sumerel. Before we go any further, it's ten minutes of 12:00. You want to go on until 1:00, or we want to break for lunch at 12:00?
MR. SMITH: Well, the next couple witnesses I have will be rather lengthy, so this might be a good place to stop, if my co-counsel agrees, but I think it probably is.
MR. HIGHTOWER: We're fine with that, Your Honor.
THE COURT: All right. My next question is how long do you want, an hour or an hour and a half?
MR. SMITH: That's more than adequate.
THE COURT: Which one?
MR. SMITH: Oh, I couldn't hear you well. An hour is fine with me.
MR. HIGHTOWER: That's fine with the Department,

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Your Honor.
THE COURT: All right. Let's just say we'll be back here at 1:00, that's an hour and ten minutes.
MR. SMITH: Sounds good.
MR. HIGHTOWER: That will be fine, Your Honor.
THE COURT: Be in recess.
(Lunch break from 11:52 a.m. until 1:00 p.m.)
THE COURT: Next witness.
MR. SMITH: Call Stephen Smutz.
STEPHEN SMUTZ, having been duly sworn, testifies as follows:
MR. SMUTZ - DIRECT EXAMINATION BY MR. SMITH:
Q: Good afternoon, Mr. Smutz.
A: Good afternoon.
Q: Could you just tell the Court a little bit about what your job is at DHEC.
A: Okay. I'm a member of the Bureau of Air Quality modeling section. And I guess I would divide my main job into probably three main areas. Number one, I review dispersion modeling that's submitted on behalf of applications seeking air quality permits. Second main category would be air quality forecasting for the state of South Carolina. And the third is a broad category, but -- and

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that category is assisting the Bureau of Water in reviewing agricultural applications such as this one.
Q: And that's what you did for this permit?
A: I did.
Q: Now, it's my understanding from Mr. Chaplin's deposition testimony that when a permit comes in, a form memo is sent from waste water to you air quality folks; is that correct?
A: Sent from Bill Chaplin to me, correct.
Q: And what does it ask you to evaluate?
A: Well, it boils down to two main things. Number one, would the proposed facility cause a violation of an air quality standard; and number two, would I have any recommendations regarding setbacks.
Q: And when you receive this document, tell me what you do to evaluate a particular site.
A: Well, for this site in particular, this is a dry manure poultry facility, so the only EPA guidance that we have regarding the air emissions from such a facility is the 2002 document from EPA entitled Non-Water Quality Impact Estimates for Animal Feeding Operations. So using that document, the EPA indicates that

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from a facility like this, the only pollutants that could be expected to be emitted are methane, nitrous oxide, and ammonia. And none of those pollutants are regulated by the bureau in the state of South Carolina. So my conclusion, just to cut it right to the chase, is no on both of those counts that I mentioned before. No that no air quality standard would be violated by this proposed facility; and number two, I wouldn't have any recommendations with regard to the setbacks.

Q: That second part, recommendations to setbacks, do you always find if the first part of your analysis, if I may categorize it like that; is that fair?

A: Okay.

Q: If you find the first part of your analysis that no increase in pollutants, regulated pollutants, then you always find no necessary additional setbacks?

A: That's true.

Q: A hundred percent of the time?

A: That's true.

Q: And you turn back around a memorandum, a form memorandum to Mr. Chaplin, correct?

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A: I do.

Q: And it looks -- and it's Number 10, I believe in front of you. It's already been pre-marked Joint Exhibit Number 10. It's right there in front of you.

A: Yes, I see that.

Q: You see that?

A: Yes.

Q: You mind pulling that out? Now, Mr. Chaplin testified, I want you -- I'd like for you to verify if you could for me, please. This never looks any different except for the name of the actual facility; is that fair?

A: This must not be it. This is something else. It must be Number 9 actually. I recognize it here.

Q: Number 9. Yes, I don't know why -- I wrote 10 on my nots. That's my mistake.

A: Okay. Now, I'm sorry, what was your question?

Q: This form that you turned back around to Mr. Chaplin, wastewater bureau, for these permits, this always looks the same? This is just a form document; is that correct?

A: Well, I review each case individually as it comes through thoroughly, and if parameters end up being the same, if the conclusions are the same, then sure, I use a template that I used on a previous case that had the same conclusions.

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Q: Have you ever found that there was an air quality issue with one of these permits?

A: With one of these permits meaning poultry facilities ---

Q: Yes.

A: --- with dry manure handling?

Q: Yes.

A: I have not.

Q: And you base that, and you just testified to and it's in your memo, on a 2002 EPA study?

A: That's correct. I guess I would have to mention that the addendum, the addendum to the application came in after this was submitted regarding the composting, dead animal composting, so.

Q: Thank you for making that point.

A: Okay.

Q: Because I think you're getting to it. The 2002 study specifically indicates it does not consider composting for these type facilities, right?

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A: That's correct.

Q: Now, are you aware of the new EPA studies that have come out about these type of operations?

A: There's a draft report that that was disseminated in 2011, I believe, if that's the one you're referring to.

Q: And why wouldn't you rely on that for new information?

A: It's a draft report.

Q: And is this a final report in 2002?

A: Yes.

Q: And that's the only reason you wouldn't rely on it?

A: Well, it's a draft report. There's also -- I mean that in itself is enough; is enough of a reason to not rely upon it for regulatory decisions regarding a permit application. But also, there's a science advisory board for the EPA that has issued comments about it, and they have some -- they have some pretty strong comments that indicate there's probably -- I don't know, but there could well be some drastic changes to the document before it's actually disseminated, supposing it is eventually disseminated.

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Q: And that's -- you're referring to the EPA, the February 2012 report? 2012, does that sound about right?
A: Yes.
Q: Do you -- are you aware of the 2004 report and study on the national emission inventory -- the ammonia emissions from animal husbandry operations?
A: I'm aware of it, yes.
Q: Does it have any application in this context?
A: It does not.
Q: Why not?
A: Well, we don't regulate ammonia, so there's not much -- no reason for me to focus on that.
Q: And ammonia, as your memo says, is non-regulated emission, correct?
A: Correct.
Q: Does that mean in and of itself it's not a harmful, caustic gas?
A: Doesn't necessarily mean it isn't harmful.
Q: So why would the Department not consider something that could be harmful to the surrounding environment? Is it just because it's not regulated?
A: I'm not -- if you're asking why I didn't

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consider it in my analysis; is that what you're asking?
Q: Sure.
A: Okay. Yeah, it's not -- there isn't a regulation for it, so that's why I didn't consider it.
Q: And you mentioned earlier there is a later amendment to the plan for this particular permit, right?
A: Yes.
Q: And there was no reevaluation done by you or anybody to evaluate the impact of that amendment, correct?
A: Yes, I evaluated it myself.
Q: You reevaluated it after the amendment?
A: I wouldn't say -- I didn't reevaluate anything I'd already evaluated. I just took at the plan regarding the dead animal composting because we weren't aware of that initially.
Q: Is there a document somewhere that shows that you did this reevaluation?
A: No. I didn't write up any documents about it.
Q: What other emissions come from these operations that aren't regulated but you consider potentially harmful emissions?

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A: I'm not sure I understand your question, sir. Could you rephrase it or repeat it for me, please?
Q: There's certain things these type of operations emit into the air, right?
A: They have emissions into the air, certain pollutants, correct.
Q: And the Department's stance and your evaluation have focused solely and exclusively on regulated pollutants, right?
A: Yes.
Q: Are there anything, any types of emissions from these operations that aren't regulated pollutants that are potentially harmful to the health and environment of the surrounding area?
A: Well, I guess there's a saying out there, I don't know if I'm saying it right, something like the dose -- the poison is in the dose or the dose causes the poison or something to that effect. Anyway, almost any substance that's emitted can be a hazard to humans if it's in a certain concentration. It depends on the concentration, so I really can't answer that directly, I don't think.
Q: Is it fair to say the Department just doesn't

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consider that at all?
A: Well, the Department has to rely on the regulations that are in place, so the permit decision is based on the regulations that are in place at that time.
Q: That are promulgated by the Department?
A: Well, there's a legislative body that actually determines what the regulations are, but DHEC connects them and uses in its regulatory purposes.
Q: And the definition in your -- in this memo that we're talking about, Number 9.
A: Uh-huh.
Q: Downwind receptors, who did that definition, do you know?
A: Yeah. That's in the modeling guidelines. We have modeling guidelines, and that's where that is defined.
Q: And there was some confusion about this, and I ask you to clear this up for me. You don't do, based on your testimony I believe it's clear, you don't do any air modeling or anything along those lines to evaluate these particular type permits, right?
A: It just depends on whether there's a regulated

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permit -- I'm sorry -- a regulated pollutant that is emitted ---
Q: Did you do it for this permit?
A: --- and whether or not it, and whether or not the emission rate of that pollutant rises to a threshold above which an evaluation would be necessary, which would probably be modeling. For this facility and for this evaluation, I did not do any modeling.
Q: Thank you for clearing that up.
A: Sure.
Q: Now, you also mentioned, if you'll look at page 2 of your memo, in addition to ammonia, nitrous oxide and methane, those are also emitted. They're non-regulated, correct?
A: Right. We have no standards for them.
Q: So none of that's considered, are they?
A: Well, they were considered, but we don't have standards for them. So there's not much more that could be done with them from a regulatory standpoint.
Q: That's all I have right now, Mr. Smutz. Thank you.
A: All right.
THE COURT: Mr. Hightower.

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MR. SMUTZ - CROSS-EXAMINATION BY MR. HIGHTOWER:
Q: Good afternoon, Mr. Smutz.
A: Good afternoon, Mr. Hightower.
Q: I'm going to show you what is marked Joint Exhibit 15. Are you familiar with that document?
A: I did look through this at one point, yes, sir.
Q: And that document is your curriculum vitae; isn't that correct?
A: No.
MR. SMITH: I've got 16. You asked for 15.
MR. HIGHTOWER: Oh, I'm sorry.
MR. SMITH: I wondered why that was so thick.
Q: Sorry. Wrong document.
A: All right.
MR. SMITH: Sixteen is what you want.
MR. HIGHTOWER: Sixteen, yes.
MR. SMITH: Unless you want to put in Dr. Parkhurst for me.
MR. HIGHTOWER: No, no, no. That's okay.
MR. SMITH: There you go.
MR. HIGHTOWER: Thank you. Okay.
Q: Correction. Joint Exhibit 16, you're looking at that document, that is a copy of your curriculum vitae; is that correct?

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A: Yes.
Q: Okay. And, according to that document -- well, first of all, you prepared that document?
A: I did.
Q: Okay. And according to that document, you have bachelor's of science degree in civil engineering, correct?
A: Correct.
Q: You have a master's degree in atmosphere science?
A: Yes.
Q: Okay. And according to your CV, you have worked at various places. Specifically, you worked as a graduate research assistant in the Department of Atmospheric Science at the University of Wyoming in Laramie ---
A: Yes.
Q: --- Wyoming? Okay. And that was from '83 to '86, correct?
A: Correct.
Q: Okay. And you were involved in meteorological research, correct?
A: I was.
Q: Okay. Could you describe some of the research that you may have done at that time.

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A: Well, the research that I was mainly involved in there had to do with -- it was categorizing what is known as a barrier jet that's in the lee of Sierra Nevada in California. I was doing a fair amount of work on characterizing the different parameters of that barrier jet.
Q: And after that position, you went to work for Climatology Consulting Corporation in Asheville, North Carolina?
A: Right.
Q: And you were a consulting meteorologist from '86 to '98?
A: That's true.
Q: Okay. And also while -- in that same time frame, you also were an adjunct professor of atmospheric science at the University of North Carolina at Asheville?
A: Yes.
Q: Okay. And when you were an adjunct professor, you taught radar and satellite meteorology, correct?
A: That's right.
Q: And when you were with Climatology Consulting Corporation you were a forensic -- you specialized in forensic meteorology, correct?

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A: That's true.
Q: Okay. Could you explain to the Court what that is.
A: Sure. As a forensic meteorologist, one primarily is involved with reconstructions of weather events when weather is a factor in litigation, in a nutshell.
Q: So it's fair to say that since the early 1980s, you have worked and studied as a -- in the field of meteorology, correct?
A: Yes.
Q: Okay. And you've actually been qualified as an expert witness in litigation; is that correct?
A: I have.
Q: And, in fact, you've qualified as an expert witness in meteorological sciences in at least two agricultural facility permitting cases; isn't that correct?
A: I'll defer to you for the number, but at least once.
Q: Okay. Do you remember a case Georgia Lawrence et al against DHEC and T. Scott Swilling?
A: Yes.
Q: That was a case in Anderson County about a facility in Anderson County?

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A: Yes.
Q: Okay. And would you remember another case, Patrick Williams et al against Boland Poultry Farm?
A: Yes.
Q: Okay. Thank you.
MR. HIGHTOWER: At this time, Your Honor, the Department moves to have Mr. Smutz qualified as an expert in meteorological science and agricultural permitting, the issues of air pollution generated by poultry facilities.
MR. SMITH: Your Honor, if I may object to this. I don't believe Mr. Smutz was disclosed ever as an expert in all of our pre -- was he not?
MR. HIGHTOWER: He was.
MR. SMITH: He was.
MR. HIGHTOWER: He was. I disclosed two experts, Mr. Smutz and Dr. Bell.
MR. SMITH: Okay. Did we not do a final expert disclosure? Was Mr. Smutz on that and I'm just mistaken?
MR. HIGHTOWER: Yes, he was.
MR. SMITH: Okay.
MR. HIGHTOWER: He was on it.
MR. SMITH: Well, if he was, he was. I'm mistaken.

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MR. HIGHTOWER: And, in fact, we even agreed to have his curriculum vitae.
MR. SMITH: Oh, I know we agreed on that Stephen, I'm just asking if that was correct. Okay. Well, if it's in my pre-hearing disclosures as Mr. Hightower says then I have no objection. If it's not then I ...
THE COURT: The Court has no objection, but I'd like some definition for the record of what meteorology is. I know, but whoever reads the record might not.
MR. HIGHTOWER: Well, the ---
THE COURT: Not from you, from him.
MR. HIGHTOWER: I'm sorry.
Q: Mr. Smutz, if you can for the Court, please define meteorological science.
A: Well, it's simply the science and study of the atmosphere. I'm not sure how else to put that. I know it's broad, but it's the study of the atmosphere and all the processes therein. You know, it's a broad field, but it's basically the study of the atmosphere and the sciences therein.
THE COURT: That's adequate. If there's no voir dire then, I qualify him as an expert in the

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field of meteorology and agricultural permitting.
MR. HIGHTOWER: Thank you, Your Honor.
Q: Now, Mr. Smutz, you were just asked about why you relied on the 2002 study non-water impacts from animal facilities; you remember that?
A: Yes.
Q: And you stated that it's because that is the most recent final guidance from EPA as to what these emissions are?
A: That's correct.
Q: Okay. And why would you not use a draft report? You did go into explaining that there were changes. But beside just changes, are there other reasons why one would not use a draft report in your position?
A: Well, we have to rely on the final guidance that has already been promulgated. A draft report, as I mentioned before, can change. It's just in its -- it's not finalized. There could be many changes. Those are the main reasons.
Q: Now, you were asked about ammonia. Ammonia is a air pollutant; isn't that correct?
A: It could be termed as an air pollutant,

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certainly.
Q: Okay. But it's not regulated, correct?
A: It is not regulated in South Carolina.
Q: Does the EPA have a regulation for ammonia in ambient air?
A: Not that I'm aware of.
Q: Okay. And what does ambient air mean?
A: Just means the free-moving atmosphere, I guess, is the way I would describe it.
Q: So it does not mean in an enclosed structure like sort of in this room, correct?
A: Right, outside air, right.
Q: Because, in fact, there is a standard for ammonia under OSHA; isn't that correct?
A: Yeah, I believe there is.
Q: Okay. But that standard is not applicable to ambient air, correct?
A: Correct.
Q: Okay. And you stated that part of the reasons for not using -- for not looking at ammonia is because it's not regulated, correct?
A: Yes.
Q: Okay. I'm going to show you Regulation 61-43 Part 200.70(E). And I'd like you to read that to -- out loud.

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A: All right. 200 Part 70(E) reads, "The Department shall act on all permits to prevent, so far as reasonably possible, considering relevant standards under state and federal laws increase in pollution of the waters and air of the state from any new or enlarged sources."
Q: So ammonia, since there is no regulatory standard under state law nor there is no regulatory standard under the Clean Air Act with -- through the EPA, you would agree that there are no relevant standards in which you could assess what the effect of any ammonia produced by the facility would have on anybody; is that not correct?
A: That's true. We couldn't determine that it violated an air quality standard, for example, because there is no standard.
Q: In a sense, you would have to sort of make it up, correct?
MR. SMITH: Objection.
MR. HIGHTOWER: I'm trying to find out what your objection is.
MR. SMITH: Mr. Hightower is testifying for the witness here.
MR. HIGHTOWER: No, Your Honor. I'm on cross-

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examination and I'm asking a leading question, but I'm allowed to do that.
THE COURT: Overruled.
MR. SMITH: Thank you, Your Honor.
A: Yes, I guess so.
Q: Okay. One moment, I lost my train of thought. Now, you were asked about air dispersion modeling of ag facilities.
A: Yes, I guess I was.
Q: Okay. Now, does the Department perform air dispersion modeling of poultry facilities?
A: We haven't so far.
Q: And is that because there are no standards for us to apply for the modeling to have any true value?
A: Yes. First of all, there would have to be a regulated pollutant that was emitted. And, secondly, the emission rate of that pollutant would have to rise above a certain threshold to cause further evaluation, which would generally be modeling.
Q: And if I remember your memo, you stated that there was -- the only regulated pollutant that there would be from a poultry facility would be hydrogen sulfide and that would not be expected

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to occur so long as the manure was kept at the right moisture level which is best management practices, correct?
A: Right. It's considered to be a dry manure management system, and in that circumstance, hydrogen sulfide is not expected to be emitted.
Q: So under that situation, so long as the farmer is properly maintaining the manure in the houses, the Department would not expect that there would be any a emission of hydrogen sulfide or at least an emission at any level that would have any impacts to human health and the environment; would that not be true?
A: Yes.
Q: You looked at the dead animal disposal plan, correct?
A: I did.
Q: The one that's admitted as Joint Exhibit 2, correct?
A: Yes, I have it here.
Q: Okay. And you stated that you did not send a memo to Mr. Chaplin; is that correct?
A: That's correct.
Q: But it would be true that you did notify him that you found no problems, correct?

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A: I believe I told him that I would let him know if I did find any problems to it.
Q: Did you contact him finding any problems?
A: I did not.
Q: Okay. In looking at that plan, what types of things would you -- would lead you to believe there might be a problem?
A: Well, if it's not managed properly. For example, if it's not maintained in a proper temperature range, if it's not maintained in a proper moisture range, if there's not enough bulking agent used, those sorts of things. As long as it's managed properly, I wouldn't expect any problems with it from an air quality standpoint.
Q: Okay. So if it is properly maintained and operated, it won't produce any pollutants that would lead you to be concerned about setbacks or some other type of conditions on the permit; is that correct?
A: That's correct.
MR. HIGHTOWER: No further questions.
THE COURT: Mr. Hite.
MR. HITE: I don't have any questions for this witness, Your Honor.

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THE COURT: Re-direct.
MR. SMITH: Yes, Your Honor, briefly.
MR. SMUTZ - RE-DIRECT EXAMINATION BY MR. SMITH:
Q: Can an air -- can an airborne ammonia emission increase the pollution into the waters and the air of the state?
A: I'm sorry, the very first part of that, can ammonia what?
Q: Can an airborne ammonia emission ---
A: Okay.
Q: --- increase the pollution to the air or the waters of the state?
A: Not by -- not by our definition. At least as far as the air is concerned.
Q: I'm not asking about a definition or anything like that. Not -- putting this memo aside, putting definitions aside; I'm asking about science. Something you know a great deal about it's been established. Can an ammonia emission, an airborne ammonia emission increase the pollution of the water or air of the state?
A: Well, I think we have -- we have to talk about it as far as defining what we mean by increasing the pollution of, so you know, there has to be a definition of that, and the way we

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use it in order for it to increase the pollution has to rise to the level of violating an air quality standard. And there is no air quality standard for ammonia. So, based on that, I would say no.
Q: Can there be harmful environmental impacts from these types of emissions?
A: It depends on the concentration of it being emitted.
Q: And does the Department know or evaluate the concentration of ammonia or other non-regulated emissions from these type of operations?
A: If there's not a regulation for them, then they're not -- they're not evaluated as far as whether they would violate an air quality standard.
Q: When you were looking at the plans, the -- whatever part of these plans that you review to do your evaluation, did you know the exhaust direction that the ventilation fans are going to be directed in?
A: I did know that at one point; I don't recall though which way they are. I know they're at one building or the other, but I'm not sure as I sit here right now.

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Q: Would you need to look at the plan; would that refresh your recollection?
A: If you'd like me to. It doesn't impact my -- any of my analysis as to which end they're on, so if you'd like me to look at it, I'd be glad to.
Q: You went to my next question which might ---
A: Okay.
Q: --- cut that out of this.
A: Okay.
Q: Does it matter to you which direction they're pointed in?
A: It doesn't as far as the regulatory review of the permit is concerned.
Q: Thank you, Mr. Smutz. No further questions.
A: Sure.
MR. HIGHTOWER: No further questions, Your Honor.
THE COURT: You may step down, Mr. Smutz. Thank you, sir.
MR. SMUTZ: All right. Thank you.
MR. SMITH: One second, Your Honor.
THE COURT: Take your time.
MR. SMITH: Thank you. Petitioners next call Dr. David Hargett.
DAVID HARGETT, Ph.D., having been duly sworn,

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testifies as follows:
DR. HARGETT - DIRECT EXAMINATION BY MR. SMITH:
Q: Good afternoon, Dr. Hargett.
A: Good afternoon.
Q: We'll start with what has been jointly marked as Exhibit Number 14, which is Dr. Hargett's CV. Dr. Hargett, as anyone can tell holding your CV in front of you, it's rather extensive. I want to ask you about your background, education, and credentials as far you being able to evaluate and offer the opinions on this case that you're going to offer today.
A: Yes, sir.
Q: What's your educational background?
A: I have a bachelor of science from North Carolina State University in agricultural and forestry. I have a master of science from North Carolina State University in soil science, and I have a Ph.D. in land resources from the University of Wisconsin Madison.
Q: And tell the Court something about your professional experience that I believe is applicable to your evaluation of this permit.
A: I have worked as an environmental consultant for approximately 37-38 years, including the

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time when I was in graduate school both at NC State and University of Wisconsin. I have been involved in a broad array of environmental matters doing assessments of sites for various engineering applications for various scientific investigations. I have been in South Carolina for 25 years this year. During that time I was involved with Serene Environmental Consultants; subsequently, SCC Donahue; subsequently, Rust Environment and Infrastructure; subsequently, Pinnacle Consulting Group, and after that, Northwind Consulting Group. And for the past eight years, I have consulted independently as Hargett Resources, Inc. providing services related mostly to water resources and land resources, to include permitting, various kinds of environmental activities in areas ranging from surface water discharge, ground water assessment and management matters regulated under the both Bureau of Water and Bureau of Land and Waste, and occasionally matters related to agricultural operations. I've also worked as a contractor to DHEC. I've collaborated with DHEC staff, have many good friends and colleagues who are DHEC staff or

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have been DHEC staff over the years and have collabrated with them in contested cases of various sorts. I've also been involved in cases, contested cases on the opposite side of DHEC on various matters dealing with matters from solid waste to groundwater contamination issues and surface water issues. I have also been involved on a adjunct basis with Clemson University and, at last record, I'm adjunct in three different departments at Clemson. One is the environmental science and, exuse me, environmental engineering earth science program. Another is the forestry and natural resources program. And I'm also associated with the South Carolina Water Resources Center, which is housed in the Strom Thurmond Institute for Government Affairs as a senior scholar. I've also provided expert witness on a variety of matters, permit matters, contested case issues, toxic tort kinds of litigation matters over the years in South Carolina and numerous other states.
Q: And you've qualified as you just said as an expert on several occasions. What kind of expert have you been qualified before in the

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past in courts of this state and others?
A: In water resources issues, impacts to water resources, both surface water and ground water from various environmental activities. And, likewise, in other states also in solid waste related permitting activities.
Q: You also have farming experience yourself?
A: Yes, sir. I grew up on a farm; seems everyone did today.
Q: Yes.
A: And I am an owner of a farm property, primarily a tree farm operation, but my wife aspires to have animals so I'm in the process of getting into that. I also manage Lake Conestee Nature Park, which is a site I've done extensive professional work on for the past 20 years, and that site is a farm by USDA standards. My personal property is as well. So I'm very familiar with USDA programs, NRCS programs, farm service agency programs and understand their criteria and what is important to them in terms of the best management practices and so forth.
MR. SMITH: I'd offer to the Court that Dr. Hargett as an environmental scientist consultant and an

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expert on water impacts.
THE COURT: Voir dire?
MR. HITE: Not from us, Your Honor.
MR. HIGHTOWER: No voir dire, Your Honor.
THE COURT: No voir dire. I so qualify Dr. Hargett.
MR. SMITH: Thank you, Your Honor.
Q: Dr. Hargett, you reviewed some material to do your analysis in forming your opinions on this permit; is that correct?
A: Yes, sir.
Q: What did you review to form your opinions in this case?
A: The permit documents that were provided in discovery; the applicable regulations for agricultural facilities and other regulatory programs under DHEC that I think are relevant in my opinion. I also did quite a bit of background research on similar facilities in South Carolina and elsewhere. I reviewed various resource information in terms of the setting and what was surrounding the proposed site. I looked at numerous aerial imagery, aerial photographs, for example, topography, hydrology, the contour of the site, vegetation of the site and the surroundings, the adjacent

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parcels, likewise all those same categories of information. And I also did a site visit, which I think was on the 11th of June. Prior to that, I'd done a couple of I'll say drive-by reconnaissance visits in the area. Some of those went back to January of 2013, I believe, to familiarize with the setting, the residential scenario for the surrounding environment and the nature of agricultural operations out there.
MR. SMITH: Beg the Court's indulgence one second. I hope this doesn't fall apart on me. It's kind of flimsy.
Q: You mentioned a site visit that we conducted recently with everybody, correct?
A: Yes, sir.
Q: And during that, you took some photos?
A: Yes, I did.
Q: All right. Let me show you these. Do you recognize these photos?
A: Yes, sir, I do. These are labeled Petitioner's Exhibit 12 and there appear to be ...
Q: Are those the photos you took during our site visit that day?
A: Yes, sir, nine photos in the package.

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Q: And they accurately reflect -- what are they showing?
A: The first five, excuse me, first four -- the first five photographs depict the grassy site where the proposed facility would be located, and you can see in some of those several vehicles, which included our vehicles, DHEC and the Sumerels' vehicles, and then otherwise it's sort of a panoramic, a series of panoramic shots around the site showing the site conditions, vegetation, the forested tree line and I can see pictures of Mr. Chaplin in the far distance.
THE COURT: Do I have these?
MR. SMITH: No, Your Honor, it's a petitioner's exhibit that wasn't agreed as a joint, so I'm trying to lay the foundation and then admit it.
Q: And then the second series of photos?
A: The last five photos -- they're actually ten, I'm sorry, are photos of wetland and surface water conditions on the Orrs' property of the area, their large pond, which I gather is on the order of nine to ten acres and some of the wetland areas, which include beaver ponds and perennial streams flowing into that pond area,

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again, on the Orrs' property.
Q: Okay.
MR. SMITH: I ask that this be admitted. We pre-marked exhibits, so it's Petitioner's Exhibit 12. We can make it 1 if the Court would like for simplicity sake.
THE COURT: I note in your handbook 12 is vacant. Was it left vacant for that purpose?
MR. SMITH: No, Your Honor, it was not. Anything I handed the Court in that notebook are all joint exhibits. I don't know what 12 is. What is 12?
MR. HITE: I believe I saw 12 up on Your Honor's desk.
MR. SMITH: Twelve is the preliminary site inspection request. It should be a one-page document.
THE COURT: There are two 12's, one of them is vacant.
MR. SMITH: Again, this is not a joint exhibit. I'm just laying the foundation authenticating and asking that it be admitted as petitioner's exhibit.
MR. HITE: No objection.
MR. HIGHTOWER: No objection.

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THE COURT: Without objection, Petitioner's -- what number is it?
MR. SMITH: We have it pre-marked as 12. I can strike that and make it 1.
THE COURT: All right. Let's make it Petitioner's 1. That's the first 1, that's not joint.
MR. SMITH: Yes, yes, Your Honor. Let's do that. It makes much more sense now.
THE COURT: Petitioner's 1 admitted without objection.
(Petitioner's Exhibit Number 1 was admitted into evidence.)
THE COURT: My law clerk said that the overhead projector is available if you're going to refer to individual photographs.
MR. SMITH: Yes, Your Honor. And I appreciate it. I'll take advantage of that if I need to. Have you got that one marked?
THE COURT: Yes.
MR. SMITH: All right. This also, just for housekeeping, this is also a non-joint exhibit. Hand this to Dr. Hargett.
Q: Do you recognize these two maps?
A: Yes, sir.
Q: And can you describe them for me, please?

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A: These are maps that I had developed prior to the public hearing. And the date of that, I think, was March 2013, if I recall. And they illustrate the location of both the Sumerel, the proposed Sumerel and the proposed Duckett concentrated animal feeding operation facilities and also illustrate various nearby features to include residences, highway's infrastructure, and these are compiled on an aerial photograph basis or base, which was probably a -- well, it says it's a 2011 image.
MR. HITE: Your Honor, I'm going to object to this line of questioning as it relates to these images as well as the images coming into evidence because there is no regulation on multiple facilities and the Duckett facility is still in the permitting processes as we know, it's in the Administrative Law Court as well. So having them both on a map is irrelevant as well as prejudicial to my client, Sumerel.
MR. SMITH: Your Honor, it's a map that's showing the surrounding area and designating the Duckett site. It's also a very similar size operation, and we're going to present evidence

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and we argue that it is a necessary additional consideration in this particular permit because of the collective and cumulative impact.
MR. HIGHTOWER: Your Honor, the purpose of this contested case is to determine whether or not the Department followed the regulations as contained in 61-43, Part 200. And there is no regulation that deals with the Department when it's reviewing an application that it takes into account some proposed facility that may or may not come into being at approximately the same time. And we feel that this exhibit, because it clearly highlights the two facilities, is prejudicial and does not accurately reflect the review as required by the regulations.
MR. SMITH: It's a demonstrative exhibit my expert put together.
THE COURT: What?
MR. SMITH: It's a demonstrative exhibit my expert put together and we'd still argue and take the position, and through expert testimony I believe that it will be substantiated, that this other facility, the effects of it as a cumulative effect, environmental health should

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have been considered. Whether or not the Department has a reg on it is not relevant to the admissibility of the evidence.
MR. HIGHTOWER: Your Honor, we actually beg to differ on that. Whether or not the Department has a reg is actually very germane because this is to determine whether or not the Department complied with its requirements as set forth by the regulations, not whether or not the petitioners feel that there's a better way of doing something. That's a legislative function and that's not what this Court is here for. This Court is to determine did the Department follow the regulations and statutes that are applicable in its decision making process. And unless they can show some legal authority that says the Department is required to make such a review, we believe that this is not relevant and it is prejudicial.
THE COURT: Well, the thing that troubles me is that it's not in existence and may never come into existence in the permitting process. I'm going to sustain the objection.
MR. HITE: Thank you, Your Honor.
Q: Now, Dr. Hargett, if you'll look with me,

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please, on what's been marked Joint Exhibit Number 8 and Joint Exhibit 10, 8 is Chaplin memo to the onsite wastewater management bureau and 10 is the memo from -- return memo from the wastewater management bureau, I believe.

A: Yes, sir, I have those.

Q: Okay. These are joint exhibits. They should be in the notebook there. The memo from Chaplin to the Bureau of Environmental Health, what does it direct them to evaluate?

A: In the inset box on page 1 of the 11 October 2012 memo from Chaplin to Howard Gordon, it specifies there shall be no discharge of pollutants in the groundwater which could cause groundwater quality not to comply with groundwater standards. It specifies the setback limits given in this part of minimum, citing requirements with exception to those that are not labeled as minimum requirements, which are absolutes, and on a case by case basis, the Department may require additional separation distances applicable to animal facilities, lagoons, treatment systems, manure storage ponds and manure utilization areas. And it goes on to identify geography and soil

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types, adjacent groundwater usage and vulnerability as the technical criteria being used. And it's my understanding that the review that was conducted under Mr. Gordon's -- by Mr. Gordon's staff, by Mr. Burriss, William H. Burriss in the other memo that you've cited dated 22 October was evaluating the proposed burial site for animal, dead animal material.

Q: And that isolated evaluation, is that adequate, in your expert opinion, evaluation and consideration to determine there's no detrimental impacts to the waters of the state in this operation?

A: Well, let me respond. First, Mr. Burriss conducted three -- no, four soil borings which were hand augured borings evidently, and he provided soil descriptions for those borings and advised that conditions were favorable at the location he inspected on the proposed site for animal burial. The answer to your question to me is that adequate to address potential water quality impacts from the facility, in my opinion, no, it is not because of a variety of other considerations that should be evaluated as well.

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Q: Please tell me what those other considerations in your expert opinion should be.

A: From my recollection of review of the application, and may I ask, is there an exhibit we can refer to that shows the proposed footprint of the facility?

Q: Sure thing. It's going to be Exhibit 1, the comprehensive management plan.

A: Okay. There's a figure in that, I assume.

Q: I'll give you a copy. You've got it right there.

A: Okay. What I'm looking at is Exhibit 1, which is the comprehensive nutrient management plan for the Sumerel Poultry Farm, and I'm looking at a figure, it has a heading, Sumerel Poultry Farm aerial map. And it shows four buildings, which I assume are the 52 x 500 foot buildings and around that, there is a setback shown and that basically characterizes the poultry barns marked in red. Those are the long buildings oriented northwest to southeast. The buffer area is the 200 foot property setback, and there is also a 100 foot waters of the state setback indicated in blue. In this kind of facility, this, I think, came out in earlier

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testimony, this is going to be a large site, large operation that will require quite a bit of construction activity, quite a bit of earth moving. When we were on the site on the 11th of June, we all sort of waved arms and kind of shared ideas on where things would be and what the scope of the construction would be, and I think we all concurred that there would have be quite a bit of cutting and filling and moving of earth around to create the appropriate footprint for such a large facility. That obviously goes to the point that a construction activity of this scale is going to have to have a comprehensive stormwater pollution prevention plan under the State guidelines, which is a separate regulation under the Department, under DHEC and the Bureau of Water, which is also same Department, same Bureau, same division of DHEC as Mr. Chaplin works in. In fact, I think Ms. Clark's in the audience manages that division, if I recall correctly. That's a major feature of this kind of construction activity, and there's no reference in this plan other than there will be one. The relevance of this is overwhelming to me in that just the

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footprint of these four buildings and all of the impervious area that's going to create, impervious meaning rainfall on those rooftops and all that surrounding area, is basically going to fall on ground that's been disturbed and compacted, roads, operational areas. I estimated in my calculations from this that you have on the order of 300,000 or more square feet. That's on the order of six acres of disturbed area in this operation. That is essentially converting what is now a beautiful grassy pasture shown in the photographs into an industrial footprint with a high degree of imperviousness, a high degree of runoff. Customarily when stormwater facilities are designed for these kinds of facilities, for this kind of facility you look at a design storm that is your storm that would occur once in ten years over a 24-hour period, ten year 24 hour-storm, and in this area, it's on the order of six inches of rainfall over that period. We had one of those in Greenville, in parts of Greenville ten days ago.

MR. HIGHTOWER: Your Honor, I'm going to object here because the witness is going into stormwater,

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and I don't remember the witness being qualified as an expert in stormwater. He was qualified as an expert in water in impacts and such, but you know, which may get into pollution and things like that, but now we're getting into technical aspects about stormwater management. And I don't believe that he has been qualified in that area.

MR. SMITH: I think stormwater goes to wastewater management. I think it's one and the same. He's more than qualified -- Dr. Hargett is more than qualified to testify as to stormwater management. We can further into his CV if we need to in qualifying him as a stormwater expect, too, if the Court would like.

THE COURT: I don't think he's been as far as Mr. Hightower thinks he's been. I'm going to overrule the objection, but we will watch it closely if he crosseis the boundary.

MR. SMITH: Sure thing. Like I say, if Mr. Hightower would like and the Court would like, we can go that route. He's more than welcome.

THE COURT: Overruled.

MR. SMITH: Thank you.

Q: Now, talking about grading plans and how it's

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a necessary consideration for the site; is that your opinion?

A: Yes, sir. And if I may, Your Honor, I have worked extensively with stormwater related issues over the past five years. My major consulting experience has been with Duke Energy on the Lee Nuclear site in Cherokee County, and I was the senior subject matter expert for hydrology and we used essentially the same concepts, the same extensive technology, if you will, to compute for the Nuclear Regulatory Commission how much runoff would occur from the footprint of that industrial site. So I'm very comfortable and very capable in discussing and presenting these concepts. That is a site that has hundreds of acres of impervious surface and we ---

THE COURT: I've already ruled on it. You may proceed to ask these questions.

DR. HARGETT: Thank you, Your Honor.

Q: Now, the regulations you said you reviewed.

A: Yes.

Q: Are you aware as part of the regulations, isn't the Department required to look at and consider any downslope, intermittent streams, ephemeral

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streams that are downslope from the proposed site?

A: Yes, sir. In Section 100.70 on permit decision making process, the language, I think, was cited earlier in testimony, the Department shall consider cumulative impact but not limited to various categories of information, Stormwater potential and actual point and non-point pollution, and it goes on, so the answer is yes, sir.

Q: And there's explicit in the charge within 200.50. Are you aware that it requires that consideration?

A: Yes, sir.

Q: And based on your review of all this material, was that consideration undertaken by the Department?

A: No, sir. I believe that it has not been. There's been acknowledgment that there will be a stormwater and erosion sediment control plan to be developed. As I commented, the impact to the land and the water from a facility of this scale is going to be very significant and that water has to go somewhere. You know, if you talk about a ten year, 24 hour storm, or any

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storm, when you change the surface of the ground, you have runoff that is increased. That water, having studied the hydrology of the site and physically observed it to some extent on the adjacent property, all of that runoff is going to have to go downslope from the proposed site obviously. Downslope, there are two ponds that are on the Sumerel property.

Q: Could you, for the Court, indicate where you're talking about?

A: Those are shown. Yes, their first pond, I'll call the upper pond, is due east of the proposed footprint of the four chicken houses. The second is downstream of that along the same drainage, and both of those ponds are assumed to be manmade ponds, probably have dams. I did not inspect those in the field, but I also didn't observe in the permit any indication that DHEC staff inspected them either. Assuming there's going to be some sort of stormwater management plan, one would assume there would be detention capable of withholding damage to those downstream assets to the Sumerel farm. If not, all that runoff's going to go directly into those ponds, and if that's

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the case, I would think that it's in DHEC's purview and duty to look at the integrity of those ponds and make sure that they can handle that additional stress. Those ponds are waters of the state, waters of the US and they also tributary -- are tributary directly to the larger pond further downstream on the Orr property. So all of those resources are at risk from hydrologic impacts from this property, and specifically, the additional runoff and with that, any pollutants that might come off of that impervious industrial footprint, if you will. So it's my impression from reviewing the comprehensive nutrient management plan and the related plans that these issues have not been addressed. If they haven't been addressed, I'm not sure how the package of information in the application can be considered complete.

Q: That goes to my next question. If DHEC doesn't know any of these things or doesn't do these evaluations, can they make the determination there's no impact on the waters of the state as required under the regulations?

A: As I cited earlier, the Department has the duty

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under their own reg that says they shall consider the cumulative impact in all these things. If they don't know the specifications and the location of these facilities, the specific location of the manure management facility I think may also be hazy at best, the dead animal disposal operations may still be a question that's unresolved, those are all issues that should be nailed down comprehensively before a permit could be issued.

Q: You mentioned earlier some other regulations you believe come into play here, DHEC's own regulations. What are those and why, in your opinion, are they pertinent to this type of permit?

A: The agency stormwater regulations are under R.61-9, which deals with water programs, water pollution control permits. There are also is R.72-300, which deals with erosion and sediment control, and the purpose of both of those is basically to assure minimal impact in the environment from activities that may generate stormwater or cause erosion or sedimentation. In earlier testimony, wells were also

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mentioned. And knowing where wells are is, again, a broad spectrum of concern and duty for the agency to make sure they understand where existing wells are, whether they're potable wells or monitoring wells for that matter. And if you anticipate additional wells are going to be installed, you need to know where they're going to be installed so that they are not jeopardized under this comprehensive duty to protect the environment and public health. There also is R.72-1, which goes to dams and reservoirs safety, and it's my understanding that's under Mr. Chaplin's responsibility in that division of the Bureau of Water. And condition of these dams is something that I would think the agency would want to know specifically in this reg, and 61-43 provides specifications for how to build lagoons and the kind of conditions that lagoons and dams and levies around lagoons should be maintained. And it, for example, identifies the level, the design criteria and so forth; it also gets into the issues such are there trees on the dam, are you keeping trees off the dam. Well, the dams on the two ponds that are on the Sumerel

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property should likewise be evaluated. Are they able to -- are they in good operating condition? Are all the features of those dams consistent with the standards of care appropriate and identified in the State regs. Whether they're very small dams or not, they are obviously going to be receiving additional stress from the additional runoff will come from the site, and it's important to be cognizant of their condition. So those are the regs that come to mind immediately.

Q: And those regs, considering them in this permit evaluation process from the agency standpoint, is that not important so they don't permit something that violates their other regulations?

A: Yes. It's important for the Department to be consistent in how it administers programs. All of these programs that I've just mentioned are under the same Bureau of Water that administers the agricultural program. And you would like to think that the Department's looking comprehensively and they're not basically putting all these regulations in silos and partitioning each program from one another and

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not sharing information that may be relevant one program to another. You certainly also would not want to put a permitee in a position where you issue a permit for an agricultural program, for example, and it turns out that they're being set up to violate another program in another part of the same division.

Q: And based on your research in those facilities, is it your understanding that part of the proposed operation is highly erodible soil?

A: Yes.

Q: And please tell the Court why that is a very important aspect to consider.

A: I don't know if the specific documents that I reviewed and materials provided to me for review are in the exhibit, but there were documents from NRCS ---

THE COURT: Don't use acronyms without defining it, please.

A: I understand, Your Honor. There was a document from the Natural Resource Conservation Service which was part of the evaluation, I assume as a part of the Sumerels' program support from the Department of Agriculture which qualifies them for farm service agency financial

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assistance or technical assistance, and the bureaucracies of USDA have to coordinate all that. But one of the federal programs requires that to qualify for those -- the same thing on my personal farm, I've had to have my property evaluated and I'm qualified as a soil scientist and a soil classifier in South Carolina, among other things, so I understand the importance of this. You need to understand are the soils especially vulnerable to erosion and might that cause damage to the soil resource or to downstream waters. The assessment that was performed by the Natural Resource Conservation Service, I think it was a fellow by the name of Henry Holsenbeck, who I happen to personally know, did identify that this area where this proposed facility was going to be established is in an area of highly erodible soils.

MR. HIGHTOWER: Objection, Your Honor, hearsay.

MR. SMITH: It is a document upon which my expert is basing his opinion. He's the expert basing his opinion on a document. It's not being offered necessarily for the truth of what it asserts. He's telling me, telling the Court --

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THE COURT: You got a little fast for me.

MR. SMITH: Sorry. It's an exception to the hearsay rule because it's a document upon which my expert is basing his opinion.

MR. HIGHTOWER: He can base his opinion on it and he can say I wrote the documents, but he specifically stated the person's name, what agency he worked for, the only reason why it's important to him is because it's the National Resource Conservation Service, and that's a hearsay statement. If the witness can testify without using a statement, fine. But if he's going to use a statement, that's hearsay.

THE COURT: Can't you rephrase that question?

MR. SMITH: Absolutely, Your Honor.

Q: Based on the documents you reviewed in this case, Dr. Hargett, is it your understanding that a portion of the site, the Sumerel site, contains highly erodible soils?

A: Yes, sir, it is. And let me point out, in addition to the document that I'm not going to cite, I independently went to the federal publication, soil survey for this site. I looked at the soil conditions that are mapped. It's a matter of public record. I looked at

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the cross listing of how that soil is classified. It is classified as highly erodible soil. That is consistent with my professional experience in looking at hundreds and hundreds of sites in the field.

Q: Thank you. And why is that relevant in the context of evaluating this permit?

A: Highly erodible soils are extraordinarily vulnerable to mobilization if not properly managed with appropriate best management practices as specified in DHEC's stormwater and erosion sediment control regulations.

Q: And none of that is provided for in these plans ---

A: No, sir.

Q: --- the comprehensive nutrient management plan or the dead animal disposal plan for this permit?

A: No, sir.

Q: And based on your testimony, it appears you are of the opinion those plans should be in place to do a full and adequate evaluation?

A: Yes, sir.

Q: Do you believe that DHEC, the plans in the DHEC evaluation are based on an assumption that

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there's no discharge runoff from these facilities?

A: No, sir. I believe from the documentation that they anticipated the comprehensive stormwater management plan would be developed for the site, but that would be done independent of the agricultural permit.

Q: As you know, Dr. Hargett, there was an amendment to the plan submitted in late May of 2013. Do you recall that amendment?

A: Yes, sir. I'm familiar with it.

Q: And it was a change to the dead animal disposal method, correct?

A: I believe that's correct.

Q: And in your opinion, is that a significant amendment or alteration of the plan as far as potential environmental, potential environmental impacts?

A: It is a significant change in an important component of the plan, just like changing the location of any of the facilities would be or the methods employed to manage those. I'm not an expert -- I'm not presenting myself as an expert in boiler operation management, but it is a component to the information presented to

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the public and considered by the Department in their permitting process.

Q: Based on your knowledge, education, experience and the research you did for this case, what are the water impacts that can result from these type of operations?

A: The major -- the most major concern that I have is the general absence of recognizing where's the stormwater management activity going to go. The buffer that is presented in the figure for the site that we discussed earlier in the comprehensive management plan shows the area between the upper pond that we referred to earlier and the southeast corner, the southeast chicken house, as a minimum setback available and that provides minimal setback distance to the upper pond. And I also point out that that overlap, that setback overlaps from my analysis looking at a variety of aerial photographs on where that pond is located, some of that setback overlaps waters of the state. So I have a concern about the accuracy of the plan mapping that was done, especially given my understanding that the engineer and the DHEC inspectors did not go and look at that. There

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may also be additional waters of the state, wetlands, perennial streams, intermittent streams, or ephemeral streams that are not shown on the resource maps. That's frequently the case. For example, when we did the site visit on the 11th of June, we viewed the large pond on the Orr property, and I observed personally that there were extensive waters of the state that are not mapped in a similar fashion. It only makes sense, Ponds don't just spontaneously happen at a point in space. They're fed by springs; they're fed by runoff. And so you have those hydrologic influences upstream. There are certainly some of those upstream of the upper pond and the lower pond that are not indicated in the resource maps which were used by the engineer and by DHEC to assess the site. So their information is incomplete. That's one major body of concern. The other, as I related, is where is the stormwater detention going to go. We're talking about a large footprint facility. It's going to generate a lot of runoff. It's got to go somewhere, and if there's going to be a stormwater detention facility, where is it

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going to go? It's inappropriate to go in that buffer zone because those kinds of best management practices have their own buffer requirements. So those important provisions of engineering simply haven't been provided for. There are also issues with regard to potential releases of contaminants, whether those are from atmospheric sources or from runoff from the site from simply handling of the agricultural operations, whether that's manure, whether it's ammonia from emissions. My experience in working with similar sites is that it's well documented that ammonia from concentrated animal feeding operations does affect water quality in surrounding receiving waters. And those issues haven't been addressed.

Q: Cut out a lot of my questions there, Doctor. Thank you for being concise on that. So your overall assessment of this particular permit and the Department's evaluation of it, do you believe their assessment was adequate?

A: No, sir. I think it's more fair to say it was incomplete. It was based upon incomplete information that there are still numerous

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aspects, I'll call them moving targets, in the operations of this facility even defining what the facility is. Is the facility, for example, the buildings only. In my opinion, it's not. It's the entire complex. It includes all the surrounding apron of compacted area or paved area that specified in the -- excuse me, the Columbia guidance for these kinds of operations. They specify how much area you have to have around each of the buildings, what the loading area is, loading and unloading for the chickens, and even the orientation of the buildings, which is not what is specified here. That's an item that Columbia specifies they're supposed to get approval on and any waiver of that. So there are a variety of moving targets in this application that are still question marks from my review and my opinion of looking at lots of kinds of environmental permits and across lots of environmental programs. It's a very incomplete program that I think is what DHEC has reviewed.

A: Do you think they -- you mentioned that Part 200.70 a few times.

A: Yes, sir.

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Q: Based on that and other applicable regulations, do you believe that DHEC has failed to abide by their own regulation in this permitting process?

A: Yes.

Q: That's all I have for now. Thank you, Dr. Hargett.

THE COURT: Mr. Hightower, cross-examination?

DR. HARGETT - CROSS-EXAMINATION BY MR. HIGHTOWER:

Q: Mr. Hargett, or I should say Dr. Hargett, you stated you've done some work for Duke at their Lee Nuclear Plant, correct?

A: It's the proposed Lee Nuclear Plant.

Q: Okay. And you were doing some work concerning, I guess, the water that they have to hold on site for cooling; would that be correct?

A: My responsibilities were as a subject matter expert for hydrology. A great deal of my work involved management of surface water and groundwater impacts and assessment as you would in a complex facility like that that has a lot of potential scenarios for failure, of what might happen in the case of a accidental release of a variety of contaminants to include radionuclides. In that process, I oversaw

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extensive groundwater modeling work. I was also a part of teams that was involved in surface water assessment, to include the stormwater program as the amount of stormwater generated, under what conditions it might be generated and where it might go affected the groundwater program. And so those two were tied together as seamlessly as possible and attempted to predict what happens under various hydrologic scenarios in a complex site, you know. So I think I answered your question.

Q: Now, in that case, you're saying that the ground, that the stormwater permitting was -- the permitting process was done as part of another permit?

A: The actual submittal of permits was not part of my chart. Other consultants were involved in that. I am aware that DHEC was issued a permit for water related issues at the site. There are other permits and other licenses that are still outstanding on that, so.

Q: You stated that you believe that the Department in the issuance of this agricultural permit was improper because you didn't see anything about stormwater, is that correct?

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A: No, sir, that's not exactly what I said. I believe I testified that the plans and the permit application package did identify that there would be at some point a stormwater management plan, somewhere a pollution prevention plan, but that that was not included as a part of the complete package. The regs specify that a permit can only be issued when a complete package is submitted and meets the requirements of the Department.
Q: Okay. Yes, the regs do state that, a complete package. Stormwater, as you know, is regulated under 61-9, correct?
A: Yes, sir.
Q: That's a separate permit. That's not 61-43, is it?
A: No, sir, it's not. And it's one of the vague areas of regulating complex environmental matters, and my opinion goes to why they need to be coordinated and share data, share appropriate information so that one isn't permitted absent the input from -- it's highly relevant from a parallel program.
Q: But the Department has the discretion to determine that you could get separate permits,

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correct?
A: Evidently, it issued a permit.
Q: And if the Department issues, or I should say if the Department's issuance of 61-43 is approved and the applicant applies for a stormwater permit under 61-9 and 72-300, and provides the proper documentation there and gets that permit, would that address the issues that you have stated that there is not a way to determine whether or not stormwater's been addressed?
A: In the big picture, and I'll speak from the experiences I've had with a wide variety of other permitted facilities of all sorts in numerous states, it's prudent for a regulatory agency and the permittees to coordinate and make sure all of the potential permits are coordinated, that they aren't contradicting one another potentially or leaving important components that cross program lines or regulation lines out of the communication cycle. In this case, I think we've all acknowledged that there needs to be an address of stormwater issues and a permit. an agricultural permit has been issued absent that

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information that could make this permit seriously flawed. In my opinion, it does.
Q: Well, if the Department in its stormwater permitting finds that there's some reason why they can't get a permit, they can deny a stormwater permit, correct?
A: Yes, sir.
Q: And even though the applicant has a permit, they wouldn't be able to -- an agricultural permit, they wouldn't be able to construct, would they?
A: That's my understanding.
Q: Okay. So the Department can choose how it wants to do its regulatory thing. And the fact that you want every single permit conceivable to be looked at at one time by how many different permits you have would probably have that many different reviewers instead of the Department to determine, well, you want to build an agricultural facility, you get an ag permit first. If you get the ag permit, then you go and determine whether or not ---
MR. SMITH: Your Honor, I object. It's a massively compound question and Mr. Hightower is testifying.

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MR. HIGHTOWER: Fine. I will -- I will rephrase the question.
THE COURT: Please do.
Q: Is it not possible for the Department to determine the following. You get an agricultural permit first. If you get that, you then get a stormwater permit. And if you need a well, you get a well permit. Is there anything wrong with the Department doing an overall comprehensive ---
MR. SMITH: Same objection, Your Honor.
THE COURT: I'll overrule that. He's going slowly enough.
Q: Is there anything wrong with the Department doing a comprehensive review in a sequential fashion?
A: Mr. Hightower, it's not my understanding that there's any sequencing that's called for among these various programs at DHEC. All I'm simply asserting is my opinion, my interpretation of the Department's regulation is under 200.70, item (E), the Department shall consider all cumulative impacts to include potential impacts. And if stormwater has a potential impact, they can't issue this permit validly

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without considering them.
Q: You said 200(E)?
A: 200.70, subparagraph (E).
Q: 200 ---
A: I may be looking at an old version or a different version of the reg, but ---
Q: Well, I'm looking at the most recent ---
A: Okay.
Q: --- version and that just says the Department shall act on behalf of permits to prevent so as reasonably possible considering relevant standards under state and federal laws an increase in pollution of waters and air of the state from any new or enlarged sources. Don't see any ---
A: I think that's essentially the same spirit what I'm ---
Q: Well, no, because you added that somehow we would look at "cumulative." The word cumulative is not in that definition that I just read.
MR. SMITH: Objection. That's not a question.
THE COURT: You are sort of ---
Q: Is cumulative ---
THE COURT: Excuse me, let me ---

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MR. HIGHTOWER: Oh, I'm sorry.
THE COURT: I ask that you not argue with the witness, and to the witness I say, please, sir, answer his question. You've evaded one there and I needed to hear the answer.
MR. HIGHTOWER: Okay.
A: May I take the opportunity to clarify and see the reg.
Q: You can look at the reg.
THE COURT: Let me interject here because I needed to have the answer. Mr. Hightower asked whether there was any reason why the Department -- can you hear me, Dr. Hargett?
DR. HARGETT: Yes, sir.
THE COURT: Could not first issue the agricultural permit, then the stormwater, and then the well, not doing them all at one time. What is your response to that?
DR. HARGETT: Thank you, Your Honor. My response is that would not be appropriate because it would set up the potential that the permit could be erroneous because it didn't look at all of the relevant information. The stormwater information is relevant. It goes even to where the facility is foot printed, and if the

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Department anticipates that, a reasonable reviewer would know we've got to have stormwater go somewhere. Why should we permit something that we know we're going to have to change later. That certainly doesn't, in my opinion, appear to be in the agency's interest or in the public's interest or in the permittee's interest.
Q: But the ---
A: The permittees are in the room and they may be hearing things that they're going to be required to do that they aren't aware of, and that's certainly not fair to them and this additional costs, additional moving targets. You know, I simply have the opinion that it's important to look at all of these components of a decision process together to the extent practicable.
Q: To the extent practicable. Well, okay. What is the time frame for the Department to review a stormwater permit application under 61-9?
A: I don't recall off the top of my head, but there is a timeline process that they go through.
Q: Would 20 days be approximately what it is?

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A: I don't recall specifically, but that ---
Q: If I represent to you it is 20 days and an agricultural permit process takes more than 20 days, would that not be a reason for the Department not to have a comprehensive look at the stormwater permit as well as the ag permit at the same time because the permits have different time frames in which the Department must make a decision?
A: I understand that, Mr. Hightower. It's a complex agency regulating a lot of different complex issues. It's also my understanding that the agency's trying to be business friendly and consolidate those timelines and make things as easy on a permittee as possible.
Q: My question was if the time frame for agricultural permitting and the time frame for stormwater permitting are different such that you couldn't do them both at the same time, can the Department do the agricultural permit at one time and the stormwater permit at the other?
A: It's my observation that that appears to be how the Department is operating now.
Q: You stated that you did some research

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concerning -- concerning the maps that were submitted by the Sumerels' engineer to the Department?
A: Yes, sir, I did.
Q: What did that research entail?
A: I evaluated all the materials. There were several different versions of maps included in the comprehensive waste management plan for the proposed facility developed by Shealy. I also looked at the county's GIS information, just as DHEC used that information and related resource information. On that GIS program, you can look at contours, you can look at hydrology, you can look at imagery, you can look at wetlands, the FEMA maps in terms of flood-prone areas. All of these are specific items that are called out, and so that helped inform me as to whether the information that DHEC was reviewing was consistent with what was in the Shealy engineering report. I also looked at Google Earth, and that was useful particularly because they have new 2014 imagery up from April 25th. It shows very recent aerial photograph conditions. So I looked at all those, and I also looked at the Natural Resource

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Conservation Service soils maps which are available through a tool that NRCS has called web soil survey. All of that information helped me put together an understanding of site conditions for areas that I have not had the opportunity to physically inspect or observe. As I related earlier, I did go down to the Orr pond and headwaters of the Orr pond and inspected one of the tributaries to that pond, but I did not inspect the two ponds on the Sumerel property because I simply -- it wasn't appropriate at the time, and we didn't have time on that. That was not part of our understanding that day for inspection on 11 June. So I looked at a variety of resource information to help me formulate an opinion of conditions and likely conditions that may receive the runoff from this major agricultural facility.
Q: Did you print out any of these documents?
A: Yes, sir, I did, but I'm not sure they're an exhibit. If you want to refer to them, you know, I can break them out, but again, this is information that I assumed DHEC reviewed in their review process.

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Q: Did you provide those documents to Mr. Smith?
A: I have discussed them with him and I have shown them to him. I have not given him physical copies. Again, this is all information that's public domain. It's on the Laurens County GIS website.
Q: True, but you printed out the documents?
A: Yes, sir.
Q: Do you have the documents with you?
A: Yes, sir.
Q: May I see them?
A: Do you want to discuss these, side bar, or you want me to explain what they are?
MR. HIGHTOWER: Your Honor, if we could go off the record for a moment.
(Off the Record)
THE COURT: Are we back on the record, Mr. Hightower?
MR. HIGHTOWER: Yes, Your Honor.
Q: Now, Dr. Hargett, you didn't do -- you didn't take any samples, soil samples, did you?
A: No, sir.
Q: You didn't take any water samples?
A: No, sir.
Q: Okay. You didn't do any measurements, did you?

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A: Yes, sir, I made measurements in the field. We paced off measurements. In fact, Mr. Chaplin paced off some measurements for us when we were out taking photographs.
Q: When you were there, you took measurements, you personally?
A: We shared information regarding how far it is from point A to point B, that kind of casual pacing off of approximately where the site was going to be located.
Q: You did ---
A: I also made measurements, to answer your question if I may, using standard GIS techniques just like DHEC used to determine how far is it to the potential receiving pond, how big is that pond. Those are standard tools that are available to the public using Laurens County GIS. How big is the watershed of the upper pond on Sumerels, the lower pond on Sumerels, so I could have a sense of the relative impact of runoff from this agricultural industrial site to those receiving waters.
Q: And you stated that you have information that the property line setbacks have waters of the

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state?
A: Yes, sir.
Q: Can you show me where that is?
A: Yes, sir, but I'll have to share with you my other documents that support that. In this area right here that we're ---
THE COURT: I need to know what you're referring to.
A: Yes, sir. This is -- this is the aerial map of the poultry farm. It shows ---
THE COURT: Is that DHEC 107?
A: Yes, Exhibit 1.
THE COURT: Bates? Look at the bottom under your thumb.
A: Yes, sir, DHEC 107.
THE COURT: 107? Proceed.
A: Where the easternmost point of the yellow crosshatch area is, it actually overlaps the pond, and in this particular figure submitted by Shealy, it's hard to discern exactly the limits of that pond. But if you pull away all of those crosshatch layers and look at the raw underlying aerial photography, you can see that the pond actually comes under that crosshatch area.
Q: You do know that the yellow crosshatch line

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here is the property line setbacks?
A: Yes, sir.
Q: Okay. You know that the property line setbacks are different than the setbacks for the waters of the state; isn't that correct?
A: Yes, sir. The property line setbacks also overlap the waters of the US setback. So my point is that the actual waters that are protected by that waters of the state setback aren't clear here.
Q: Well ---
A: And there may be other waters, in my opinion, there likely are other waters that are not reflected at all.
Q: Other waters that are waters of the United States?
A: Yes, sir. Yes, as the reg says that DHEC shall decess (ph) all wetlands, ephemeral, intermittent, and perennial streams.
Q: Do you have any evidence showing that there are waters of the state that are within the 100 foot setback at the site?
A: Within the 100 foot setback, yes, sir. That's the yellow crosshatch we just described.
Q: No. The yellow crosshatch is not ---

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A: I'm sorry, I stand corrected on that. Within the 100, my position is it's unknown. Again, because I didn't inspect that. I surmised based on my understanding of soils, landscapes, the size of that watershed, which happens to be approximately 24 acres above the small pond from my measurements using GIS, that there likely are waters of the US not shown on these maps. I didn't inspect that, and it's my understanding that DHEC didn't inspect it. So it's unknown.
Q: When you went out at the site, you had access to the site, correct?
A: We had a limited amount, yes; yes, sir, we did. We had a limited amount of time to look at a lot of different issues, and that was not one of the issues. We also were looking at that other site that shall go unmentioned, so.
Q: Well, but did anyone tell you that oh, it's time to go, we have to go? Or did you determine you had seen enough and that you were ready to go to do other things?
A: We had other things to do and we had a limited amount of time, yes, sir.
Q: You had a limited amount of time?

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A: We all had a limited amount of time.
Q: Well, but you stated just now that you surmised. At the time you went out to the site, you reviewed the comprehensive nutrient management plan; isn't that correct?
A: Yes, sir.
Q: So you had already looked at Bates stamp page DHEC 107, correct?
A: Yes, sir.
Q: So you were well aware that maybe there was something that you should look at, correct?
A: Let me acknowledge, Mr. Hightower, that as a consulting scientist, you never have all the data you'd like to have. There's always an additional data point that would be nice to have, but at some point, you've got to move forward and develop your opinion on what's available. I'm simply saying now, it's my opinion that more likely than not, there are additional waters of the US, waters of the state, that are either wetlands, ephemeral or intermittent or perennial streams that are now shown on this map.
Q: In preparing for your testimony today, did you take any steps to find out whether or not this

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opinion of yours is based in fact or not?
A: Yes, sir. I looked at the resource maps and I made calculations on the size of the watershed to that pond, the topography. These are the maps that I just shared with you.
Q: Did you find out from the Army Corps of Engineers that there's a wetlands delineation for this particular site?
A: I did not, and they customarily would not have that information. The absence of information is not evidence of absence. In this case, that level of mapping, likewise the hydrology doesn't even show that there's a stream between the two upper ponds.
Q: Did you observe the stream?
A: When I went into the supplemental data, yes, sir.
Q: And, again, when you went out to the site, you did not take any steps to determine whether or not there was a water of the state that was closer than 100 feet from the footprint of the facility; is that not correct?
A: That's correct. I did not.
Q: One moment.
MR. HIGHTOWER: No further questions, Your Honor.

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THE COURT: Excuse me, what did you say?
MR. HIGHTOWER: No further questions.
THE COURT: How long will you be, Mr. Hite?
MR. HITE: I'll be very brief.
THE COURT: Okay, proceed.
MR. HITE: Thank you, Your Honor.
DR. HARGETT - CROSS-EXAMINATION BY MR. HITE:
Q: Dr. Hargett, just so I get this correct, okay, your major concern in your expert opinion with the plan is that it doesn't -- and the permit, because the plan does not entail any information other than the statement that it will related to stormwater?
A: Yes, sir. That is my foremost concern is that that's a major aspect of all the infrastructure that has to go into this kind of facility, and it's not accounted for. It could potentially impact resources offsite. It could impact where the facility is located. If it turns out that once it's sized and engineered, it could result in a movement of the footprint of the facility, and that obviously has a lot of implications to the permit.
Q: And if it does move the facility, then they would fall or be outside of their permit, ag

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permit; is that correct?
A: The permit would obviously have to be amended.
Q: And really the only people that it benefits to do all of these together are really my clients isn't that true?
A: I think it would be a huge benefit to your client to do all of those together, yes.
Q: But as Mr. Hightower said, DHEC's got the right to do it however they want to do it?
A: That's my observation.
Q: And it doesn't necessarily benefit or -- it makes no difference when stormwater is analyzed as long as it's analyzed and permitted properly? To the environment, let me ask it this way. To the environment, as long as stormwater is permitted before the construction begins, it makes no difference if it's before, after, or during the ag permit; isn't that true?
A: It could potentially have -- there could be scenarios. Whether this is the case here, we don't know until we go through it. But there could be determinations that, you know, this has such a -- you know, this missing data point for what are we doing with stormwater is so

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significant that it changes the whole concept. You know, that's pretty important to know in terms of fulfilling DHEC's duty to assess all the issues that are live on the table.
Q: But how can it affect the environment, because they can't even start moving dirt until they get the stormwater permit, correct?
A: That's correct.
Q: So how can it affect the environment?
A: In terms of the environment, it's less a concern than the concern for how do you go through the process and communicate openly, honestly, and thoroughly with the public on what factors are that will affect the permit.
Q: Right. And that would be something great to take up with, I guess, the legislators and DHEC from a top down level, correct?
A: Yes, sir.
Q: But not in terms of this permit today?
A: My opinion is it should be coordinated. That may go beyond the scope.
Q: So but just so I'm 100 percent sure, you weren't testifying that you believe that there's water within side the 100 foot from the buildings, were you?

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A: I testified that the engineering drawings that are presented obscure important information and may not provide all of the relevant information. There may be additional waters that have not been identified. I have not had the opportunity or privilege to go and carry out that investigation. It was beyond the scope of my involvement here as an expert witness. And DHEC evidently has not investigated that or even looked at the ponds to see what the impacts are.
Q: Did we deny you that opportunity to ---
A: No, sir, it's ---
Q: --- measure from where the barns will be to the water?
A: The only information provided is what is in the plan. No, you did not deny me that opportunity but it was not an opportunity that I ---
Q: But you're here testifying today and it sounds like you're saying that, or you're wanting to insinuate that there's waters within 100 feet within the buffer. But you don't have any evidence that says there are?
A: That's correct, and I would assert that DHEC doesn't have clear irrefutable evidence that

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there is not, other than what is in the engineering plan, which I have opined is inaccurate.
Q: But nobody denied you an opportunity to come out and disprove it, did they?
A: No, sir.
Q: And is it -- we don't need to get into whose burden today. No further questions.
MR. SMITH: Re-direct, Your Honor, if you don't mind.
THE COURT: Brief. I was going to say I usually take a two-hour break.
MR. SMITH: Yes, Your Honor.
THE COURT: I'm fine if the rest of you can wait just a few minutes.
MR. SMITH: I'll be very brief, Your Honor.
DR. HARGETT - RE-DIRECT EXAMINATION BY MR. SMITH:
Q: Dr. Hargett, just so we're clear on the record on this. Those maps that you provided Mr. Hightower today, you first brought those down and showed them to me right before you started to testify today, correct?
A: Yes, sir. I literally generated those over the weekend.
Q: Now, as far as this permit goes, this

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agricultural permit for the poultry operation, the regulations require DHEC to determine that there's not going to be an increase in pollution to the waters of the state; isn't that correct?
A: Yes, sir.
Q: And in the Department's evaluation of the stormwater permit in your experience, do they consider the emissions in this context, the emissions from the poultry operation, or is it just runoff from the construction operation?
A: The primary concern in the comprehensive stormwater pollution prevention plan process is the amount of stormwater that's going to be generated under the various design scenarios and the sediment that is associated with that. For certain kinds of sites, they may look at the pollutant rate that may be in that stormwater, but I believe, if I understand your question, they customarily would not look at pollutants being emitted from the chicken house in that particular application.
Q: So those two evaluations are essentially segmented off by the regulations?
A: Yes, they are partitioned as Mr. Hightower

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alluded, separate processes.
Q: And your testimony is they should not be partitioned as such in order to evaluate the impacts appropriately, correct?
A: Given that the agricultural reg process stipulates that DHEC is to look at all relevant information, I am of the opinion that that's highly relevant information and without that, the package is incomplete. That's my opinion.
Q: Thank you so much, Dr. Hargett. No further questions.
THE COURT: Very well. We'll take about a ten-minute break, come back at ten after 3:00. Be in recess.
(Break from 2:57 p.m. until 3:12 p.m.)
MR. SMITH: The petitioners will call Bill Chaplin, William Chaplin.
THE COURT: Be sworn, please, Mr. Chaplin.
MR. CHAPLIN: William Preston Chaplin.
WILLIAM P. CHAPLIN, being duly sworn, testifies as follows:
MR. CHAPLIN - DIRECT EXAMINATION BY MR. SMITH:
Q: Good afternoon, Mr. Chaplin.
A: Good afternoon, Mr. Smith.
Q: Would you please let the Court know your full

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name, title and role within DHEC?
A: I'm William Preston Chaplin. I am section manager over agricultural permitting and dam safety.
Q: And your role in this permitting process we're here to talk about today is what?
A: I reviewed the application package to see that it meets the standards on 61-43.
Q: And what does that review, what is your review of that application package entail?
A: It entails a review checklist that we ...
Q: You've probably got that in front of you as Exhibit Number ---
A: Five.
Q: Yes.
A: And I used the regulations and the management plan in conjunction and reviewed the application package.
Q: And before we get into the actual review here, tell us a little bit about your background as far as education and work experience, please.
A: I graduated high school in '75 from Jefferson Davis Academy in Blackville. At that point, I went to Clemson University and graduated in '80 in agricultural mechanization business degree.

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I grew up on a family farm. My mama's parents were farmers. My daddy's parents were farmers. My mom was born in south Georgia, and I'd go down there and spend the summer down there. I worked on the farm as early as I can remember walking in my father's footsteps. So I've been farming until I started my college career.
Q: And after you finished college, you had a couple of jobs and ended up at the Department?
A: I did. I graduated on Thursday and went to work on Monday at Greenwood Mills. I got no lag time there and went straight onto work, which is a good thing these days. Worked there for three years. At that point, I left and was unemployed because the facility closed down. I was out of work for three weeks and went to work for Green -- I mean for -- it was Roper Outdoor Power Equipment at that time. It's a lawnmower manufacturing facility in Orangeburg, South Carolina, and I worked there for approximately ten years. At that time, I decided to pursue other interests and wound up getting a job as an environmental tech III with DHEC, which entailed -- I was in charge of septic tank permits, rabies control, animal

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bite investigations, daycare foster home inspections and mosquito control.
Q: Then you came -- when did you ---
A: I worked, I did that for 12 years, excuse me, and at that time, there was a job opening in Columbia for agricultural permitting, and I thought that that was more suited for my education. So I applied for the job and was accepted. I got the job. About a year and a half later, they decided to do a little reorganization and they created the dam in the agricultural section. And I applied for that job and I was accepted and that's where we are today. I've been doing that for almost eight years.
Q: And what's your current title today?
A: I'm an ag and dam section manager is what's on my business card, I think.
Q: So in addition to doing the ag permitting review like you did in this case, what else do you do within the Department?
A: I manage individuals. You know, I'm a supervisor so I have people that work under me that I have to manage.
Q: What does the section you manage do?

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A: Agricultural permitting and dam safety. I have a PE that is my dam safety go-to guy.
THE COURT: Don't use acronyms. You mean professional engineer?
A: Professional engineer, excuse me, sir, and we just hired another individual for dam safety, and I also share two people with stormwater permitting. They're half funded by dams and half funded by stormwater. And then I have a compliance lady for agriculture that works for me.
Q: And we're talking about this permit now, the Sumerel permit.
A: Okay.
Q: In your job, your role is to know everything that was done to evaluate this permit; is that fair?
A: Yes, it is.
Q: So you know everything that was done to evaluate the Sumerel permit?
A: I evaluated the Sumerel permit.
Q: And you make the ultimate decision on whether or not to issue that permit; is that correct?
A: That is correct.
Q: Now, do you recall in your deposition we talked

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about how many permit applications of this type have been submitted in the past few years; do you remember that?
A: We did talk -- we talked about a lot of stuff but I, you know, if you've got some numbers for me and I think I just did some numbers actually not too long ago.
Q: Do you recall testifying that since 2007, excuse me, 2011 ---
A: Okay.
Q: --- there had been 100 permit, agricultural permit applications?
A: That seems a bit high. That might have included any kind of stacking sheds or compostors at the site, too, and that could include expansion permits.
Q: And do you recall telling me that out of those 100, only two had not been issued?
A: That's correct.
Q: And do you remember the reason those two were not issued?
A: One was a clock-out in time and the other one, I think, the guy didn't want to go to court.
Q: So is it fair to say out of the applications pursued, DHEC approves 100 hundred percent?

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A: That wouldn't be correct. I denied one because he didn't give me the information in time, so it was withdrawn.
Q: Is it fair to say that 99 percent then based on those numbers?
A: That would be a correct percentage.
Q: We've talked a lot today about water, air, and all that stuff. Is it fair to say as you had testified before that you evaluate the setback distances?
A: I do.
Q: And that's really all you evaluate, and if the setbacks are met, you issued a permit?
A: I evaluate everything based on this review checklist, so, you know, don't -- you be clear what I reviewed.
Q: So you reviewed based on this checklist the Bureau of Air Quality memo submitted by Mr. Smutz; is that correct?
A: Right.
Q: And does that memo, no matter what permit, has that memo always looked the exact same besides the name of the farm?
A: In the past, it has, yes.
Q: You've never seen it look any different, have

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you?
A: No.
Q: Have you ever found the need for additional setbacks?
A: I haven't found a need for additional setbacks, but I have required the applicant to do specific things on the property to protect the environment and the neighbors.
Q: On this permit, and if you need to reference it, Mr. Chaplin, I think it's Exhibit 3.
A: It's here. I've got it.
Q: Are there any additional setbacks or special conditions such as a vegetative buffer required?
A: No.
Q: And you base that on the minimum distance setbacks?
A: Yes. I did require -- other than what they asked for, I did require that they either compost or incinerate their dead animals because the burial site location was unacceptable for the groundwater use. So I guess you could say I did put a special condition that they either compost or incinerate their dead animals.

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Q: And that's an amendment to the plan we talked about?
A: Exactly, exactly.
Q: Now, the water evaluation, as far as your understanding goes, does that focus solely on the burial site?
A: The groundwater -- are you referring to Mr. Burriss' evaluation?
Q: I am.
A: Okay. That essentially looks at -- the regulations state that you can bury animals if you can bury them two feet above what they call a zone of saturation now, in my day it was called a seasonal highwater table, and you have to have two foot of cover on the -- above the bird. So if you dig a hole to four feet, you've got to have two feet above the, you know, if the groundwater is at four feet and you really can't bury birds because you've got to have two feet below and two feet above. So, you know, anything greater than four feet would be acceptable. You can mound the cover to give you the two feet of cover if needed.
Q: You understand Mr. Burriss' evaluation focused solely on whether or not the site, the burial

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site it's called ---
A: Right.
Q: --- complied or would comply with the regulations?
A: That's correct.
Q: And as far as you understand and know, he did not consider anything else as far as water impacts?
A: No, he did not.
Q: In your eight years of doing this in evaluating what has to be more than 100 permits based on what we talked about earlier, has the air quality folks, have they ever determined that there's going to be a detrimental impact to the air from these type operations?
A: The air people have not.
Q: There was a lot of talk earlier about ammonia and other emissions from these operations in Mr. Smutz's testimony; do you recall that?
A: I do.
Q: And things like ammonia, that's a caustic gas, is it not?
A: I'm not a chemist, but ---
Q: Based on what you know?
A: Based on what I know, and my father used to be

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a surveyor and way back when, you would take the blueprints and you'd have to put them in an ammonia tube. So at an early age, I was exposed to ammonia in a gallon jug. So I can tell you right offhand you don't want to stick your nose over that gallon jug.
Q: And how was that?
A: That was very pungent, and it was a lesson you learned in a hurry, don't stick your nose when you're a little kid over the gallon jug of ammonia.
Q: What's that smell -- how would you describe that smell?
A: That's pure ammonia now, so it's a little different from what you smell out at the poultry houses.
Q: Well, describe to me what you smell at a poultry house. That's more apropos to what we're doing.
A: How do you describe that smell? It's -- you know, I don't know how I can describe the smell of ammonia. It's not -- it's not very pleasant in high concentrations. I pass by two poultry houses on the way to work. One's a little further off the road than the other one. You

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can sometimes smell the one that's further off the road and if the wind's blowing in the right direction, you can always smell the one adjacent to the road.
Q: And it's a foul or offensive smell?
A: Foul, pungent odor. How would I describe the smell of ammonia? I can't come up with words. I don't know. You asked me a question I can't answer.
Q: I think you answered it just fine.
A: Okay.
Q: Now, Mr. Sumerel submitted the dead animal disposal plan in May of 2013. If you need to reference it, it is Exhibit 2. It should be in front of you there.
A: Got it. Okay.
Q: And according to the DHEC chronology, which you prepared, did you not?
A: I did.
Q: And I'm obviously jumping around on exhibits, this is Exhibit 4 in front of you there.
A: Got it.
Q: That's something you prepared ---
A: It is.
Q: --- to try to reflect the permit issuance

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process in DHEC's view, correct?
A: This was prepared for the request for board review. We don't do this ordinarily on every document, on every application.
Q: And there's something that we think is missing from that. Tell me what date the permit was issued.
A: I have June the 12th on here.
Q: June 12, 2013?
A: Correct.
Q: And according to Ms. Matthews' testimony earlier and the documents that are already in evidence, a preliminary site inspection for that composter was performed when?
A: Is this Exhibit 12?
Q: Twelve is the request, yes. And 13 is the Department's letter about it.
A: 6/24.
Q: So 12 days after the permit is issued, someone goes out and does a preliminary site inspection for the dead animal disposal method, correct?
A: Correct.
Q: Now, Mr. Sumerel's testimony earlier, and I believe you and I, if you recall in your deposition, discussed a pad under the compost;

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do you remember that?
A: Yes, I do.
Q: Now, I do want you to take the time to do this, Mr. Chaplin. Could you show me in this dead animal disposal plan or the comprehensive nutrient management plan or the permit where it requires Mr. Sumerel to put that pad under his composter?
A: I think in my deposition I used page 2 at the bottom that says if manure is stockpiled for more than three days, it should be stored on a concrete pad or other approved pad such as a plastic or clay line.
Q: Tell us what Bates stamp you're looking at so we're all reading from the same hymn book. What Bates stamp are you on? What exhibit number?
A: Exhibit Number 2, I'm sorry, page 2.
Q: Page 2?
A: Bottom of page 2.
Q: What's the Bates stamp at the bottom there, Mr. Chaplin, the page you're referring to?
A: 286.
Q: Thank you. And that's stockpiling the manure?
A: Right.

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Q: Now, my question was talking about the composting area. Can you show me where in these documents that refer to the require, plan for, mandate Mr. Sumerel to put a pad under his composting?
A: You know, I -- it says -- these pages are out of order. It goes from page 1 to page 3 to page 4 and then to page 2. Page 2 to page 4, you know, that's just still referring to the storing of concrete, I mean, of manure outside. So it's looking at page 2 and then at the top of the next page made no sense.
Q: I was working with how the Department -- and these things happen with documents, but if you'll just refer to the Bates stamp numbers, that would be best.
A: That's fine. I said no.
Q: I'm sorry, I didn't hear you.
A: To point out the pages. Looking from -- reading from the bottom of page 2 and I went to finish it at the top of page 3 and I was looking at litter immortality and it kind of threw me off, so.
Q: So it's fair to say there's nothing in these plans that requires -- in the permit that

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requires a pad, concrete or a clay pad under the composting area?
A: Not to my knowledge.
Q: Now, look over for me in the comprehensive nutrient management plan. It's going to be Exhibit 1 and at DHEC 107 we've been referring to a lot.
A: Okay.
Q: Tell me when you're there, okay.
A: DHEC 107?
Q: Yes, just looking at the bottom right, there should be a color map.
A: Okay. I got it, a color map, yeah, I sent you a color maps.
Q: Yes, you did and I appreciate that. It makes it easier.
A: No problem.
Q: Please tell the Court how you go about evaluating whether the setbacks are complied with.
A: I use the GIS system, and I also draw the barns, physically draw each individual barn in GIS. In this case, they were 52 by 500 with 55 foot spacing. So I can draw a rectangle and right click on it and go to properties, and

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then I can size that barn exactly to the size that I tell it to. And also then -- then I draw a circle with a 55-foot radius, and then I line the barns up as best I can. For example, the second barn from the east, do you see where it barely touches that hedgerow?
Q: Yes.
A: So that would be where I -- that would be kind of a good place to start. Or I can also buffer the property lines. And I see where up at the top, that barn is just right on the top of -- the first barn from the east is right on that 200-foot property line setback. And just to clarify that this is a copy of a copy. And on my plan, there is some space between that barn and that property line setback. I mean everybody's looking at this same document, then we've had a court case where they tried to argue that that line was a specific distance on the ground. Would you like to look at my copy, the original of the plan? I'd be more than happy to show it to you.
Q: Sure, if you've got it.
A: That's the composter location but that's the same map.

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Q: Sure. I'm not going to walk away with it.
A: That's fine.
Q: Okay.
A: It's just barely there but just to be fair.
Q: Well, based on your testimony, what you just showed me, you're representing that it's within the setback but just barely?
A: Correct.
Q: And you verified for us that there's -- this is what's either a medium or small operation under DHEC regulation?
A: This is a small operation. It's under half a million pounds.
Q: And how's that -- okay. How is that half a million pounds determined?
A: It's the average live animal weight that was spoke of earlier. What you do is you take the entry weight of the birds. They come in a day old, little yellow chicks, they're considered to weigh a tenth of a pound, and on the eggs that's weighed and I think these are nine pound birds. Don't hold me to that until I can verify it.
Q: Please look at the plans. It's an important point.

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A: What?
Q: Look at the plan.
A: Okay. 8.7 pound birds.
Q: What's the entry weight they have down?
A: .25.
Q: So based on that formula listed on DHEC, are you looking on DHEC 20?
A: I'm looking at the application itself.
Q: The average live weight is what?
A: Four and a half pounds.
Q: And you multiply that by how many birds are going to be in the facility?
A: And that's how you get your ---
Q: Times turns a year?
A: Normal production live weight.
Q: Right. You do that times the birds, times the turns per year and that gives you the number?
A: That -- 109,600 birds is the maximum number of birds at any one time on the farm. Then you turn the four and a half flocks a year and this is where you get the big number that you're referring to maybe.
Q: Right.
A: And that's on page 17 of the plan, I think.
Yes.

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Q: The point is the size, whether it's regulatorily defined as small or large based on this calculation?
A: It is.
Q: And a large operation is over half a million pounds, correct?
A: By weight? Yes.
Q: Yes.
A: A large operation is 12 houses.
Q: I'm asking about the regulation.
A: Right. Anything over a half million pounds is considered large.
Q: And large requires per the regulations a 400-foot property line setback, correct?
A: Four hundred foot setback. Yes, sir.
Q: And based on everyone else's testimony has already confirmed this and the maps in front of you, there's no way for a large facility to fit within the available setbacks for this operation?
A: No, I don't even think you could put one barn there.
Q: So it's maxed out at this point?
A: The property is. I don't know, you might could put another barn at the top.

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Q: The addition of another barn, would that push the animal ---
A: Yeah, that would. That would kick it over the half million and then you would be looking at 400-foot setbacks and then you would be down to two barns and then you'd be back under a half millions, so. You can ping-pong that all day long.
Q: Right. Who provided you the maps and the plans that you evaluated? Who provides those maps to you to evaluate?
A: Joy Shealy.
Q: And you mentioned going on GIS. Do you go anywhere, I mean, independently of the maps she provides and confirm that they're accurate?
A: I use our GIS program and some county maps, but I've found county maps not to be very reliable. And I also found Google maps and stuff not to be very reliable because sometimes I have to locate people's houses and instead of using a Google map location, or Yahoo or Bing, and I've tried them all, I wind up calling the applicant and saying I'm looking at an aerial. Do you have a circular driveway or a tree in your backyard or whatever, so I can locate their

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houses.
Q: Okay. Just give me one second.
A: No problem.
Q: I'm going through some stuff. I'm trying to make this ---
A: Okay.
Q: If you'll look over with me on the dead animal disposal plan, what's been Bates stamped DHEC292.
A: Okay. Give me just a second, please.
Q: Sure, sure. And please use the exhibits you've got in front of you the best you can.
A: I am. I'm putting mine away.
Q: Okay.
A: Exhibit Number 2?
Q: Yes, sir.
A: Okay.
Q: What's been Bates DHEC 292. That bottom paragraph, could you read that for me, the very last sentence?
A: Specific actions for abatement on the form are outlined in the integrator specific odor and vector your abatement plan which is included in Appendix D of this plan.
Q: Could you flip on over to Appendix D with me.

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THE COURT: What's the Bates stamp number?
MR. SMITH: That Bates stamp number is 318.
Q: What does Appendix D have there?
A: Sample recordkeeping forms.
Q: No site specific odor and vector abatement plan?
A: No.
Q: Aren't those two aspects of a plan a requirement in order to permit this type of facility?
A: They are.
Q: The plan, does it provide anywhere about what the Sumerel plans -- excuse me, the Sumerels plan to do with the compost?
A: Does not.
Q: Does it indicate anywhere he's going to apply for exceptional quality compost designation?
A: It does not.
Q: Now, if he doesn't apply for that designation, doesn't the Department need to know what he's going to do with the composted material?
A: He has signed up with a manure broker to handle his manure and he would be handling, the manure broker would handle this compost as well.
Q: Can you point to me in the plan, either one,

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where it designates that he is going to do that or has to do that?
A: Either one? Yeah, it says in the management plan where he's going to have a broker.
Q: I understand he's going to have a manure broker. I'm asking if anywhere in there provides that he's going to use that manure broker to haul off his compost?
A: No.
Q: In doing your evaluation, does the Department know where the water runoff is going to go from this operation?
A: There are topo maps included with the plan, but as far as where the water's going to run off, it's difficult to tell because the site's going to be graded at some point prior to them building these houses.
Q: And where are the airborne emissions from this operation going to go?
A: In the ambient air.
Q: Which direction? You can use the map for reference.
A: It depends on which way the wind's blowing.
Q: Which direction are these barns going to exhaust in?

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A: It was my impression they were going to exhaust to the north.
Q: And that's designated in the plan somewhere?
A: No, it's not.
Q: Isn't the exhaust direction an important consideration as far as determining any environmental or health effects of the facility?
A: They are.
Q: Did you hear Dr. Hargett testify about the potential dams downslope of this facility; do you recall that?
A: Yes, I do.
Q: Is that a consideration that the Department undertakes in evaluating these type permits?
A: No. We just -- the waters of the state in relation to the facility.
Q: Do you know if DHEC went out to the site -- excuse me. The only person from DHEC that went out to the site was Ms. Matthews, correct?
A: No, I went there and Stephen went there.
Q: Excuse me, besides the times that we went there with you?
A: To my knowledge, Ms. Matthews, yes, she went and did a preliminary site inspection. Now, if

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anybody else went out there, I don't know about it.
Q: And you can only testify to what you know, so as far as you know?
A: That's right. To my knowledge, other than our site visit, Chrissy was the only one that went there.
Q: Now, you testified earlier you're managing the Department of wastewater over there? Excuse me, I didn't get the title right. Tell me what you're managing. There's a lot of bureaus.
A: Ag permitting and dam safety.
Q: And dam safety.
A: Okay.
Q: Is there a regulation about any wastewater lagoons that you're aware of that requires no trees be around it?
A: Yeah, we require dikes that lagoons are built by, and you referred to it earlier as there's dams, but dams imply that you're impounding water and allowing it to escape downstream. And in a lagoon, there are no such thing as dams because we don't allow discharges in South Carolina for our wet facilities. So to refer to a lagoon structure as having a dam, I think

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you'd be incorrect; it's a dike.
Q: Okay.
A: And it impounds the water and does not allow it outside of the four dikes.
Q: Okay. And the ponds I recall that are sited on these maps, the DHEC 108 and 107, those would have to have a dam of some sort, would they not?
A: If they're impounding water, they would have to have a dam.
Q: And a dam, as you just illustrated, allows water to flow in and out, correct?
A: Yes. Yes, it does.
Q: And looking at these maps, 107 and 108, these water bodies, and what I'm referring to as water bodies, I'm talking about those two, the east running to northwest of the facility, they all seem to be interconnected. They're either perennial or not or intermittent stream, are they not, based on the maps?
A: It looks like it's a blueline stream on my map so that would be a ---
Q: A perennial stream?
A: --- stream, yeah, as opposed to something that would be intermittent.

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Q: So, for example, an increased nutrient load in this closest water body would run down into these other water bodies?
A: If you were to dump nutrients in that one pond, it would probably go to another. But I'm not a hydrogeologist. I do own a pond and I can tell you that there is something called fertilizing ponds and you don't want to do it because all it does is make all your weeds grow and you can't fish in it, so.
Q: Right. Because there's some kind of drastic environmental change that can kill your fish and have all other kinds of ecological -- ecologically detrimental effects, right?
A: Actually, it doesn't kill the fish. It makes the weeds grow and it puts more oxygen in the water.
Q: Will these type of operations do that?
A: No, they're not allowed to discharge.
Q: Excuse me, one second, Mr. Chaplin, I may be wrapping up here.
A: Yes, sir.
Q: Earlier, do you recall Mr. Sumerel, and during your deposition we talked about it too, the stacking shed on this facility?

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A: Stacking shed? Yes.
Q: And there's none provided for in the plans today, is there?
A: There is not.
Q: And that would have to be a part of the plan if it were going to be part of the facility, correct?
A: If it was going to be permitted at the time of the facility, that would have been on that first page of the permit where it says description. You'd have had 40 by 80 stacking shed or whatever the size required to hold all four houses worth of manure in it.
Q: So if Mr. Sumerel wants to do, Mr. and Mrs. Sumerel, excuse me, wants to do a stacking shed, they've got to come back to the Department, site it, and y'all have to go evaluate it and then permit that?
A: They will. The usual chain of events on that is that NRCS has a cost share pogram called EQIP where they share will the cost of building a facility such as a stacking shed and usually most people -- and they can't cost share until you are in business and operating. And I've talked to the engineer many times like, you

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know, if y'all would cost share up front, then we would have more stacking sheds on property and that would help, you know, everybody out. Help the environment out; it'd help us out; it'd help, you know, the growers out. But that's not the way USDA operates. You've got to be in business to qualify for the EQIP money.

Q: So right now, piling it up outside is the cheaper alternative?

A: It is.

Q: And what do the regs require on that?

A: You have to have a specific site, and it has to be covered within three days.

Q: Does that site need to be designated in the plan and approved in a permit?

A: It does not. I just think the regs just specify that it's an approved site.

Q: And what does that mean to you?

A: That means that we're going to go back out there and decide whether you can put it there or not.

Q: So they're going to have to plan for it at some point and DHEC has to do the evaluation and approve the site?

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A: Correct.

Q: And that is not -- I think you just testified the stacking shed is preferable to that method, right?

A: Yes, it is.

Q: And can you elaborate on that as to why? Is it runoff problems or seepage problems?

A: It allows the grower more flexibility when it comes to the broker coming there and picking up his manure and land applying it. You can store the manure in there and then, for example, if you had a clean out, and the farmers try and schedule these clean outs at the proper time for corn planting or, you know, the first of the year. So they usually take it right out of the shed and spread it for fertilizer on a row crops field.

Q: Okay.

A: Having a stacking shed would allow them to store the manure until a farmer needed it when he was going to plant a crop. For example, winter wheat goes in in November, December. So he could come over and if he had a stacking shed and he had the litter in it, he could come get Mr. Sumerel's litter -- Sumerel's

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litter and take it to his field and spread it. And then you've got to come back within 30 days and plant a crop.

Q: The stockpiling or piling method, is that going to increase odor production on the facility?

A: It's supposed to be covered with a vent hole in it. And I've not stuck my nose in the vent hole yet. I think I learned my lesson when I was a kid.

Q: We all learn from our mistakes. Is it going to increase potential vector problems, flies, rats, rodents?

A: It could.

Q: I heard Dr. Hargett testify earlier about what is the facility. What does the Department consider to be part of a poultry operation facility?

A: An agriculture facility means a lot, building, or structure which is used for the commercial production of animals in an animal facility.

Q: Right. And I ask because that definition, can you agree with, me is a little vague?

A: Yeah, actually an animal facility means an agricultural facility where animals are confined and fed or maintained for a total of

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45 days or more in a 12-month period and crop vegetation, vegetative forage growth or post harvest residues are not sustained in a normal growing season over any portion of the lot or facility. Structures used for the storage of animal manure and other animal byproduct from animals, any operation also a part of the animal facility.

Q: Okay. Let me point you to -- pick up your review checklist; maybe we'll get some clarity on this.

A: All right.

Q: What have you got? Let me see what number that is. Number 6, Exhibit Number 6. And look on that front page for me what's been Bates stamped DHEC Number 6.

A: Uh-huh. Got it.

Q: It's got it looks like a definition within your checklist here what all a proposed animal facility encompasses.

A: Okay.

Q: Can you tell me what that is per your DHEC document?

A: Proposed animal facility refers to the houses, stacking sheds and/or composter. Site refers

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to the proposed animal facility, burial location and manure utilization areas.
Q: So all these aspects are considered by the Department to be part and parcel of the proposed facility?
A: It is. They all have to meet the setbacks for that.
Q: And what about the additional infrastructure? Why does the Department not consider roads and certain things that are necessary components of these operations as part of the facility?
A: Mr. Smith, you may have to go back to the crew that developed 61-43 to get the answer to that.
Q: Do you think that's an important consideration in these ---
MR. HIGHTOWER: Objection, Your Honor. Calls for speculation. The witness has also not been qualified as an expert, so his opinion is not relevant.
MR. SMITH: He's a DHEC representative. He's the man in charge of permitting these operations. I'm asking him if he thinks the aspect of the facility is an important consideration.
MR. HIGHTOWER: Well, but ---
THE COURT: I'm going to sustain the objection.

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MR. HIGHTOWER: --- he was objecting to the way it's defined ---
THE COURT: I sustain the objection.
MR. HIGHTOWER: Thank you.
Q: So none of those -- nothing outside of those aspects are considered by the Department in doing its evaluation; is that fair?
A: I'll read you the definition out of the -- this is just a partial definition under -- in the review.
Q: Sure.
A: So that's why, you know, you kind of cut me off when I was trying to finish reading that.
Q: My apologies.
A: The definition of animal facility. So I'm going to start back at this. Structures used for the storage of animal manure and other animal byproducts from animals in the operation also are part of the animal facility. Two or more animal facilities under common ownership or management are considered to be a single animal facility if they are adjacent or utilize a common system for animal manure storage. That's on page 1. That's 500(F).
Q: Part 50(F)?

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A: Yes, I mean, sorry.
Q: That's fine. I just want to make it clear. I'm looking with you.
A: Yeah. 500, I ---
Q: There are a lot of numbers. That's all I have for you right now, Mr. Chaplin. Thank you.
THE COURT: Mr. Hightower.
MR. CHAPLIN - CROSS-EXAMINATION BY MR. HIGHTOWER:
Q: Mr. Chaplin, you received the comprehensive nutrient management plan on what date? You can refer to the exhibit if you don't remember the date.
A: October the 11, 2012.
Q: Okay. And on that date, what was the first thing you did?
A: It goes to my compliance person, and she enters it into the database. And at that time, she generates two documents, one to the Bureau of Air Quality and one to Environmental Health Wastewater Division.
Q: Okay. And where do those documents go?
A: One goes to Mr. Smutz, and the other goes to Mr. Gordon.
Q: Okay. And as part of your initial review, does the Department do anything concerning notice to

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the public?
A: We do. It's required by regulation that we notify any property owner that owns property within 1320 feet from the footprint of the barns. That's why -- that's why I try to be as accurate as possible when I draw these barns in GIS. I refer to her aerial drawings, and then I pull up a topo overlay so I can see where they fall on the topo map so where I can try to, you know, draw these barns as closely as possible to where she has them located in her management plan.
Q: Okay. I'm going to show you what has been marked as Joint Exhibit 17, and I want you to look at that and tell me whether or not you're familiar with that particular document.
A: Yes, this is the posting for the public notices. We take -- we take the document that is generated out of the database, and we blow it up to 17 by 11, and we laminate it, and we're required to put up to four signs around the community where the facility is intended to be built. And in this situation, she put five signs up.
Q: Okay. And she, you're referring to Ms. Chrissy

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Matthews ---
A: Yes.
Q: --- who testified earlier?
A: Yes.
Q: Okay. And you have a copy of that in your files; isn't that correct?
A: I do.
Q: Okay. And this is an accurate copy of what is contained in your files? I'm talking about 17.
A: It is.
Q: Okay. I'm going to show you what is marked Joint Exhibit 18. Are you familiar with that document?
A: It is. This is the document we put on the printer and blow it up to an 11 by 17 and laminate it, and that's what goes up around the community.
Q: Okay. And you do that because 61-43 Part 260(A) requires the Department to put public notice concerning the receipt of an application, isn't that correct, and you can look at your ---
A: I want to verify.
Q: --- regulation?
A: That's correct.

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Q: Okay.
MR. HIGHTOWER: At this time, Your Honor, I ask that Joint Exhibits 17 and 18 be admitted into evidence.
MR. SMITH: No objection.
THE COURT: Without objection Joint Exhibit 17 and 18 admitted.
(Joint Exhibit Numbers 17 and 18 were admitted into evidence.)
Q: Now, Mr. Chaplin, let's go to Joint Exhibit 5, which is the review checklist.
A: I got it. I was organizing them.
Q: Okay. You prepared that document, correct?
A: I did.
Q: And you prepared that document as you were conducting your review?
A: Yes, sir.
Q: Okay. Now, what review did you do with regard to water resources and potential impacts to those resources?
A: I used GIS, and I pulled, as it says on DHEC 07 on this document, I looked at water supply wells for public. I look at 303(D), impaired water body list. I look at the heritage corridor to see where it falls in relation to

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the heritage corridor. We look at state and national parks and forests. We also look at see where it is in the HUC code ten.
Q: What does HUC code stand for?
A: It's a watershed unit. All water has to go somewhere and these hydraulic unit digit codes are used to show where any particular place where the water is going to run from if it were to land there.
Q: Okay. Looking at the checklist, what conclusions did you come about with regard to potential water impacts on the facility?
A: I determined that it met all the setbacks of 61-43.
Q: Now, Dr. Hargett testified that you should have considered stormwater; do you remember that?
A: I do.
Q: As part of 61-43, is the Department charged with looking at stormwater in issuance of an agricultural permit?
A: No, sir.
Q: Okay. Does the Department, in fact, look at stormwater for permitted agricultural facilities before they're built?
A: A stormwater permit is required prior to

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construction, and when I mail out a permit, I mail out a stormwater information sheet, and I also mail out an NOI for the drilling of their wells on property.
THE COURT: What's an NOI?
A: Notice of intent.
Q: I'm going to ---
A: Excuse me, sir. I get wrapped up in these acronyms sometimes.
Q: I'm going to show you what's been marked as Respondent's Exhibit 1, and ask you if you're familiar with it?
(Respondent's Exhibit Number 1 was marked for identification purposes.)
Q: Are you familiar with that document?
A: Yes, I wrote it.
Q: What is that document?
A: That's a little reminder and I attach the same document I put in the mailer when I mail out a permit. It's a ---
Q: Okay. And so it's --- I'm sorry.
A: It's a reminder that they need a stormwater plan prior to construction.
Q: Okay. To be precise, it's an email and there's an attachment and that attachment talks about

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stormwater permitting under 71-200 and 61-9, correct?
A: Well, I see this 72-300.
Q: Oh, sorry 71-300.
A: 72-300.
Q: 72-300. That's right. I got confused. And that was reminding the applicant that the fact that they have a permit, they can't construct, correct?
A: That is correct.
Q: And that before they actually engage in construction, they have to apply for and obtain stormwater coverage under the stormwater general permit; isn't that correct?
A: Correct.
Q: And that permit is not reviewed by you; isn't that correct?
A: That is correct.
Q: It's reviewed by a different section, correct?
A: It is.
Q: The stormwater permitting section?
A: Yes, sir.
Q: And that section has different review time periods, correct?
A: I'm not familiar with that, but I know they do

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have a tighter time frame than I do.
Q: Okay. Do you know offhand what is the time frame for you to conduct a agricultural permit review?
A: The database gives me 90 days.
Q: And that's 90 days when you have the information that you need present, correct?
A: That is correct.
Q: So -- I'm sorry.
A: If, for example, they did not include the broker contract, for example, and so I would stop the clock, if you will, and say I'm awaiting additional information, and then once that information arrived, I will start the clock back ticking again.
Q: Okay. And that information about time schedules and such can be found in 61-300 Section H. And 61-300 is the Department's regulations for environmental permitting fees, and I'll ask you to look over here.
A: 61-300 says H, time schedules, number one, general, A, all time given in days -- are given in calendar days, the last day of the period to be included unless it is Saturday or Sunday or a legal holiday in which the case the period

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will run until the end of the next day which is not Saturday or Sunday or a legal holiday. With respect to permit issuances, the schedule for timely action shall apply only to outcomes so elect and notifies the Department in writing.
Q: If you go to 2, I believe.
A: You want me to keep reading?
Q: Yes.
A: B says, The day the notice is mailed to the applicant that the application is deemed administratively complete shall be counted. If the notice that the application is administratively complete or notice that the application is not administratively complete together with notice of this specific items deemed know to be lacking -- deemed to be lacking is not mailed to an applicant within ten working days of the receipt of an application, the time period will begin.
Q: I believe it may be actually Section, here it is, C.
A: C says, The time schedule shall be told when the Department makes a written request for additional information and shall resume when

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the Department receives the requested information from the applicant. If an applicant fails to respond to such request within 180 days, the Department will consider the application withdrawn and the application fee will be forfeited. The Department shall notify the applicant no later than ten days prior to expiration of the 180 day period.
Q: And on another note, you had testified that you once denied an application because the applicant failed to comply with that provision; isn't that correct?
A: That's correct. I sent him a letter six weeks ahead of time.
Q: Okay. Now, as part of the regulations, public meetings are held; isn't that correct?
A: That is.
Q: And a public meeting was held in this matter, correct?
A: It was.
Q: And people were able to speak, correct?
A: They did.
Q: And the petitioners and/or representatives of theirs spoke at this meeting, correct?
A: Yes, they did.

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Q: Okay. Now, this is a no-discharge facility, correct?
A: It is.
Q: And a no-discharge facility means that the operation of the facility, waste products are not discharged into the environment; isn't that correct?
A: That's correct.
Q: Okay. This is a dry facility?
A: It is. It's a poultry dry facility.
Q: So there will be no lagoons onsite, correct?
A: That is correct.
Q: Lagoons would be applicable to a wet facility?
A: Swine or dairy.
Q: Okay. And in this facility, the manure is going to be removed from the site, correct?
A: It is.
Q: Based on the dead animal management plan, Joint Exhibit 2, a little bit will be used for composting mortality, correct?
A: That is correct.
Q: But except for that minuscule amount, or I should say minuscule amount of manure as opposed to the total amount produced in a year, the Department -- excuse me, the facility is

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not going to be placing any manure into the environment in a way outside of that allowed by the regulations; is that correct?
A: That's correct. There's a hay bale composting system.
Q: Okay. And the hay bale composting system, composting is a proper method of disposing of mortality, correct?
A: Yes, it is.
Q: And you've seen it used before, correct?
A: I have.
Q: Okay. Now, with the hay bale system, you wanted to get some additional information; isn't that correct?
A: I had not seen a hay bale composting system used before ---
Q: Okay.
A: --- or even had one submitted to be permitted. So I called Steven Henry with USCA NRCS and discussed the hay bale composting system because I was concerned that, having never seen one, I didn't know if it was a valid way to compost dead animals.
Q: And Steven Henry is an engineer at NRCS, which is the National Resource Conservation Service,

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correct?
A: He is.
Q: And based on your contact with him and any other steps you took, what conclusion did you draw about the hay bale composting system?
A: That it was -- it was an appropriate way to compost dead animals.
Q: Okay. You were asked on direct whether or not the management plan specified or discussed some type of pad, correct?
A: Yes, sir.
Q: I'd like you to look at Joint Exhibit 2, DHEC 302 --excuse me, 306. It would be the last paragraph that begins, material is loaded.
A: Material is loaded into the primary bin.
Q: Then it says figure 2-14 ---
A: Figure 2-14 and layers, figure 2-15, the temperature rises to highs between 135 and 150 degrees Fahrenheit within two to four days and remains elevated for several days. Once the temperature begins to cool from the peak temperature, usually within seven to ten days, the material is unloaded from the primary bins.
Q: Okay. You don't need to read any further. I would like you to look at figure 2-15, which is

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found on DHEC 305. Do you see that?
A: I do.
Q: Okay. If you look at the bottom, what does it state?
A: It states that it's an elevation side view, and it shows a concrete pad.
Q: Okay. And so this is informing you that this is what you would use, correct?
A: It is.
Q: And if the applicant was confused as to whether or not they needed a pad, they could ask for clarification, correct?
A: Yes, they could.
Q: And they could ask their engineer, Joy Shealy, correct?
A: That's why she's their consultant.
Q: Okay. And the Department's regulations specifically state that a management plan can, in fact, only be prepared by a registered South Carolina engineer or a member of the National Resource Conservation Service; isn't that correct?
A: It does.
Q: And that's because the Department trusts the professional opinion of someone who's is in

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A: No.
Q: Okay. So the fact that it happened, it was just extra work really done by the Department, by a member of Department staff; isn't that correct?
A: It was. The facility definition actually includes the composter, so.
Q: So when Ms. Matthews had done the original review, she was looking at the animal facility and that facility would include a composter or burial site as well as the barns, correct?
MR. SMITH: Objection. I think Ms. Matthews already testified to that and testified she did not look at those things because she did not know they were composting at the time.
THE COURT: Well, I'm going to sustain the objection.
MR. HIGHTOWER: Okay.
THE COURT: Let's not get into what somebody else has testified to.
MR. HIGHTOWER: That's fine.
Q: But the purpose of Ms. Matthews' preliminary site inspection was to just determine generally whether or not that property was suitable, potentially suitable for a facility, correct?

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A: That's correct.
Q: Essentially, she was making sure there wasn't a wetlands right in the middle of the area where they thought there might be a facility?
A: That's ---
Q: Something like that, correct?
A: That's true. I have actually had a facility that they failed to do a preliminary site inspection on, submitted me the management plan, and I sent -- had to hire an engineer to delineate the wetlands, and it wound up that two of the barns on either end of the eight-barn facility application were actually in wetlands.
Q: Okay. And that's not the case here?
A: No, sir.
Q: Okay. Now, you said, you agreed with Mr. Smith that approximately 99 percent of applications are approved for animal facilities, at least since I believe you said 2011, correct?
A: Yes.
Q: Okay. Does that approval rate mean that you just rubber stamped the applications?
A: No, I didn't remember the one about being in the wetlands. So we might have to move that

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Q: So the fact that we, that the Department may approve a high rate of facility applications, it's not necessarily a reflection that we don't do a review, but that applicants are providing good quality management plans and information that you're able to verify and come to a conclusion are suitable for permitting?
A: I would agree with that statement.
Q: Okay. You were asked about ammonia. You remember being asked questions about ammonia?
A: Yes, I do.
Q: Okay. Ammonia is not a regulated pollutant, a regulated ambient air pollutant in South Carolina; isn't that correct?
A: That's my understanding.
Q: Okay. And based on your knowledge of Regulation 61-43, specifically Part 270(E), the fact that ammonia is not regulated is a valid reason for the Department not to consider it in its review of an animal facility?

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A: That's one of those cases where I refer to the experts in another department within the agency.
Q: And that expert was Mr. Steven Smutz in this case, correct?
A: Yes, sir.
Q: And Mr. Smutz has testified here about what his understanding of what the regulations require, correct?
A: That is correct.
Q: And he sent you a memorandum that explained to you whether or not he felt that this facility would cause an increase of regulated air pollution or pollutants, I should say, within the area around the facility; is that not correct?
A: That is correct.
Q: Okay. And he, in that memorandum, did not recommend an increase in any setback, correct?
A: That's true.
Q: Okay. And that memorandum that we're talking about is Joint Exhibit 9, correct?
A: It is.
Q: Okay. Mr. Chaplin, I'm going to give you what is marked Joint Exhibit 19. Are you familiar

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either of those categories as to their knowledge with regard to animal facility management plans and all the parts that are needed for the construction and operation of a facility?

MR. SMITH: Objection, Your Honor. The witness testified he had nothing to do with drafting of these regulations. He does not know about why certain regulations are the way they are.

MR. HIGHTOWER: Well, I'll rephrase that.

THE COURT: Thank you. Sustained.

Q: Your understanding of the regulation is that if you receive an application prepared by a South Carolina registered engineer or a member of NRCS that that management plan, if it meets all the other criteria, is an approvable plan in South Carolina, correct?

A: I review the plans before I approve them.

Q: Right.

A: But they are the go to people for farmers, NRCS, National Resource Conservation Service. They're part of United States Department of Agriculture.

Q: And wouldn't it be true that if a non-engineer, but somebody nonetheless who's very qualified

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in the area of farming submitted a plan, the Department would not accept that plan because it did not meet the regulatory requirement of a PE from South Carolina, professional engineering stamp from South Carolina, or the person was a member of the National Resource Conservation Service?

A: I have sent one back that was not prepared by a PE or Natural Resource Conservation personnel.

Q: Okay.

THE COURT: Mr. Hightower?

MR. HIGHTOWER: Yes.

THE COURT: You have great latitude on cross-examination, but that question was almost too long for me to follow ---

MR. HIGHTOWER: I'm sorry, Your Honor.

THE COURT: --- almost difficult to follow along.

MR. HIGHTOWER: I apologize and I will endeavor to tighten it up.

THE COURT: Do your best.

Q: Now, William Burriss was a DHEC employee; is that correct?

A: He was. He's retired.

Q: Okay. And he performed the inspection of the

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site to see whether or not it would be suitable for burial of mortality, correct?

A: He did.

Q: Because mortality of birds and disposing them by burial is a situation where the facility would be putting something that potentially could pollute water into the environment; isn't that correct?

A: Burial does put dead animals in the ground.

Q: Okay. Where it potentially could come into contact with groundwater, correct?

A: That's true.

Q: Okay. And based on his review, it was determined that burial would not be suitable at this site, correct?

A: Based on his review and my review ---

Q: Okay.

A: --- I determined that burial is not suitable.

Q: Okay. And it is your job to make the final call as to whether or not something is – meets the requirements of 61-43?

A: It is.

Q: Okay. But you do use the expertise of other parts of the Department and people who assist in conducting certain reviews; is that not

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correct?

A: I do at every opportunity that I can.

Q: Okay. And the dead animal composting facility management plan states that the Sumerels want to either compost or incinerate their daily mortality; isn't that correct?

A: The permit indicates that on special condition number two. It reads, disposal of daily mortality will be by composting/incineration.

Q: Okay. Now, you were asked about whether or not it was appropriate to have a preliminary site inspection for the purposes of the composting plan after the permit was issued, correct?

A: I was.

Q: The preliminary site inspection is generally done to just see whether or not something could be done at a site, correct?

A: It essentially gives the applicant a green light to go ahead and hire a consultant to prepare the management plan.

Q: Okay. Did you need to have a preliminary site inspection to be done with regard to the dead animal composting facility management plan in order to make your decision on whether or not that plan was adequate?

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A: No.
Q: Okay. So the fact that it happened, it was just extra work really done by the Department, by a member of Department staff; isn't that correct?
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Q: Okay. Ammonia is not a regulated pollutant, a regulated ambient air pollutant in South Carolina; isn't that correct?
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Q: Okay. And based on your knowledge of Regulation 61-43, specifically Part 270(E), the fact that ammonia is not regulated is a valid reason for the Department not to consider it in its review of an animal facility?

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A: That's one of those cases where I refer to the experts in another department within the agency.
Q: And that expert was Mr. Steven Smutz in this case, correct?
A: Yes, sir.
Q: And Mr. Smutz has testified here about what his understanding of what the regulations require, correct?
A: That is correct.
Q: And he sent you a memorandum that explained to you whether or not he felt that this facility would cause an increase of regulated air pollution or pollutants, I should say, within the area around the facility; is that not correct?
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A: That's true.
Q: Okay. And that memorandum that we're talking about is Joint Exhibit 9, correct?
A: It is.
Q: Okay. Mr. Chaplin, I'm going to give you what is marked Joint Exhibit 19. Are you familiar

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MR. HIGHTOWER: He's going to verify with his client.
MR. SMITH: This is part of the plan. This is DHEC 115, Your Honor, you've got in there. This is the Stills, okay, and that. This is the Orrs. They have the residence down this way, and they also own this property here. There's a cabin right there actually. This is about a ten-acre lake. Tombo can say what the rest of it is here. I was just saying this is the Stills and that is the Orrs.
MR. HITE: This is the entire tract. It's an Abercrombie tract. That's the Sumerel mother. That's my client, and they cut it out of this. This is all Sumerel, this big portion is in the plan.
THE COURT: All right. I have it now. Thank you.
MR. HIGHTOWER: Okay.
MR. SMITH: That's 115 in the plan.
THE COURT: Proceed, Mr. Hightower.
MR. HIGHTOWER: Thank you, Your Honor.
Q: Okay. You were asked about some wastewater lagoons. I just want to make sure. There are no lagoons as part of this management plan; is that correct?

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A: That is correct.
Q: Okay. So the questions you had received about -- strike that. What was your understanding when Mr. Smith questioned you about the -- I don't know if you'd say ponds, but I remember you using the term about four dikes that were with property south of the facility?
A: Right.
Q: Was that your understanding that that was dealing with wastewater coming out of the facility, or was that dealing with stormwater coming out of the facility?
A: You know, I'm not sure what he meant by that, but he -- I guess he was referring to anything that would be washing down the hill, and I guess that would be stormwater.
Q: Okay. There are no manure utilization areas in this plan; isn't that correct?
A: That is.
Q: And manure utilization areas are areas where a farmer who has an animal feeding operation disposes of the manure by land applying it on fields that he owns or he has access to; is that not correct?
A: That's the job of a manure broker is to -- he

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buys it from the producers, the poultry facilities, and then he sells it to row crop owners, and then they land apply it or the broker can land apply it. It just depends on what kind of contract the broker has on the other end of the operation as opposed to the -- the front end of the operation would be a contract with the Sumerels. On the other end of the operation, the broker's contract would be with a row crop farmer, whether he would either just bring it and let the row crop farmer land apply it, or whether he would actually land apply it himself. But either way it has to be land applied at agronomic rates, which is an important point because the crops utilize the manure's nutrient value when they grow, and so there's nothing to run off.
Q: All right.
THE COURT: Hold on a minute. A moment ago, you asked him a question, and you responded "that is" and you didn't finish the sentence. We'll have the court reporter read it back if necessary. I don't know ---
MR. CHAPLIN: You're going to have to do that.
(The question was read back.)

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Q: Okay. There are no manure utilization areas in this plan; isn't that correct?
A: That is.
THE COURT: And just so you folks will understand, it's important that the record be complete and full, and that's why I have interjected myself into this.
Q: Now, there are no manure utilization areas, correct?
A: No, there are not.
Q: Okay. So the only expected runoff would be stormwater, correct?
A: Yes, that is correct.
Q: And stormwater will be addressed in a separate permit, correct?
A: Correct.
Q: Okay. You were asked about which way the barns exhaust, correct?
A: I was.
Q: And you said north you believed?
A: I usually ask the applicant that either in email or over the phone. It's just something that everybody wants to know.
Q: Okay. In this case, if the barns exhausted north, does that in any way change your opinion

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with that document?
A: I made it.
Q: Okay. What is the document?
A: It's a document showing the 1,000 foot residential setback around the Sumerel poultry facility.
Q: Okay.
A: Proposed facility, and it also indicates Rick and Donice Still's location at 1734 Poole Town Road, and it also indicates Christine Orr's location at 1174 Poole Town Road.
Q: Okay. Now, the residential setback distance is 1,000 feet from the nearest point on the animal facility, correct?
A: We refer to it as the footprint of the barns.
Q: Okay. Thank you. And according to this map, what is the distance of the Still residence from the facility?
A: I'll say I measured it approximately 1,650 feet.
Q: And that was measured using GIS, correct?
A: Yes, it was.
Q: And what was the distance from the facility footprint for the Orr residence?
A: It's approximately 3,600 feet.

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Q: Now, looking at this map, this is an aerial map, correct?
A: It is.
Q: Okay. To the east and somewhat to the southeast, there's trees there, correct?
A: Yes.
Q: Okay. And I believe we saw in the photographs taken by Dr. Hargett, and I forget what number they are.
MR. SMITH: Petitioner's 1.
Q: Oh, Petitioner's 1 that was admitted —
A: I have that.
Q: — showing the tree line looking from the Sumerel property, they're fairly mature trees.
(Off the Record Discussion.)
Q: I'm going to show you Exhibit 1, the first five photographs.
A: Okay.
Q: Okay. Now, based on those photographs and your aerial map, you would agree that there is a substantial amount of vegetation separating the petitioners' homes? Well, the Orrs and the Stills, correct?
A: Yes.
Q: And you've heard testimony from Mr. Still --

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excuse me, Mr. Sumerel who stated that he has no plans of touching any of that vegetation, correct?
A: He did.
Q: Okay.
THE COURT: Let me ask again, and I don't mean to interrupt your train of thought, but is easterly boundary of the setback area also a property line, or does the petitioner's husband or petitioner own beyond the setback on the east side?
MR. SMITH: Let me get a GIS map that shows.
MR. HIGHTOWER: Yeah, let's see.
MR. SMITH: If you're looking at the map that's currently talking about, Your Honor, part of that property coming in from the northeast is my clients'. This large lake.
THE COURT: Yeah.
MR. SMITH: That's the Orrs' property that comes down. Then the Stills here is where this clearing is out. There's the road. And they have kind of what I would call a sliver rectangular piece down right here (indicating).
THE COURT: I can't see.
MR. SMITH: Yeah, I'm probably too far away.

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THE COURT: First let me ask ---
MR. SMITH: Sure.
THE COURT: --- all of you here. The lake or the pond that Dr. Hargett was pointing to as being within the 200-foot setback, that's Sumerel owned, is it not?
MR. HITE: Yes, sir.
MR. SMITH: Yes, sir, it is.
THE COURT: As well as the one immediately to the north of it?
MR. HITE: Yes, sir.
MR. SMITH: Yes, sir. Hargett was showing those too and then flows into this is the Orrs, the large one.
THE COURT: All right. And where is the property line between the Orrs and the Sumerels?
MR. SMITH: This is the edge of the Orrs' lake. You got the GIS in there? Hold on a second, let me get a couple other maps. I've got it somewhere to show you.
MR. HITE: I've got it.
MR. HIGHTOWER: I think he has the same one.
MR. HITE: Here's a partial here, but let me make sure with my client.
MR. CHAPLIN: He's got the same.

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MR. HIGHTOWER: He's going to verify with his client.
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Q: Okay. So the only expected runoff would be stormwater, correct?
A: Yes, that is correct.
Q: And stormwater will be addressed in a separate permit, correct?
A: Correct.
Q: Okay. You were asked about which way the barns exhaust, correct?
A: I was.
Q: And you said north you believed?
A: I usually ask the applicant that either in email or over the phone. It's just something that everybody wants to know.
Q: Okay. In this case, if the barns exhausted north, does that in any way change your opinion

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as to whether or not the facility would increase air pollution in the area?
A: Once again, I'm not the air modeling specialist, but I like to try to get the barn's fans -- if they turn them a way that I don't think they should be placed, I'll ask them can turn them another way. In this case, they had already planned on exhausting them back to the north.
Q: Okay. Do you think -- have you heard anything or during your review of the management plan and all of the submissions and all of your discussions that you had either with Ms. Shealy or with the Sumerels, do you believe that the orientation of where the fans are currently placed is problematic?
A: I'm not sure that I even understand that question.
Q: All right. Based on your reading of the management plan and the information provided and then based on any conversations you may have had with the engineer who drafted the plan and the applicants, as well as any information you've heard today, do you feel that the orientation of this plan as depicted on Joint

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Exhibit 19 should be changed?
A: No.
Q: Okay.
THE COURT: Now, wait a minute. You're talking about the exhaust, not ---
MR. HIGHTOWER: Yes, the exhaust. Well the orientation ---
THE COURT: You said orientation.
MR. HIGHTOWER: I'm sorry.
Q: When I say orientation, I'm referring to which side ---
A: Which end.
Q: --- the barns will have the fans exhausting.
A: Right, it doesn't matter.
Q: It does not matter. Okay. If there was a problem, steps such as using hay bales can be used, correct?
A: We have had an instance where we used hay bales on the end with the exhaust fans, and it knocks down the particulate matter that comes out of the facility and does a good job of eliminating odor.
Q: And in this case, the nearest petitioner is more than 600 feet further than the minimum setback distance; isn't that correct?

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A: From the closest end of the barn and the exhaust fans would be on the other end of the barn.
Q: So the barn is how long?
A: I think they were 500 feet.
Q: So ---
A: Five hundred feet.
Q: I'm sorry.
A: Five hundred feet.
Q: Five hundred feet. So in reality, the Stills' residence is more than 2,000 feet away from the end of the barn that -- where the exhaust fans are exhausting the air from inside of the barns to the outside; is that not correct?
A: That's correct.
Q: Okay. One moment. Finally, Mr. Chaplin, based on everything you've heard here today, have you heard anything that leads you to believe that the Department did not properly issue the animal facility permit to the Sumerels?
A: No, I haven't.
MR. HIGHTOWER: No further questions.
THE COURT: Mr. Hite.
MR. HITE: Just briefly, Your Honor.
MR. CHAPLIN - CROSS-EXAMINATION BY MR. HITE:

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Q: Mr. Chaplin, you testified that I believe it was in the animal addendum. Let's flip to that real quick.
MR. SMITH: What exhibit number?
Q: Exhibit 2, where engineer Shealy was -- in the plan it states appendix D, I think, appendix G, Odor and Vector Abatement Plan.
A: Right.
Q: Is it possible that they just misattached the wrong exhibit?
A: You'd have to ask Ms. Shealy that question.
Q: But what she's referring to is not attached as appendix D, is it?
A: It's not. Appendix D is a sample recordkeeping form.
Q: But what she was referring to was an odor and vector abatement plan?
A: That's what Mr. Smith was referring to.
Q: And the plan, the comprehensive nutrient management plan, which is Exhibit 1, will you flip to page 22 of that. I'm sorry, 22 of the plan.
A: Twenty-two of the plan. Okay.
Q: And that's DHEC 37?
A: It is.

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Q: Tell the Court what 7.2 is on that plan.
A: Vector control and abatement.
Q: And is that case specific and details that covers insects, rodents, and other vectors?
A: It is.
Q: So the plan does cover that?
A: It does.
Q: Is also has a case specific plan on page 26 of the plan.
MR. SMITH: Object to that. He's testifying.
MR. HITE: It's cross-examination, Your Honor.
THE COURT: I'm going to overrule that.
A: I think that's 28.
Q: Okay. DHEC 47, I'm sorry.
A: Okay.
Q: And 7.1, site specific vector and odor abatement plan?
A: That's 7.6 site specific vector and odor abatement plan.
Q: So the plan does sufficiently have a vector and odor abatement plan; is that correct?
A: It does.
Q: I just wanted to make sure of that for the record.
MR. HITE: Thank you, Your Honor.

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THE COURT: We're approaching the 5:00 hour. How long will your re-direct be?
MR. SMITH: I'd say five minutes maybe.
THE COURT: Let's go ahead with it then.
MR. SMITH: Thank you, Your Honor. Pointed questions and I'm happy to do that.
MR. CHAPLIN - RE-DIRECT EXAMINATION BY MR. SMITH:
Q: While we're on vector and odor abatement, we'll work backwards. That's labeled site specific, is it not, on DHEC 47? Let me know when you're there please, Mr. Chaplin.
A: I'm there.
Q: All right. Now, that has the title "site specific," correct?
A: That's correct.
Q: Now, there's nothing that's in this plan though that actually says what Mr. Sumerel and the Sumerels are going to do specifically. It just says approved by Columbia Farms, correct?
A: This is a Columbia Farms specific document. So it's specific to Columbia Farms' facilities.
Q: Okay. And it's not -- okay. Specific to Columbia Farms' facilities, not necessarily the Sumerel facility, and that's not saying they're going to do one or the other thing to control

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for odor and vector problems?
A: Was that a question?
Q: I'm asking you if you think that's accurate?
A: This is what Columbia Farms is requiring them to do site specific-wise.
Q: Excuse me a second. I lost the page that Mr. Hite referred to before that.
MR. HITE: Page 22 of the plan.
MR. SMITH: Yes, thank you.
MR. HIGHTOWER: Exhibit 37, I believe.
Q: Yes. If you'll flip over to Exhibit 37 for me.
A: Okay.
Q: Again, this has the title Vector Control and Abatement.
A: That's correct, 7.2.
Q: But again, is there anywhere in there that says what the Sumerels are going to do site specifically, or is this just a list of possible best management practices?
A: It lists best management practices. It does not list that these are what the Sumerels intend to do.
Q: Thank you. The exhaust direction, Mr. Hightower asked you a lot about that and I did as well; you recall that?

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A: Asked about what again?
Q: Exhaust direction.
A: Okay, yes.
Q: Exhaust direction is not designated anywhere in this plan at all, is it?
A: It is not.
Q: As you testified, as far as the Department is concerned, it doesn't matter; is that correct?
A: That's not exactly what I said, but it doesn't matter for the Bureau of Air Quality review.
Q: I have ---
A: I have an instance required them to move the fans to the other ends of the barns.
Q: And why is that?
A: They were pointing towards peoples' houses.
Q: Does it matter for the water review?
A: No, it does not.
Q: Now, if you flip to Joint 19, it was that map I believe you said you put together?
A: Oh, yeah, I've got it right here, yeah.
Q: I've got a really easy question on that.
A: Okay. Yeah, I made this.
Q: That black line designated in the setback, that is not circular; is it?
A: No, I call it a square circle, and I get a

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laugh when I do that, but it ---
Q: I think that's pretty accurate. So why is it like that and not a true circle to show a radial setback distance?
A: Well, because if you would've -- and this is done by the GIS program itself. So I just -- I just, I can put any number in it. I put 1,320 in there, and then I overlay a tax map overlay to see that people got notified that were supposed to. In this case, I made this map with 1,000 foot residential setback, and it just buffers the four corners and the middle of the barn. So if you were to measure at any point around that square circle, it's going to be exactly 1,000 feet to any point on that footprint of the barns.
Q: Thank you for clarifying that. Preliminary site inspections.
A: Okay.
Q: Mr. Hightower and I both asked you a lot about them. Do you recall that testimony?
A: Yes, I do.
Q: Are they just not needed in the Department's eyes?
A: No, the site inspection's required by

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regulation.
Q: So that's why they're done?
A: I did not have a hand in promulgating these regulations. So I can't answer to that question honestly and give you an honest answer to why the preliminary site inspections are in the regulations. However, I can tell you having sent one back that didn't get a PSI, preliminary site inspection, it helps.
Q: Mr. Hightower asked you about the regulation requirement of professional engineer. I forgot the other category of folks ---
A: NRCS employees.
Q: --- that can do these type of plans.
A: Correct.
Q: Now just because a professional engineer does a plan, that doesn't make it, per se, adequate, does it?
A: No, it does not.
Q: In fact, you've sent back plenty of plans prepared by professional engineers because they had issues, right?
A: I usually don't send the plan back. I just -- I just tell them what I find is deficient with the plan.

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Q: And the Sumerel plan had issues that you had to work with Ms. Shealy on?
A: Absolutely.
Q: I want to direct your attention to Bates DHEC 306. I believe that is in Joint Exhibit Number 2. Please let me know when you're there. We're almost done.
A: All right.
Q: Now, Mr. Hightower asked you to look at those figures and noted there's a concrete pad in that figure?
A: Correct.
Q: You're referring to 2-14. That is not a hay bale composter, is it?
A: The one on the right is not and the one on the left, it just says dead bird composter. So the one on the right, the elevation side here has a roof, but the plan doesn't indicate a roof, so.
Q: All right. So this isn't a reflection of what the Sumerels are going to do on their facility under the permit?
A: Give me just a second.
Q: Sure thing.
A: No.

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Q: We've talked about stormwater a good deal, and you heard Dr. Hargett testify about that some; do you recall that?
A: I do.
Q: Now, the regulation at hand, 61-43, and it's cited several times, Part 270(E) requires the Department determine that there's going to be no increase to the waters and air of the state and pollutants; is that not accurate?
A: That's true.
Q: Now, runoff and stormwater are going to greatly affect the health of downslope waters and the ambient area and around the facility?
A: That's true.
Q: Finally, you noted that this is a non-discharge facility because it's a dry operation, right?
A: Well, all the facility permitted under 61-43 are considered no-discharge.
Q: And you got to my next question and I appreciate that, but just so it's clear in the record. I know you're trying to -- this is it. No matter what, if it was a wet operation, if it had a holding lagoon, no matter what, if it was swine, the Department would say that is a no-discharge facility?

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A: We've had a situation where we had that and we required the man to clean out his lagoon, land apply all of the liquids and solids and reconstruct a lined lagoon because we thought the lagoon might have been leaking.
Q: And you told me during your deposition and I believe testified today that DHEC does not permit discharge facilities?
A: That's correct.
Q: Because you just -- the Department just flat labels them all, regardless if it's dry or wet as a non-discharge facility?
A: CAFO's by definition ---
Q: Concentrated animal feeding operations.
A: Thank you.
Q: No problem. You understand why I'm trying to ---
A: I know. Concentrated feeding, by definition from the EPA are allowed to discharge, and that's why we try to say in this state we don't have any CAFOs. We have AFOs, which are just animal feeding operations because ours aren't allowed to discharge. Other states allow facilities like this to discharge their waste product more so on the wet side than the dry

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side.
Q: And that would bring the operation under the purview of the Clean Water Act and things like that?
A: Correct.
Q: That's all I have. Thank you, Mr. Chaplin.
A: You're welcome.
MR. HIGHTOWER: Just very briefly, Your Honor.
THE COURT: Only on matters brought out on re-direct.
MR. HIGHTOWER: Yes.
MR. CHAPLIN - RECROSS-EXAMINATION BY MR. HIGHTOWER:
Q: Okay. You were asked about the documents from Columbia Farms and whether they were site specific just in name only, correct?
A: That's right.
Q: Isn't it true that without having an operating facility, you can't specify a particular best management practice, but you could give a listing that, if the operation is permitted, you could choose from?
A: That's true. You don't have -- you don't have any air emissions unless you have a facility, and you don't have any discharge unless you have a facility that discharges, and in this

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case, this facility is not allowed to discharge.
Q: Okay. Well, in this case when we were talking about the Columbia Farms document and site specific was more with the vector plan and with the odor abatement plan; is that not -- I believe it was Joint Exhibit 2.
A: Thirty-seven.
Q: Right. Actually it's Joint Exhibit 1, DHEC Bates stamp 37 and 47.
A: And the question again, sir?
Q: Well, my question was specifically, since these are not operational facilities, having -- just narrowing down to just one type of BMP as opposed to a range of BMPs that could be used would be difficult to do because you don't know what is really going to happen until you actually have the facility operating; isn't that true?
THE COURT: BMPs being best management ---
MR. HIGHTOWER: I'm sorry, best management practice. Thank you, Your Honor.
A: That's true.
Q: Okay. And so it would be expected if this facility is permitted and is indeed operating,

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it's going to use one of those best management practices that are listed on those particular pages in Joint Exhibit 1?
A: I would hope they would use more than just one, because there are several listed, having reviewed these same plans that they do these things will keep your rodents and your insects and your scavenging animals problem to a minimum.
Q: So you think they would even have to use more than one, correct?
A: Absolutely.
Q: But just looking at the plans right now, could you say with any degree of certainty which best management practices you would have to use and which ones you could decide not to use?
A: No, because some of these -- they're all kind of integrated together, you know. I mean, you can -- if you don't keep your garbage or trash off a facility but you keep all your vegetation mowed around the facility, you're still going to get some insects and maybe some rodent problems. So, you know, you need to incorporate all of these, in my opinion.
Q: Okay. And you were asked about no-discharge

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facilities, and you stated that in South Carolina, animal feeding operations are not allowed to discharge, correct?
A: That is correct.
Q: And Mr. Smith said so that means that the Clean Water Act doesn't apply, correct?
A: That's what he said.
Q: Okay. And the Clean Water Act would mean that if it did apply, the operator would have to get a National Pollution Discharge Elimination System permit, correct?
A: It's my understanding that if you discharge, you've got to have a ---
Q: That permit?
A: --- NPDES, yes.
Q: Correct, which is National Pollution Discharge Elimination System.
A: Correct, you're going to need one of those permits.
Q: Okay. And the Department has determined instead of letting people have these type of permits which would actually discharge pollutants into the environment, they have decided that no one is allowed to discharge; is that not correct?

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A: That's correct.
MR. HIGHTOWER: No further questions.
THE COURT: Mr. Hite.
MR. HITE: Just one.
MR. CHAPLIN - RECROSS-EXAMINATION BY MR. HITE:
Q: Exhibit 2, DHEC 307.
A: Okay. I'm there.
Q: That diagram, would it be consistent to use that formulation of products in a hay bale composter and a composter as pictured on the page before it?
A: Yes, this is kind of like the recipe.
Q: And a concrete pad is listed at the bottom.
A: It is.
MR. HITE: No further questions.
THE COURT: Anything further, Mr. Smith?
MR. SMITH: Sir?
THE COUERT: Anything further from you?
MR. SMITH: One question and I'm done.
MR. CHAPLIN - FURTHER RE-DIRECT EXAMINATION BY MR. SMITH:
Q: Do you have your regulations up there?
A: I do.
Q: Can you look at 200.160(A) sub part two. You there?

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A: Yes.
Q: Does that not require -- it states to list the specific actions to be taken by the producer if vectors are identified as a necessary part of the animal management plan?
A: It says, and I'll read 200.160(A)(2), a list of specific actions to be taken by the producer if vectors are identified as a problem at the animal facility, lagoon treatment system, manure storage pond or any manure utilization area. These actions should be listed for each vector problem, e.g., actions to be taken for fly problems, actions to be taken for rodent problems, etcetera.
Q: And per the wording, that requires a site specific in that it has to identify what Mr. and Mrs. Sumerel are going to do to address each one of these problems specifically, not a list of potential best management practices?
A: That's correct. It says if vectors are identified as a problem. So they be able to run their facility and they don't have any vectors.
Q: Right, and they need to plan for it if they do, and that's the point of this particular

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regulation.
A: That is.
Q: Thank you.
MR. SMITH: Nothing further, Your Honor.
THE COURT: Mr. Hightower, Mr. Hite?
MR. HIGHTOWER: Your Honor, just quickly ---
THE COURT: On that one issue.
MR. HIGHTOWER: --- one limited item.
MR. CHAPLIN - FURTHER RECROSS-EXAMINATION BY MR. HIGHTOWER:
Q: In 61-43 Part 200.160(A)(2) where it says if vectors are identified as a problem, to be taken if they're identified as a problem, the specific, I should say the plan, I believe it's on page 30 -- excuse me 47, DHEC 47 of Joint Exhibit 1.
A: Okay.
Q: Reviewing those steps to be taken, would you consider those steps meeting the requirements set forth in 61-43 Part 200.160(A)(2)?
A: Yes.
Q: Okay.
MR. HIGHTOWER: No further questions.
MR. SMITH: Nothing further, Your Honor.
THE COURT: Very well. All right. What time do you

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want to meet tomorrow? Ten o'clock, I take it, since you have a distance to travel, you wouldn't want to start at 9:00, although I make that offer to you if you wanted to get up early.

MR. SMITH: My clients have some ways to travel.

MR. HITE: I've got a ways to travel.

THE COURT: Ten o'clock?

MR. HITE: I'd prefer 10:00, Your Honor.

MR. SMITH: That way we'll avoid traffic issues.

THE COURT: We'll be in recess until 10:00 in the morning. All of you have a safe trip to your homes.

(There being nothing further, the hearing was adjourned for the day at 5:14 p.m.)

DAY 2 - TUESDAY, AUGUST 26, 2014

THE COURT: Thank you, ladies and gentlemen. Be seated, please. May I suggest to the lawyers and the others as well, I'll be perfectly happy for you to stand when I come in in the morning and when you close down in the afternoon, but in the meantime don't feel the need to stand and pay your respects to the State of South Carolina, because you're not standing for me, you're standing in honor of the State of South

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Carolina that pays me.

MR. HIGHTOWER: Thank you, Your Honor.

THE COURT: Next witness.

MR. SMITH: Thank you, Your Honor. Call Dr. Carmen Parkhurst.

CARMEN PARKHURST, Ph.D., being duly sworn, testifies as follows:

MR. SMITH: And we'll get started here, Dr. Parkhurst. I'd like to ask the Court to admit what's been pre-marked Joint Exhibit Number 15, CV of Carmen Robert Parkhurst. It should be in the Court's notebook there.

DR. PARKHURST - DIRECT EXAMINATION BY MR. SMITH:

Q: Good morning, Dr. Parkhurst. How are you?

A: Good morning.

Q: To start, I'll just go through some of your credentials and background, okay?

A: That will be fine.

Q: Tell me a little bit about where you grew up, what you grew up doing.

A: I grew up on a general farm in northern Ohio and -- until I was old enough to go in the military, and then I went in the military. And from there went to college.

Q: And where did you go to college?

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A: I started while I was in the service. I went to the University of Maryland; completed about a year there. Got transferred to Dover Air Force Base and attended the University of Delaware. And then I went to Ohio State where I -- back home where I got all my degrees.

Q: And tell me about the degrees you got from Ohio State.

A: I got a bachelor's degree in agricultural education. I got a master's degree in economics. I got a PhD in poultry science and extension education.

Q: And after -- what kind of work did you do with your graduate studies?

A: I did research related to health of poultry on their farms and how people got additional education from the extension portion.

Q: And after you completed your graduate work at Ohio State, what did you do?

A: I was offered a job as an assistant professor at North Carolina State University in the poultry science department.

Q: And what year was that?

A: That was in the fall of 1970.

Q: And since that time, tell me what you've done.

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A: I stayed at the -- at North Carolina State University until 2008, and I retired at that time from the poultry science department as a full professor.

Q: Between '70 something and 2008, tell me what you did at North Carolina State. I know it's extensive, but.

A: I taught a number of courses, introductory courses in poultry science. I taught broiler production, turkey production. I taught a course on game birds. I coached the collegiate poultry judging team, and I advised students and was advisor to the poultry science club.

Q: You were the head of the poultry science department at some point, right?

A: No, sir.

Q: Did you serve as a -- department head evaluation committee, excuse me. I'm reading your CV incorrectly.

A: Okay.

Q: What academic participation did you have outside of your teaching duties?

A: I advised graduate students and served on a lot of graduate committees.

Q: As all related to poultry science and

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agriculture?
A: Yes, sir.
Q: What poultry science and agriculture related research did you conduct in your time at NC State?
A: Well, most of them were related to management of broilers. An example is I did a lot of the initial work on lighting that's used today, the -- just about every broiler company uses a lighting program, 23 hours of light, one hour darkness. That was something that I did. I did some work with intermittent light, a number of litter materials, things along that line; applied research is what I ...
Q: After your retirement in 2008, what did you do?
A: Immediately after I retired, I had an opportunity to go to Iraq and be the agricultural advisor for the 101st Airborne trying to establish some poultry processing there.
Q: And you were successful in doing that or getting the ball rolling over there?
A: Yes, sir.
Q: And now you've returned to NC State, correct?
A: Yes, sir. I had an opportunity -- North

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Carolina State has one of the few animal and poultry waste management centers where we try to look at better methods of handling waste. We've got a tremendous production of animal waste in North Carolina with the swine and broiler and turkey industry and, sooner or later, we knew there would be problems, so we started working on it before it was a problem. And we have this facility that that's primarily what they do. And I had an opportunity to take it over on a half-time basis as manager, and that's what I do to the present time.
Q: So it's -- based on your CV and the little bit of background we've given the Court, it's safe to say you've dedicated your career and life to agricultural and poultry science?
A: That's correct, sir.
Q: And you're intimately familiar and knowledgeable on these subjects?
A: I would say yes, sir.
MR. SMITH: Based on the what the witness just told us and the CV admitted as Joint Exhibit Number 15, I'd ask the Court certify Dr. Parkhurst as an expert in animal feeding operations, poultry science, and waste management.

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THE COURT: Any voir dire?
MR. HIGHTOWER: Just briefly, Your Honor.
DR. PARKHURST - VOIR DIRE EXAMINATION BY MR. HIGHTOWER:
Q: Dr. Parkhurst, in your teachings and in your work experience, have you ever worked in South Carolina or did a project that was based on a poultry facility or any agricultural facility within South Carolina?
A: Yes, sir. We're working a little bit right now with Mark Marsh on a gasification unit to burn poultry litter that some of my people are helping with that project.
Q: Okay. But except for that one project, have you worked on any others?
A: Not in South Carolina, sir.
Q: Are you familiar with South Carolina statutes and regulations concerning agricultural facilities?
A: To the best of my knowledge through reading the material that's been supplied to me and comparing it to North Carolina's.
Q: Okay. So it would be a comparison of North Carolina statutes, which you are more familiar with, and then copies of South Carolina

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statutes ---
A: Yes, sir.
Q: --- and regulations?
MR. HIGHTOWER: No further questions, Your Honor.
THE COURT: Mr. Hite.
MR. HITE: No questions, Your Honor.
THE COURT: I find the witness to be qualified as an expert in the fields stated.
MR. SMITH: Thank you, Your Honor.
DR. PARKHURST - CONT. DIRECT EXAMINATION BY MR. SMITH:
Q: Dr. Parkhurst, you reviewed some materials to prepare for this case and your testimony today, correct?
A: That is correct, sir.
Q: Can you please tell the Court what you reviewed and did to prepare to offer your expert opinion today.
A: Well, I spent a lot of time reading the materials that you supplied me. I also made a site visit to the Sumerel Farm and spent a lot of time looking at the permit application that was provided by, I believe, Joy Shealy, the professional engineer.
Q: And as you mentioned a minute ago, you reviewed

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and became familiar with the applicable South Carolina regulations?
A: Yes, sir.
Q: And as you just stated, you reviewed the comprehensive nutrient management plan submitted by Joy Shealy?
A: Yes.
Q: And you reviewed the dead animal disposal plan?
A: That is correct.
Q: Did you review anything else to inform yourself, inform your opinions you're going to offer here today?
A: I went to the CDC, the communicable diseases website, and looked at some things on ammonia because I figured there would be some questions on ammonia emissions and so on.
Q: Now, in your review of the Sumerel site, what kind of land and grading changes are they going to have to make?
A: Well, I think the site, it's possible to make the site acceptable. It's going to require considerable amount of grading and movement of soil to make a satisfactory site for the broiler houses.
Q: And that's going to be a land disturbance of

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well over several acres in your estimation?
A: Yes, sir.
Q: Now, chicken's got to eat, of course?
A: That is correct.
Q: Can you talk a little bit about how much food that's going to need to be supplied and how it's going to be trucked back and forth to the facility.
A: Okay. Everything in the poultry industry has been automated or mechanically mechanized as much as possible. So we use bulk feeding systems with poultry so that we don't have to bag feed to save labor. And most individual poultry houses will have either two 12-ton feed tanks or three eight-ton feed tanks along the side of them, and then that feed will be augered into the house and into the mechanical feeders. So we've got four houses proposed on this site, so feed companies, to be efficient, use semi-trucks that are permitted generally in most states to carry 24 ton of feed. So that will be the amount of feed that a house will have to it. So this facility when it goes into operation is going to produce a million pounds of poultry roughly speaking from the four

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houses when they're ready to go. Chickens are very efficient in turning feed into live animal weight. A good rule of thumb is they'll eat two pounds of feed for each pound that they gain. So during this 60-day period two million pounds of feed is going to have to come to the farm.
Q: How often is that going to be trucked in?
A: Well ---
Q: How frequently?
A: Obviously towards the end there's going to be three or four truckloads a week, roughly speaking. And initially, a truckload of feed will last ten days, something like that, because the chickens are small.
Q: Now, can you tell the Court a little bit generally about how the housings are made up and constructed.
A: Okay. To start with, chicken houses still utilize dirt floors. And it isn't that we don't like concrete; it's just the cost of concrete for a 500 by 50 or 52 foot piece is quite astronomical. So we use dirt floors, and on top of the dirt floor they'll use wood shavings about four inches deep. It takes

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about two semi-loads for a house. All right. As we've evolved in the poultry industry and the houses have gotten bigger, they've gotten longer. When I started in the -- being around poultry farms houses were 36 by 240 and gradually they moved to 40 foot wide to 500, and now we're seeing 50 foot wide, 60 foot wide houses by five and six hundred feet long. Because of mechanization, a person can take care of a poultry house in about two hours. All right. So this is the reason behind four house farms, to some degree, is what someone can take care of and handle properly. And it is easier for the company when it's time to take the birds to the processing plant is to come in and get the five semi-loads out of each house and load out 20 loads while you're at a site; it makes it more efficient. Now, years ago we had curtain-sided houses. Curtain, the side walls would be about three foot wide and then there would be a five, four or five foot curtain above it and you would adjust the curtains for ventilation. Houses were narrow. You oriented them north and south, so we normally have westerly breezes and that would

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be the ventilation system. As houses got bigger, we went to some fan ventilation. And now we make totally enclosed houses, and they're completely dependent on fan ventilation. They're not air conditioned; they're fan ventilated.

Q: And that's what's called for in this operation, right?

A: That is correct.

Q: And tell us a little bit how the tunnel ventilated system works.

A: Okay. To start with, fan ventilation works by exhausting air from the house, not blowing it in; it's exhausting it out. So the house is under negative pressure. In other words, on one of the sides near the eight foot -- under the eave there will be opening air inlets to let air in. And because the fans are exhausting they're going to pull fresh air into the house and make it turbulent, and it'll swirl down the house and go out the exhaust fans picking up dust and moisture as it goes and carbon dioxide.

Q: And the rate of the ventilation increases as -- with what?

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A: As heat's generated.

Q: Okay.

A: In other words, when the chicks first go in -- to start with, one thing I might point out that I think would help.

Q: Sure.

A: Chickens do not have the ability to sweat, okay? Their normal body temperature is 105 to 109 degrees Fahrenheit, depending on whether they've eaten or not recently. When they hatch, their body temperature is 100 degrees, the same as incubation temperature. And over the next few days their temperature goes up to 105 to 109. All right. When we first put them in the house, chicks don't have much insulating value in the down that is on them, so they lose body heat. So we use LP gas normally as a heat source to keep them warm the first few days.

Q: And what does LP stand for?

A: Liquified propane.

Q: Okay. Thank you. Please continue.

A: Okay. All right. So as they're breathing they're generating carbon dioxide, so we've got to pull some fresh air into the house or they'll suffocate. So the fans -- there's a

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series of fans in the house, and they're on thermostats and they're sequenced. So when it gets to -- you may set the first one to run minute out of five, one minute out of ten just to bring some fresh air in. All right. The others will be on a thermostat so as the temperature rises -- the ideal temperature to get optimal growth in chickens is between 70 and 85. The closer you get to 85 the less LP gas you use. If you keep them toward 70 they've got to eat more feed to generate heat. So depending on the price of liquified propane gas and feed, there's a happy medium somewhere in there that the company will decide and tell the growers what to set the houses at. So as the chickens get bigger, because of their high body temperature, they're going to generate more and more heat, so we have to move more air in to pull more heat out of the house. So maybe the second fan will kick in at 88, and then if the temperature goes up to 90, fans three and four will kick on. And if it gets above 90 five and six will be on; they'll all be on pulling air. And these fans will, depending on who made them and whether they're

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variable speed or not, will kick out 20 to 40 thousand cubic feet of air a minute per fan. So if you've got six fans in there, you could be moving a quarter of a million cubic feet of air a minute through the house.

Q: And weather conditions affect fan running durations and frequencies, correct?

A: Well, as humidity builds up, it's harder for the chickens to lose heat to the atmosphere, so fans are going to come on more as humidity builds.

Q: And where are they going to be located on the barn in relation to the other parts of the operation?

A: It depends which company. They're usually on the side wall at the end of one side of the house.

Q: Okay.

A: Depending how the houses are oriented, they could be at either end of the house depending how you orient the house.

Q: Okay. I'd like to look with you at what's Exhibit Number 1 right here. This is the comprehensive nutrient management plan for the Sumerel operation. I'm also going to pull out

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Number 2 here, which is the dead animal disposal plan so we can talk about some particulars, okay?
A: All right, sir.
Q: Now if you open Exhibit Number 1. And Dr. Parkhurst, when I refer to Bates stamp numbers, I'm talking about there's a printed number in the bottom right corner of all these pages that say "DHEC ---
A: Yes, sir.
Q: --- and it'll have a number. If you flip over with me to, please, DHEC 107, a colored map of the facility. Please let me know when you're there.
A: I'm there.
Q: Okay. Looking at this map, what end of these houses would you say the exhaust fans are going to go on?
A: I would say just looking at the map, towards the bottom.
Q: Okay.
A: The south ---
Q: Okay.
A: --- orientation.
Q: And tell me why you say that.

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A: Well, I -- just looking at it, and not seeing it graded, I think they're going to have to load out of the other end of the houses.
Q: So put the exhaust on the opposite end of the loading area traditionally?
A: It could be. Because the ends would open, it could be on either one. But just looking at that side, I would think they would be that direction.
Q: Okay. What comes out of these exhaust fans?
A: Well, in the air there is going to be moisture, there'll be some dust and small feather debris, and generally, there is some ammonia.
Q: And tell me how this ammonia comes out in the atmosphere and what happens to it.
A: Okay. Maybe it would be best if I kind of explain where it comes from.
Q: Sure thing.
A: Okay. To start with, chickens and birds in general have about three times the kidney mass that a person would have, okay. So they are able to pull the metabolic water out of it. And birds do not urinate, okay. They excrete the equivalent of urine as uric acid. And for those of you that have had a bird defecate on

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your windshield or something like that, the fecal material comes out and then because of peristaltic movement through the ureters, the uric acid comes out, and it's kind of the little white cap that you see on the top of manure, okay. All right. So that is in the litter. And the litter will be slightly acid. And on a scale of one to 14, water is roughly neutral at seven, so anything -- and the litter's probably going to be around six, five and a half, somewhere in that vicinity. Under slightly acid conditions bacteria grow that convert uric acid to urea and then to ammonia, okay. And you can -- when you're used to walking through poultry houses, usually a person can detect ammonia at about five parts per million. Chicken houses, one of the -- one of the advantages of tunnel ventilation is keeping enough air moving that it picks up the ammonia and disperses it into the air and keeps it from building up in the house. If someone doesn't manage their watering systems correctly and we get wet litter, we'll get more ammonia, and we might get the levels 20 or 30 parts per million. And at this point, if you and I

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walked through the chicken house, it would start to irritate our eyes. Now most poultry growers are knowledgeable enough and have a service person supervising them that they're going to either move more air or do something to start to dry out the litter to keep more ammonia from forming. Now, once ammonia is exhausted from the house it -- a lot of people want to say it evaporates. It doesn't evaporate. It volatilizes into a gas, and it escapes into the atmosphere. If it rains, it is going to come back to earth, maybe not ---
MR. HIGHTOWER: Objection, Your Honor. The witness has been qualified as an expert in poultry science. Now we're getting into meteorological areas and you know, what happens in the atmosphere with this gas is not the expertise of this witness.
MR. SMITH: This is an offshoot in emission from a poultry operation that Dr. Parkhurst is more than qualified to testify about.
THE COURT: I agree. Overruled.
MR. SMITH: Thank you, Your Honor.
Q: Please continue, Dr. Parkhurst.
A: Okay. So when it rains it's going to come back

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to earth and ammonia's utilized as nitrogen. If it's on pastureland or something, it's good; if it's on forest land it's good because it will cause mild mass growth and so on. The unfortunate thing is in many areas if it falls in sensitive waters, then this is where we get algae blooms and have fish losses and ---

MR. HIGHTOWER: Objection, Your Honor. Now poultry and now we're talking about algae blooms in water and fish kills. The witness is not an expert in water impacts from pollution, is not a hydrogeologist. There is nothing in his educational background nor his experience that says that he has the requisite knowledge to be able to give an opinion about what will happen with a gas when it comes in contact with water.

MR. SMITH: Again, Your Honor, this is an effect, an offshoot of a poultry operation that Dr. Parkhurst is intimately familiar with, and he understands and has extensive background, education, experience on the effects of poultry operations on the surrounding environment.

THE COURT: Again, I agree. Overruled.

MR. SMITH: Thank you, Your Honor.

Q: Please continue.

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A: So if there's sensitive waters, we have this problem in North Carolina a lot where people are concerned about ammonia causing algae blooms and so on.

Q: And based on your review of these plans and all the other materials and understanding where the Stills and the Orrs live, is there going to be a detectable odor at their properties?

A: I think when the birds are ready to sell and we've got this close to a million pounds of birds and we have high humidity, there is certainly a possibility of them being able to smell some ammonia.

Q: And can you just describe the smell of ammonia a little bit, please?

A: It's difficult to describe.

Q: Would you agree that it's foul or offensive?

A: It's slightly irritating.

Q: Okay. Now, we've mentioned weight several times already. You reviewed the nutrient management plans, right?

A: Yes, sir.

Q: And find this page -- excuse me. And are you aware that this permit allows -- or calls for, excuse me, for the normal production live

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weight of 493,200 pounds of chicken?

A: That is what I saw in the paperwork, yes, sir.

Q: And that calculation for the plans is based on what a layman might call the exit weight or what I understand is called the processing weight of a chicken?

A: That is correct.

Q: And what does the plan say that processing weight is? And you can -- if you want a reference it's DHEC 20 has a calculation on there.

A: All right. I see it.

Q: And what is the plan that was submitted to DHEC say the processing or exit weight?

A: It appears that it's 8.75.

Q: Do you believe that's an accurate processing weight?

A: It's my opinion that this plan submitted by the professional engineer is a little bit dated. Chickens tend to get bigger over time through genetic selection. As an example, I just completed on March 1st a study with 80,000 birds and -- for another integrator, and the average was 9.37. And that was average of the birds sold that week.

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Q: So in your expert opinion and experience, the process weight is going to be on average what?

A: It's going to continue to go up, and I suspect with new houses and -- that people are going to get above nine pound average weight.

Q: And can you say with certainty it's going to go over nine pounds based on new technology and progression?

A: I can't say with certainty. I think it's most likely that they will or they're not going to be in the top third of the growers.

Q: And based on the process weight that you think is more accurate, this facility will be over a half million live production weight, correct?

A: The calculations show that it would be.

Q: And how -- excuse me -- there's a growth cycle duration called for in the plan.

A: Yes, sir.

Q: And what's that growth cycle duration?

A: Approximately 60 days.

Q: And what was -- you just mentioned the study you did recently. What was your growth cycle duration?

A: Sixty days.

Q: And it yielded, you said?

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A: 9.37 average. The reason behind the heavier weights is that most broiler chickens are being deboned. And the cost per pound goes down. It takes about the same amount of time to debone a large chicken as it does a smaller one and breast meat yield goes up the heavier the live weight of the chicken is. So it's advantageous to the processor from two standpoints.
Q: Now, it was mentioned several times you reviewed these plans submitted. Can you give the Court your opinion of the adequacy of these plans?
A: You're talking about the plans from the professional engineer?
Q: I am.
A: It is a good guideline, but I think there are some points in it that cause difficulty because they're not explained in detail.
Q: Does it appear to be a form plan to you?
A: This appears to be a software program that's kind of boilerplate. One of the things I noticed in it in reviewing it, the integrator that was mentioned in it was Perdue rather than Columbia Farms, so it didn't look like it had been changed from the last time it was run.

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Q: And the average live weight being dated too?
A: Appears to be dated to me.
Q: And in your opinion, it needs to be updated so the calculations are correct?
A: Yes, sir.
Q: Now, you reviewed the dead animal disposal plan, which is in front of you as Exhibit 2 there; is that not right?
A: Yes, sir.
Q: And what kind of dead animal disposal method does it call for in that plan?
A: It is approved for composting using a hay bale system of compost bins.
Q: Have you ever heard of someone or seen someone using a hay bale system?
A: I have heard of it, but I have not witnessed it.
Q: In your opinion, is it a best management practice?
A: I think there are much better systems available.
Q: And could you explain why you think it's problematic.
A: Well, most people use a compost building that has a concrete floor, has bins, has a roof over

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it. Composting works by anaerobic digestion; in other words, without air. If you're trying to make bins out of hay bales, they're going to be outside, they're going to be exposed to the elements, more opportunities for wild animals and so on to get into them, can't control the amount of rain on them and so on. I don't think that is a best management system.
Q: And to do this type of disposal, it requires the frequent handling of manure and litter?
A: Generally people use -- use litter to be the carbon source that covers the layer of mortality in the compost bin. Either system is going to use litter. I just don't see in this system, unless they have a special building that I didn't see in the plans, where they're going to be able to store it.
Q: And you reviewed the odor and vector abatement portions of these plans too, right?
A: Yes, sir.
Q: Does it appear to be anything site specific to you?
A: Well, it mentioned best management practice would be used and there wouldn't be any debris laying around where there were homes for

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rodents or anything. But a best management practice, to me, would be something like having a licensed exterminator to have bait stations and so on and be on a plan to control it.
Q: To specifically state that's what's going to be done in the ---
A: Right.
Q: --- plan?
A: Right.
Q: Now, going to back to dead animal disposal real quick. What's the rate of -- mortality rate on average of these type operations?
A: I would say between three and five percent during the 60-day period.
Q: So that's going to give you approximately three to five thousand dead birds per cycle?
A: Yes, sir.
Q: And just to get an idea of scale, how large is the composting area going to be approximately to handle that type of mortality?
A: A compost building, if I'd put it in that base, would be -- would need to be something the size of this room with bins.
Q: Okay. And during the growth cycle, is there a period where there's increased mortality as

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opposed to another part of it?
A: Probably two peaks. One, the first two weeks, which won't be a problem because they'll be so little that, you know, we'd put them in a cardboard box for that matter. The problem is towards the end if there's extremely hot weather or something and you're losing these seven/eight-pound birds, 50 of those a day is a lot of mass to get rid of.
Q: And at that same time, you're talking towards the end of a growth cycle. I believe you testified earlier that's going to have increased exhaust and all of that, so trying to keep the houses dry, correct?
A: Yes, sir.
MR. SMITH: Just give me one second as I look through my notes.
Q: Now, based on your review of all the materials, Dr. Parkhurst, in your opinion, did DHEC adequately evaluate all the portions of this poultry operation to ensure that it's done correctly?
A: That's a difficult one to answer because they're relying on the professional engineer's permit application.

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Q: Would you ...
A: Looks like it's a checklist system that if this has been done, this is okay. So I think that's where the difficulty arises here is that, to me, it's a fairly weak permit application that was submitted by the engineer.
Q: Do you recall seeing the Bureau of Air's qualities memorandum about the potential air impacts?
A: I remember seeing it, but not specifically.
Q: Okay. We've got it into evidence already; pull it out for you. It is Joint Exhibit Number 9.
A: Is that an exhibit?
Q: It should be up here. Do you recognize that document, Dr. Parkhurst?
A: Uh-huh.
Q: And do you see in there where it cites a 2002 EPA study as a basis for the opinion there's no air impacts? I'm not sure what page that's on. It might be on the second page, I think.
A: Yeah, it's at the top of the second page.
Q: Are there -- is there new data that's available?
A: Well, there's been several pieces of legislation that have passed since then, like

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the Clean Water Act and so on that -- and I believe that was in 2008, that it was passed.
Q: And in your opinion when the Department's evaluating these things, should they have looked to this new data to try to inform their decision?
A: I don't see how you can avoid not looking at something that is a federal mandate.
Q: And to that point, are you aware that the State of South Carolina classifies all animal feeding operations as non-discharge facilities?
A: I was not aware initially, but I came to see that, yes.
Q: Are all type of animal feeding facilities non-discharge as the State views them?
THE COURT: Did you say "as the State views them"?
MR. SMITH: Yes. Yes, Your Honor.
A: Liquid manure systems, to me, would be discharge.
Q: Thank you.
A: Like hog lagoons or lagoons from the CAFO houses.
Q: That's all I have for you right now, Dr. Parkhurst.
THE COURT: Mr. Hightower, cross-examination.

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DR. PARKHURST - CROSS-EXAMINATION BY MR. HIGHTOWER:
Q: Mr. Parkhurst.
A: Yes, sir.
Q: Or I should say Dr. Parkhurst. You're familiar with the Clean Water Act; are you not?
A: To some degree, yes, sir.
Q: The Clean Water Act states that you cannot discharge pollutants into the waters of the United States, correct?
A: Yes, sir.
Q: So, and if you do, you need to have a National Pollution Discharge Elimination System permit, NPDES permit, correct?
A: Correct.
Q: If a system -- if a facility, an animal facility, does not discharge the waste into waters of the United States, then it's not going to need a permit under the Clean Water Act; isn't that correct?
A: That is correct.
Q: Okay. In South Carolina, liquid manure, while it may go to a lagoon, is not then discharged into the waters of the United States; are you aware of that?
A: Yes.

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Q: So since it's not being discharged into the waters of the United States, it's not a discharging operation under the Clean Water Act; isn't that correct?
A: With this exception, if you are storing manure and it rains on it and someone, you are discharging.
Q: But that's if you're improperly storing the manure. We're talking about whether or not the system as designed and is operated properly, it is not intended to discharge manure or any waste stream from manure into waters in the United States; isn't that correct?
A: That is correct.
Q: Okay. You talked about -- I believe you said the Clean Air Act was passed in 2008. Did I understand ---
A: I said that. I don't have it in front of me.
Q: Okay. You do know the Clean Air Act has been around for about 40 years?
MR. SMITH: Objection, Your Honor. He didn't ask the question.
Q: I've asked do you know -- I think it's ---
A: I said ---
Q: --- a yes or no.

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A: Sir, I said -- I spoke to the Clean Water Act.
Q: You said Clean Water Act?
THE COURT: That's correct, he said Clean Water Act.
MR. HIGHTOWER: Okay.
Q: Well, the 2002 EPA study was dealing with air emissions. Why would the Department looking at air emissions look at areas regarding the Clean Water Act?
A: At this moment, I can't think of an answer.
Q: As far as you know, are there any EPA, which stands for the United States Environmental Protection Agency, final studies regarding emissions, air emissions from poultry facilities other than the 2002 study?
A: I cannot quote any, sir.
Q: Okay. You were asked about, I believe it is called the live production weight, and I think it was the 8.75 pound number ---
A: Yes, sir.
Q: --- which was located on Bates stamp page DHEC 20, which is in Joint Exhibit 1.
A: Yes, sir.
Q: Okay. And you thought that that number was somehow inaccurate, correct?
A: I think it's low.

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Q: Where would one get that number from? Is there -- let me rephrase that. Is there some readily available source that says this is what is considered to be the live average weight for a broiler chicken in 2014?
A: I don't know whether you could access it or not, but there is a company called AgraMetrics that gets the data from literally every company in the US and generates a weekly average body weight of poultry.
Q: Did you do that?
A: Yes, I've seen that, sir.
Q: You've seen it and it says currently 8.75 pounds is not correct?
A: It doesn't say it's not correct; the average is just higher than that.
Q: Do you have -- where could we get this document that shows this?
A: Any company like Columbia Farms gets it on a weekly basis, and I usually see it through one of the companies.
Q: But you chose not to make this an exhibit in this case, correct?
A: I didn't see any need to, sir.
Q: But you are saying that this number's

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incorrect, and you're saying that there is a source to find this, but you haven't made it available so that ---
MR. SMITH: Objection. Compound, Your Honor.
THE COURT: I was distracted.
MR. HIGHTOWER: Sorry.
THE COURT: It was. It was compound; back up and split it up.
MR. HIGHTOWER: I'll go back.
Q: You had access -- you have access to this data, correct?
A: I can get it, yes, sir.
Q: And you knew you were coming here today to testify, correct?
A: Yes, sir.
Q: Okay. And you knew that you had an issue with the average live weight as indicated in the plan, correct?
A: Yes, sir.
Q: And you say that there's some document out there that says that this number is not representative of what is -- it should be; is that not correct?
A: That is correct. And I also stated that I had just completed a study and had the weights of

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March 1, 2014, that the average weight was 9.37 and that was the same range as all of the birds killed that week for a large integrator.
Q: Did you make that study available to your attorney?
A: I did not.
Q: Why not?
A: I didn't see the need to.
Q: You're relying on it in testifying here today?
A: I used it as a reference point, yes, sir.
MR. HIGHTOWER: Your Honor can we go off the record for a second?
THE COURT: Off the record.
(Off the Record)
THE COURT: You state your objection, you state your response and then I'll rule on the record.
MR. SMITH: Okay. And just so we're clear, we're good with him testifying about his own research and his own findings, his own -- I mean, if ---
THE COURT: General knowledge that he's obtained ---
MR. HIGHTOWER: His general knowledge I'm fine with.
MR. SMITH: Okay.
THE COURT: All right. State your objection.
MR. HIGHTOWER: Okay. Thank you, Your Honor. Your Honor, the Department's objection is to the

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witness' reliance upon information from a third party, specifically some kind of clearinghouse that gathers information from all integrators about the live weights that they are observing when they get the birds to their facilities and that that information then being available for people to find out, and therefore, could have been used in this plan as a substitute, whatever that current number would be for the 8.75 number that is listed in Joint Exhibit 1, DHEC Bates stamp number 20.
THE COURT: Your response, Mr. Smith.
MR. SMITH: Thank you, Your Honor. We believe it's all admissible and that he, as an expert, formed his opinion based on information he gathered from other sources, which if it were to be a hearsay objection of some sort is obviously an exception to the hearsay rule in offering an expert opinion. It's a reliable source. Dr. Parkhurst also has provided testimony, and we believe it's admissible, of his own studies and own knowledge and experience and opinion, and it's expert opinion, as to the current and accurate live process or exit weight.

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THE COURT: I sustain the objection in respect to the third-party studies, which I think we've earlier referred to as being in possession of Columbia Farms, but I overrule the objection as to whatever he may tell from his own experience and knowledge as an expert.
MR. SMITH: Thank you, Your Honor.
MR. HIGHTOWER: Thank you, Your Honor.
Q: You stated that you've heard of hay bale compounding, correct?
A: Yes, sir.
Q: Okay. Do you have any objection in composting in general?
A: No, sir.
Q: It's just hay bale composting?
A: I think there are better methods.
Q: And the reason why is because of what specifically?
A: One thing, there's no cover. It's open where animals can get in it, and once they open it, you do not have anaerobic breakdown, you have aerobic, and there's going to be odor, access to flies and so on in the system.
Q: Okay. So if you ultimately put a structure over it, would you then have a problem with it?

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A: No, sir.
Q: Okay. And you're aware that the permit allows for incineration?
A: Yes, sir.
Q: And you have no problem with incineration, do you?
A: Not with a double stage incinerator.
Q: Okay. So if the permittee determines that hay bale composting is just too difficult and decides to do incineration, you would have no objection to the plan based on ---
A: I would not, sir.
Q: Your million pound weight that you've talked about which you believe will be the weight of the birds at time when they are taken out of the ---
A: Yes, sir.
Q: --- barns.
A: Yes, sir.
Q: That's based solely on your belief that the 8.75 number is not the most current number; is that not correct?
A: Well, the plan says you're going to have 109,600 chickens, correct?
Q: That is correct. Well, that's the maximum

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number.
A: Yeah. Yes. Okay. Well, if they have that and they're 8.75, you're still close to a million pounds, sir.
Q: How do you arrive at that number?
A: 8.75 times 109,600.
Q: Okay. Are you aware that in South Carolina the regulations have a definition for average live weight? Are you aware of that?
A: Yes, that they ---
Q: Okay.
A: --- take the projected point and divide by two like the formula there.
Q: And -- well, let's look at -- it's Regulation 61-43 Part 50, which is the general definitions for agricultural facilities, and we're looking at Subsection K, average live weight. If you could read what that means, the definition that's provided.
A: Yes, that's the same formula that is in the PE's plan here on page 20.
Q: Right. So then you would have 4.5 pounds, correct? And 109 times 4.5 is not a million?
A: Sir, that's average live weight. They don't sell average live weight; they sell 8.75 to 9-

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point chickens at the end.
Q: But the Department's regulations give a specific formula that is to be used and that formula is different than what you're saying; is that not correct?
A: That is correct, but I think you're trying to compare apples and oranges, sir.
Q: Well, I just want to make sure you're not stating that this is a million pound facility according to the regulations?
A: I am not.
Q: Okay. Is there any federal or South Carolina standard for ammonia concentrations in ambient air?
A: It is not regulated, sir.
Q: Now, you would agree that ventilation of a poultry house is important for the birds; it's also important in keeping down odor by reducing the moisture content, correct?
A: That is correct.
Q: And, in fact, you would agree that if a poultry facility is operated correctly, there shouldn't be too many problems with it?
A: That is correct.
Q: Okay.

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A: However, some things are beyond the control of the operator.
Q: But you would agree that in a regulatory permitting scheme, the Department has to look at things are going to be operated as normally, that, yes, there could always be some type of act of God accident that occurs or even total negligence, but those would then be -- would lead to enforcement issues, correct?
A: That is correct.
Q: Okay. But that's not that the farm as intended to be operated would not be able to be safely operated; isn't that ---
A: I would agree with you.
Q: Okay. You're aware that in South Carolina grading, land grading and all those issues are covered in a separate permit?
A: Yes, sir.
Q: Okay. So you would agree that the Department's permit and the plans that were submitted here would not necessarily -- it would not be required of them to have those documents because they're not going to be reviewed by the reviewer in this case, correct?
A: That's correct.

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Q: Okay. That doesn't mean they can't grade that site successfully?
A: Yes.
Q: Okay.
A: My only concern with the grading was that it was going to be costly.
Q: Well, it may be costly, but you would agree that cost really only impacts the permittee and ---
A: Yes, sir.
Q: --- whether they're willing to spend that money, correct?
A: Yes, sir.
Q: But you would agree that if they're willing to spend their money and they can make an adequate plan and it's reviewed by the Department and they follow it, that site could be turned into a perfectly safe and functioning poultry farm?
A: Yes, sir.
Q: Okay. You would agree that the fact that the permittee is having all the litter removed from the site is a -- helps to make this a safe facility, correct?
A: I would agree 100 percent.
Q: Okay. And in your experience with poultry

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facilities -- strike that. You have no particular expertise in meteorological conditions, correct?
A: That is correct.
Q: Okay. You know, I understand that you've been around poultry facilities pretty much your entire life and that you've learned a great deal about them, correct?
A: Correct. That's correct.
Q: But you don't hold yourself as having any scientific knowledge about what happens?
A: No, sir.
Q: Your information about ammonia, that's not based on you having been educated in the scientific -- in chemistry or anything like that, correct?
A: No, sir.
Q: That's just -- that would be, if I understood, based on you maybe reading some document someplace, correct?
A: Reading documents and -- yes, sir.
Q: Okay. And does that happen in every single case? Strike that. At every single poultry facility that you can think of that you've been around, are any bodies of waters nearby overrun

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with algae blooms?
A: Yes, sir.
Q: Every single one?
A: No, sir.
Q: Okay. So it doesn't always happen?
A: No, sir.
Q: Okay. And you can't tell this Court what would allow it to happen and what wouldn't allow it to happen?
A: No, sir.
Q: All you can say is it's a possibility, correct?
A: That is correct.
Q: You can't say with any degree of certainty that's a probability?
A: No, sir.
Q: With the vector abatement plan you -- would it be fair to say that you agree with the BMPs, but you believe that there could be even other BMPs added to that plan?
A: I think they needed to be defined.
Q: Well -- and for the record, BMP is best management practice.
A: Yes, sir.
Q: Well, when you say they need -- well, strike that. If the permittee follows the best

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management practices that are listed in the management plan, which is in evidence as Joint Exhibit 1, with -- in your expert opinion, would that somehow be harmful?
A: Not harmful.
Q: Okay. It would, in fact, deal with vector problems, correct?
A: Correct.
Q: Okay. One moment. Dr. Parkhurst, you had mentioned in your direct that you saw the name Perdue in the plan. Do you know where that was located?
A: I just saw it in a general reading.
Q: Just in general reading, but you can't tell the Court which page to go and look at it, correct?
A: No, sir, right off the top of my head I cannot, sir.
Q: And you would agree that different integrators -- and integrators are the companies that actually own the birds -- grow their -- or they want their farmers to grow birds of various sizes, correct?
A: That is correct.
Q: And various sizes within a category of birds, like broilers? Not all integrators are their

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broilers going to be at basically the same weight; wouldn't you agree with that?
A: It depends on the end market.
Q: It would depend on the market, and it would also depend on corporate issues for each individual integrator, correct?
A: That is correct.
Q: So Columbia Farms may want an eight-pound bird, Perdue may want a ten-pound bird; isn't that correct?
A: That's possible.
MR. HIGHTOWER: Okay. No further questions.
THE COURT: Mr. Hite.
MR. HITE: Yes, sir, Your Honor, briefly.
DR. PARKHURST - CROSS-EXAMINATION BY MR. HITE:
Q: Dr. Parkhurst, good morning.
A: Good morning, sir.
Q: Isn't it true that the calculations that were submitted in the plan are of a ceiling for the amount of birds, the total, the maximum amount limited available for them; is that correct?
A: That is correct as -- as in the permit.
Q: And they could operate with lesser than the maximum?
A: Yes, sir.

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Q: Which would be within the permit?
A: Yes, sir.
Q: And they also, if the integrator asked for six-pound birds and would come get the birds as six pounds, they could operate with even more birds than what's on the plan?
A: They could, but the processing plant is usually set up for the same size bird all the time.
Q: Usually ---
A: In other words, some of the -- the equipment is mechanized to the point that you can adjust it for a certain size bird and leave it at that point, like nine-pound birds, six-pound birds; you couldn't jump back and forth easily.
Q: But you don't know where these birds would go, what plant they would go to, do you?
A: To my knowledge, Columbia Farms only has one operating plant here in the state?
Q: And did you visit that plant?
A: I have not.
Q: Did you ask Columbia Farms the live weight birds that they're pursuing?
A: No, sir. I've -- because inadvertently, this is associated with them, I didn't want to have any contact with them.

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Q: Why is that?
A: I was afraid somebody would say I was for one side or the other. I'm not for or against anybody. I'm trying to provide information.
Q: Do you have any business with Columbia Farms?
A: Well, the president of the company is Jim Mabe, who's one of my former students, but I haven't had any personal contact with him.
Q: Okay. But isn't it true that the calculations for the maximum number of animals or the average live weight, which affects permitting in this state ---
A: Yes.
Q: --- can be lowered?
A: It could be.
Q: And they would remain inside this permit for a -- considered a small facility in South Carolina?
A: Yes. Well, at least medium size.
Q: All right. You testified a moment ago about a vector control and abatement portion of the plan. Do you know where that is in the plan?
A: Not right offhand.
Q: Okay. Let's look at Exhibit 1, Joint Exhibit 1, page -- it's DHEC 37. It's page 22 of the

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plan.
A: In 1 here?
Q: Yes, sir. I'll flip it to you -- for you if you want me to. It starts at 7.2 there at the bottom of the page.
A: Uh-huh.
Q: Okay. That says "vector control and abatement"; does it not?
A: Yes, sir.
Q: Okay. And then if we flip to the next page, it shows us specific actions or it breaks it down specifically into an insect problem, a rodent problem, and then a scavenging animal problem; isn't that true?
A: That is true.
Q: Okay. Also I want to show you on that plan while we're on this plan -- I'm sorry, we're going to be on the dead animal composting plan, Exhibit 2, okay?
A: All right.
Q: And that's near the back of that, which is an appendix which is attached to this dead animal composting plan.
A: Right.
MR. HITE: I beg the Court's indulgence just so I

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can find that. Okay.
THE COURT: Give it a Bates number, please.
MR. HITE: The Bates number is DHEC 307.
A: Okay.
Q: I'm just giving the Court time to find it. And this is Figure 2-15; is that correct?
A: (Nods head.)
Q: Yes, sir? I'm sorry. Just go ahead and say yes, sir.
A: Yes, sir.
Q: Or yes on the record.
A: Yes.
Q: And what does this say here?
A: Dead bird composting schematic.
Q: Okay. And that -- does that have a concrete pad at the bottom?
A: The schematic does.
Q: And the plan -- and this is in the plan?
A: Yes.
Q: Okay. And this is a composting scheme, correct?
A: Uh-huh.
Q: And can be used in a hay bale composter as well?
A: It could be. I mean, composting is composting.

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Q: Yes, sir. And is composting the most environmentally friendly method of the dead animal disposal?
A: In my opinion it is. It's most cost effective as well.
Q: Dr. Parkhurst, isn't it true that you wrote us a report, one two -- an eight-page report, and I appreciate the report; it was very informative for me. Thank you. Isn't it true that you drafted that report in this case?
A: Yes, sir.
Q: And correct me if I'm wrong, but I'm summarizing here, the only red flag that you issued in this report was that hay bale composting could be problematic?
A: That is correct.
Q: And there weren't really any other issues other than cost to my client?
A: Yes.
Q: And you were there the day we all visited the site?
A: I was.
Q: And you understand the purposes of your visit there?
A: Yes, sir.

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Q: What were those purposes?
A: Well, one, to see the site and how close the neighbors were, and you know, tried to look at the prevailing winds and what vegetation was in the area and so on that would affect discharge of the air from the houses.
Q: Do you remember the first time you saw me?
A: Yes, sir.
Q: And where were we?
A: We were at the site, the Sumerel Farm.
Q: But where at the site? Do you remember me coming up the road to meet y'all?
A: Yes, sir.
Q: And why did I come up -- how far of a walk was it from the Stills' house down to the Sumerels?
A: Probably quarter of a mile.
Q: Were you expecting it to be a shorter walk?
A: I hadn't given any thought to it.
Q: It was a hot day?
A: It was a hot day.
Q: When we were out there, how long do you remember staying at the Sumerel part?
A: Less than a half hour.
Q: And you talked to the Sumerels out there? You talked to the other parties that were out

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there?
A: Yes, sir.
Q: Do you remember some of the things you might have said to them?
A: I asked them where the orient -- where the houses were going to be and asked where -- we walked off where the mortality disposal area would be and several items like that.
Q: Okay. Do you remember telling them out there that we ought to have you up and running here shortly?
A: No, sir.
Q: Do you remember talking to them about farming?
A: Yes, sir.
Q: Do you remember telling them that their site was a good site?
A: I said it was a possible site.
MR. HITE: No further questions.
THE COURT: Re-direct.
MR. SMITH: Thank you, Your Honor.
DR. PARKHURST - RE-DIRECT EXAMINATION BY MR. SMITH:
Q: Can you look again, Dr. Parkhurst, for me at the dead animal disposal plan. Mr. Hite just talked to you about a schematic, I believe that's DHEC 307.

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A: Which exhibit is that?
Q: That's Number 2. It's the dead animal disposal plan.
A: Yes, sir.
Q: If you flip forward, the figure on page 306, the page before that, do you see that figure marked 214?
A: Yes, sir.
Q: That's not a hay bale composting system, is it?
A: No, sir.
Q: And then if you flip with me, look on Exhibit Number 1, please, which is the comprehensive management plan. And could you flip for me to what's Bates stamped DHEC 45. Please let me know when you get there, Doctor.
A: I'm there.
Q: All right. And again, what do you see there as a picture, a schematic?
A: I see another compost thing which shows layering the composting with carcasses.
Q: Anything in there labeled concrete or clay pad?
A: I do not see it in the schematic.
Q: Okay. We talked a lot about weight today, right?
A: Yes, sir.

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Q: And I believe there might have been a little bit of confusion between you and Mr. Hightower. Just so the record's clear ---
A: Yes, sir.
Q: --- when you were saying they're going to truck off about a half million pounds of bird, were you talking about the processing or exit weight of the flock?
A: I was talking about the exit weight of the birds going to the processing plant.
Q: Not the average live weight?
A: No, sir.
Q: We discussed based on your studies and experience the average live weight you believe is higher than what's calculated in the plan?
A: That is correct.
Q: I'm going to ask you again about the vector abatement plan, and didn't write down the reference to it. Mr. Hite talked to you about -- I believe it is -- okay , starting DHEC 37. If you flip over there for me, please.
A: Are we on 1 or 2?
Q: Still on Number 1. And that's going to be the comprehensive plan.
A: That's on 37?

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Q: Yes, sir. And Mr. Hite just asked you, do you recall him -- he asked you about that 7.2 vector control and abatement plan; do you recall that?
A: Yes, sir.
Q: And based on your reading of this, is it just a list of general best management practices that could be employed by the operator, or best management practices that are going to be employed by the operator?
A: It looked to me like a suggestion list of what could be done.
Q: Thank you. Now, I hate to skip back and forth, Doctor. Apologies, I'm just trying to get it done quick. The growth cycle.
A: Yes, sir.
Q: Is that what determines the average live -- the average process weight of a bird, the growth cycle duration?
A: Yes, sir.
Q: So on 63-day duration you're going to get how big of a bird based on your experience?
A: Roughly nine pounds plus.
Q: Thank you. Nothing further, Your Honor. Thank you, Dr. Parkhurst.

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THE COURT: Re-cross on matters brought out on re-direct only.
MR. HIGHTOWER: No problem, Your Honor.
DR. PARKHURST - RECROSS-EXAMINATION BY MR.HIGHTOWER:
Q: Dr. Parkhurst, counsel just pointed your attention to Joint Exhibit 2, which is the dead animal composting plan, page 307, correct? Actually 307 and I think 306.
A: One moment, sir.
Q: And it's DHEC Bates stamped ---
A: Okay.
Q: --- 307 and 306.
A: 307 and 306, yes, sir.
Q: Okay. With any composting method, you can put a concrete or a compacted clay pad as the base material, correct?
A: Yes, sir.
Q: There's no scientific reason why a hay bale composting pile cannot be on a pad, correct?
A: It could be on a pad, that is correct.
Q: Okay. So if the Court determined that a pad, either compacted clay or concrete should be set as a condition, you would have absolutely no problem with the hay bale composting plan that is in evidence, correct?

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A: If it had a roof over it.
Q: And it had a roof?
A: Yeah. One of the things that happens on concrete pads, they're usually sloped to the center so that liquids do not run off the pad and have an opportunity to head towards streams or groundwater, whatever. So it would have a be incorporated into your clay pad or water you use.
Q: Okay. Now, you talk about processing weight, correct?
A: Yes, sir.
Q: You're aware that South Carolina's regulations did not have any requirements about processing weight; is that not correct?
A: I don't see why they would, sir.
Q: Okay. And the average live weight you have stated you think then could be higher, correct?
A: That is correct.
Q: But you don't know for certain?
A: I do not know for certain.
Q: Okay. And you specifically haven't spoken to Columbia Farms to ask them what average live weight they're using, correct?
A: That is correct, but from the days that they're

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growing the birds, all of these integrators are very similar, and what one integrator has the other ones within a few hundredths of a point of being the same and ---
Q: Well, you've been talking about nine pound birds, correct?
A: Yes, sir, nine plus.
Q: 8.75 is close to nine, correct?
A: It's close to nine, but it's not close to 9.37.
Q: Well, I believe you said you were using nine as the figure?
MR. SMITH: Objection. It's not a question, Your Honor.
THE COURT: It is cross-examination.
MR. HIGHTOWER: I believe the witness can answer it ---
THE COURT: I'm going to allow that. Overruled.
MR. SMITH: Thank you.
Q: When you have been stating here, you've use for the most part, the figure nine pounds, correct?
A: I believe so, yes, sir.
Q: Okay.
A: It's a minimum.
Q: Oh, okay. So there's a difference, but it's fairly slight?

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A: (Nods head affirmatively.)
Q: Okay. When you move your head, was that a yes or no?
A: Well ---
Q: The court reporter needs to be able to ---
A: Okay. Fairly slight, but on 100,000 birds, it's still quite a few pounds.
Q: That's true, but for each bird, it would be a quarter of a pound, correct?
A: Yes, sir.
Q: Okay. Last thing, with the vector abatement things you were asked about these being suggestions or requirements. The straight fact is is if the identified requirements in the vector abatement plan are followed, there should not be a problem with vectors; isn't that correct?
A: There is unlikely to be a problem.
Q: Okay.
MR. HIGHTOWER: No further questions.
MR. HITE: No questions, Your Honor.
MR. SMITH: Nothing further, Your Honor. We ask that Dr. Parkhurst be dismissed.
THE COURT: Excuse him?
MR. SMITH: Yes, sir.

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THE COURT: Any objection to that?
MR. HITE: I don't have any objection to that, Your Honor.
MR. HIGHTOWER: No objection.
THE COURT: Thank you, Dr. Parkhurst. You may step down and be excused.
DR. PARKHURST: Thank you, gentlemen.
THE COURT: Next witness, Mr. Smith?
MR. SMITH: Sorry, I didn't hear you, Your Honor.
THE COURT: Next witness.
MR. SMITH: Call Terry Orr.
TERRY ORR, being duly sworn, testifies as follows:
MR. ORR - DIRECT EXAMINATION BY MR. SMITH:
Q: Good morning, Mr. Orr.
A: Good morning.
Q: How are you doing today?
A: All right.
Q: Now we've looked at this map several times. I want to try to find a reference point so you can describe to the Court where your land is. Just one second. If you'd pick up Exhibit Number 1 in front of you; it's under 2 right there. And as you noticed, Terry, when we talk about Bates stamp, we're talking about the number stamped at the bottom right corner of

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these things. Flip on over with me to DHEC 115, please. Let me know when you're there.
A: I'm here.
Q: All right. I just want you to have that in front of you for reference as we talk about where your certain properties are, okay. Tell me how -- actually, can you point out for the Court where your residential property is here; where your house is? And just show the Court and maybe lift it up so counsel can see here. I know it's a small photo.
A: It's real small.
Q: Yeah. I'll give you a hand.
A: It's right there (indicating).
THE COURT: Excuse me.
A: Goes all the way back.
THE COURT: That's DHEC 115?
MR. SMITH: Yes, Your Honor. I don't know if we can blow it up on Elmo thing or not. Could we do that? Okay. Great. I'm going to take mine out of my notebook. All right.
Q: Now, Terry, can you point out for the Court where your house is on this property? And I'm not sure what's going on with the red.
A: I ain't neither.

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MR. HIGHTOWER: Oh, if you touch the screen it makes a mark.
MR. SMITH: Can he erase that off?
MR. HIGHTOWER: Yes.
MR. HITE: Hit right below undo on the top right.
MR. HIGHTOWER: Yeah.
Q: There we go. All right. Now being careful, because obviously it writes on there, can you just put a dot on your house, as best you can.
A: A dot?
Q: Yeah, just mark it with your hand like you just did. It writes in red.
A: I'm trying. That ain't where I touched.
Q: Okay. Well, let's abandon that. Can you point out to the Court where your house is? You can come up here and point it out, Mr. Orr. Come on up. I'll get out of your way.
A: It's supposed to be right in here (indicating).
Q: That's the Stills, I believe, Terry.
A: Okay. I can't even find it on that.
Q: Okay. You can have a seat back down. Are you down the road here some?
A: Yeah, maybe ...
Q: Okay.
A: You ain't got it far enough I don't think.

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Q: It's the plan map. Okay.
MR. HIGHTOWER: Yeah, that's not the one for that.
MR. SMITH: Okay. Well, let me find the right map. Yeah, okay. Excuse me a second, Your Honor.
THE COURT: Take your time.
MR. SMITH: I expected to have an exhibit in. All right. Here we go.
Q: All right. Well, at least on this map can you point out -- y'all own other property in the area; do you not?
A: Yeah.
Q: Is your other property shown? Do you need a pen to reach?
A: It goes back here to the pond.
Q: And
A: That's right. It's hard for me to look up at that.
MR. HIGHTOWER: If you do it at the ---
MR. HITE: Yeah, you can do it on the Elmo and that way ---
MR. HIGHTOWER: At the Elmo that way ---
MR. ORR: I'm down here.
MR. HIGHTOWER: Right. You are.
MR. SMITH: Okay.
MR. HIGHTOWER: This map is not for these

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properties.
MR. ORR: You've just barely got a corner right there.
Q: Yeah, this is a plan map from one of the plans. Now does it show your pond in there, is it showing?
A: Yeah.
Q: Can you point out your pond and that property for the Court, please?
A: Is it on there? I don't see it there.
Q: Okay. Keep it on there so they can see it now and point it out to the Court. That's your property as well and that pond, right?
A: Yeah.
Q: Okay. And you can have a seat back down. And you live on Poole Town Road?
A: Yeah.
Q: Right down the way, a little bit out of this map shot we've got up here, correct?
A: Repeat.
Q: You live right down the road here ---
A: Yeah.
Q: --- on Poole Town close to this proposed operation?
A: Yes, sir.

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Q: And how long have you lived out there?
A: Forty years.
Q: And tell the Court a little bit about your background, work history and that stuff, please.
A: Well, I'm retired.
Q: Yeah. What did you do before you retired?
A: Well, I was an auto detailer for years, served in the Navy for six years, worked for Canal Wood for six years.
Q: And you've been out there for four decades?
A: Yeah.
Q: And why do you live out in this area? What do you enjoy about it?
A: Well, I moved to the country because of peace and quiet and fresh air.
Q: And you pointed out your lake property to the Court just a minute ago?
A: That's recreation.
Q: I was going to ask you, what do you do on that property?
A: Well, fish, walk, camp, cook out.
Q: How often do you use that piece of land?
A: I use it every day if the weather's permitting to walk my dog.

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Q: Do y'all have a cabin on that property?
A: Yes, sir.
Q: So tell me -- tell the Court why you're here opposing the Sumerel operation.
A: Well, I don't want the smell, and I don't want no -- nothing happening to my pond.
Q: And you believe that your use and enjoyment of your property is going to be negatively affected by this operation?
A: Yeah, I think it will by the smell and who knows what long-term effects it might have.
Q: And that's the reason you moved out to the country?
A: For peace and quiet and fresh air, yeah.
Q: Do you have any other concerns with this operation and the reason you're here today?
A: I just -- you know, traffic.
Q: You don't want 18-wheelers coming by your house on a regular basis?
A: Do any?
Q: Do you want them coming by your house on a regular basis?
A: Not no more than already do.
Q: Okay. Are you concerned about that happening with the Sumerel operation?

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A: I would imagine it will.
Q: And should this operation get up and running, will it interfere with the use and enjoyment of your property?
A: I would imagine, the smell.
Q: The potential pollutants?
A: Pollutants.
Q: Thank you, Terry. That's all I have for you.
A: Thank you.
THE COURT: Mr. Hightower.
MR. ORR - CROSS-EXAMINATION BY MR. HIGHTOWER:
Q: Good morning, Mr. Orr.
A: Good morning.
Q: I'm going to ask you a few questions. I'm showing you what is admitted as Joint Exhibit 19. It's a map that was prepared by the Department. Does it accurately show where your residence is in relationship to where the proposed facility will be?
A: It looks like it does, yeah.
Q: Okay. Your home is somewhere in that little slight cleared area right here, correct?
A: Yeah.
Q: Okay. Now, do you own any fields?
A: Fields?

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Q: Yeah.
A: All woods.
Q: It's all woods, okay.
A: Except for where the pond is.
Q: Okay. And you said you moved to the country for peace and quiet, correct?
A: (Nods head affirmatively.)
Q: You understand that farms are in the country, correct?
A: Yes, sir.
Q: In rural areas?
A: Yes, sir.
Q: Okay. And farming is a legitimate way of earning a living, correct?
A: Yes, sir.
Q: Okay. So you understood when you moved to such an area that there could be agricultural farms either already there or land over time being used for farming, correct?
A: Yes.
Q: Okay. The Sumerels could turn that field into, let's say, row crops, correct?
A: Yes, sir.
Q: And they may even land apply manure on such land to prepare it for planting, correct?

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A: Yes, sir.
Q: And isn't that true that a lot of farms do that?
A: I guess.
Q: Okay. Now this is a animal poultry farm, and you said you're concerned about odor?
A: Yes.
Q: Is that correct? Do you have any direct knowledge that this facility's going to produce odor that you're going to smell at two-thirds of a mile away?
A: No, I don't.
Q: Okay. And you would agree that this map accurately shows that the area between where your home is, your residence, and the facility has a significant amount of woods there, correct?
A: Yes, we've got woods.
Q: Okay. You're aware that DHEC's regulations about placement of animal facilities have no provisions about traffic?
A: I know that they don't care nothing about traffic.
Q: Okay. You would agree that reviewers who are -- have knowledge in farming may not have any

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knowledge as to the accuracy of roads and how to construct them and what to do with large trucks on them, correct?
A: I guess.
Q: Okay. And you said you were concerned about something happening to your pond. What are you concerned about happening to your pond?
A: The runoff.
Q: The runoff. And that would be runoff from the facility?
A: Yes, sir.
Q: Okay. Now, you're aware that your pond is, I don't know, probably at least 2,000 feet away, correct? Well ---
A: Yeah, it's at least that.
Q: Okay. In fact, I believe this is your pond where I'm pointing?
A: Yes, sir.
Q: Okay. And between your pond and where the proposed facility is, it's heavily wooded, correct?
A: Yes, sir.
Q: So you would agree that it's unlikely that any runoff from the facility would get to your pond?

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A: It can get there.
Q: Okay. How do you think it would get there?
A: All them creeks back there.
Q: Which way does water flow?
A: Downhill.
Q: And which is downhill from -- on this map?
A: Towards the pond from the chicken houses.
Q: You believe it's going that way?
A: That's downhill from the chicken houses towards the pond.
Q: Okay. And you know that there will be a stormwater permit in this -- for this facility, correct?
A: Yes.
Q: And runoff would be something that would be dealt with stormwater, correct?
A: Yeah.
Q: So you would agree that this permit, the Department would not be in a position to be able to review this, but is aware of waters of the state, correct?
MR. SMITH: Objection, Your Honor. That's a compound.
MR. HIGHTOWER: I'll rephrase that question.
THE COURT: Sustained.

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MR. SMITH: Thank you.
Q: You would agree that any runoff will be considered by the Department in its stormwater permitting?
A: Yeah.
Q: Okay. And you understand that, in this case, the Department is not looking at the stormwater plan, correct?
A: Yes.
Q: Okay. Your attorney has shown you the documents that you received from the Department and none of those documents contain stormwater plans, correct?
A: Yes.
Q: Okay. It's never been represented to you that the Department reviewed any storm ---
MR. SMITH: Objection, Your Honor. I think he's getting into a little attorney-client privilege at this point, asking him what I'm showing him, representations made. I'd just like to exclude any testimony about any conversations ---
MR. HIGHTOWER: Fine.
MR. SMITH: --- my client had with me.
THE COURT: I sustain that.
Q: To the extent, without going into whatever you

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discussed with your attorney, have you ever felt like you have seen a stormwater plan for this facility?
A: No.
Q: And again, you understand that that's a separate permit process, correct?
A: Yeah.
Q: Okay. The cabin on your property, no one lives there on a full-time basis, correct?
A: No, don't nobody live there.
Q: Okay.
A: It's just for recreation.
MR. HIGHTOWER: Okay. No further questions.
THE COURT: Mr. Hite.
MR. ORR - CROSS-EXAMINATION BY MR. HITE:
Q: Mr. Orr, let me undo that real quick, clear all that off. You're not testifying today as an expert in grading today, are you?
A: No.
Q: Okay. And isn't it true that the grading can be done differently so that there's no runoff going in the easterly direction?
A: I don't know. I don't know how they're going to grade it.
Q: Well, have you seen other facilities, any

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construction site, have you seen such as a Walmart where they direct wastewater in other places?
A: Yeah, I've seen that.
Q: So you do -- you are aware that they can direct wastewater or stormwater in opposite or other directions of desired lo- ---
A: Yes, they can.
Q: And your residence here? (indicating)
A: Yeah.
Q: And from the Sumerel poultry farm, isn't it true that it would be closer for the trucks to go down this way to get to 26 and to go to Columbia Farms; isn't that true?
A: I guess, yeah.
Q: Okay.
A: Down 308.
Q: If the Sumerels were able to tell you that you wouldn't have any runoff and that you wouldn't have a terrible odor, would you be okay with the facility?
A: They can't tell me that though because they don't know.
Q: But you can't prove today that you will have an odor or runoff; isn't that true?

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A: You can't prove I won't.
Q: But the farming facility, okay, you're not here today with any evidence that shows that you'll smell a vile odor; isn't that true?
A: No, I don't have any evidence that I'll smell it.
Q: Okay. And you also don't have any evidence, scientific evidence about the runoff that may or may not approach your pond?
A: No, I don't. But common sense, it runs downhill.
Q: Now, you testified that you moved out to the area 40 years ago?
A: Yes, sir.
Q: Okay. On your tax notice that you get in the mail as it relates for Laurens County, do you pay a lesser tax or a higher tax than the residential areas?
A: I pay a lesser tax in the rural.
Q: Okay. And is that a benefit living in a farming area?
A: It's a benefit for living in the country.
Q: And is that considered -- is the country considered to you a farming area?
A: I guess so, yeah.

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Q: So isn't true that you want the benefits of living in a farming area, like lower taxes, but you don't want to have to actually deal with a farm in the farming area?
A: It's a difference in a farm and a chicken farm. Farms is either cows or either just plowed and planted row crops.
MR. HITE: No further questions, Your Honor.
THE COURT: Re-direct.
MR. SMITH: Brief re-direct on that, Your Honor.
MR. ORR - RE-DIRECT EXAMINATION BY MR. SMITH:
Q: Mr. Orr, you indicated earlier that the slope towards your pond; do you recall that?
A: Yeah.
Q: And you're testifying based on your firsthand knowledge that the slope is downhill into your pond, right?
A: Yeah.
Q: And based on -- I put a new map up there; this is DHEC 108. It's in the plan, Joint Exhibit 1. And Mr. Orr, you can -- is that focused up; I can't tell this close. You can flip to that map in front of you, Mr. Orr, if you want a closer look. So that's Exhibit 1, DHEC 108. Just let me know when you're there.

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A: 108?
Q: Yes, sir. And based on your very intimate knowledge of that area and on that map, those waters all seem to be interconnected; is that fair?
A: That's correct.
Q: And Mr. Orr, I'm sure you know a lot about a lot of things, but do you know anything about DHEC's stormwater permitting process?
A: No.
Q: What you do know is that as it stands, your pond is downhill from this operation?
A: Yes, sir.
Q: And I believe you just addressed it with Mr. Hite, do you consider the Sumerel operation to be a farm?
MR. HITE: Objection, Your Honor, asked and answered.
MR. SMITH: I'm following -- I'm clarifying.
THE COURT: It's a follow-up question. Overruled.
MR. SMITH: Thank you, Your Honor.
Q: You can go ahead and answer.
A: Yes, it's a farm.
Q: In a traditional sense?
A: It was.

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Q: And what do you mean by it was?
A: It used to be a beef farm.
Q: And you remarked earlier ---
A: And hay.
Q: Go ahead.
A: And cut hay up there.
Q: In your mind, in your view this is a different type of farm?
A: Yes, sir.
Q: And one you're very concerned about?
A: Yes, sir.
Q: Thank you. Nothing further.
MR. HIGHTOWER: Just very briefly.
THE COURT: Mr. Hightower, recross on matters only brought out on re-direct.
MR. ORR - RECROSS-EXAMINATION BY MR. HIGHTOWER:
Q: Mr. Orr, have you ever been on the Sumerel property? The property ---
A: A long time ago.
Q: A long time ago. More than a year?
A: Oh, yeah.
Q: Five? More than five years?
A: Maybe not that long.
Q: Okay.
A: But if I did go on it, it was just barely

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across the line back there where the beaver ponds are.
Q: Okay. So you're talking about somewhere in this wooded area over here, correct?
A: Go on back down a little bit.
Q: Down around here?
A: Go back down toward the pond.
Q: Oh, towards your pond.
A: Right in there where the back of -- right there.
Q: All right. Right there. You haven't been on this area right here ---
A: No, sir.
Q: --- where the ponds are? So you don't have any firsthand knowledge of the terrain there; would that be correct?
A: No, sir. I don't know what it's like over there now.
MR. HIGHTOWER: Okay. No further questions.
THE COURT: Anything further, Mr. Smith?
MR. SMITH: One question, Your Honor.
MR. ORR - FURTHER RE-DIRECT EXAMINATION BY MR. SMITH:
Q: Is it your understanding the Sumerels requested for you and the Stills not to come on their land during the site visit?

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A: Oh, yeah. That's what you told us.
MR. SMITH: Thank you. Nothing further.
A: That they requested us not to come.
MR. SMITH: That's good. Nothing further, Your Honor.
THE COURT: Okay. Nothing further?
MR. HITE: No, sir.
MR. HIGHTOWER: No further questions.
THE COURT: You may step down, sir. We have reached the five minutes after 12 hour. I suggest that we leave now for lunch and come back at 1:15. Is that acceptable? Does that suit everybody?
MR. HITE: Yes, sir. It suits us.
MR. SMITH: Yes, Your Honor.
MR. HIGHTOWER: That's fine with the Department.
THE COURT: 1:15. We'll be in recess until 1:15.
MR. SMITH: Thank you.
(Lunch break from 12:05 p.m. until 1:15 p.m.)
THE COURT: Next witness.
MR. SMITH: Yes, Your Honor. Call Christine Orr.
THE COURT: Come up and be sworn, Ms. Orr.
CHRISTINE ORR, being duly sworn, testifies as follows:
MS. ORR - DIRECT EXAMINATION BY MR. SMITH:
Q: Good afternoon, Ms. Orr. You're married to

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Terry Orr, correct?
A: I am.
Q: And how long have you and Terry ---
THE COURT: You'll have to speak a little bit, please.
A: I am, yes, sir.
Q: How long have you and Terry been married?
A: It'll be 29 years the end of September.
Q: And for this 29 years, have you lived out at your house on Poole Town?
A: As a matter, I moved in 29 years ago on Labor Day weekend.
Q: And tell me a little bit about where you grew up and growing up.
A: I grew up in Barksdale, South Carolina. It's a small community down below Gray Court.
Q: And ---
A: A rural community also.
Q: Similar to the community you live in now?
A: Similar, but we had more traffic on Highway 14, which intersected my daddy's property.
Q: And why do you live out where you do?
A: Mainly because I met Terry and that's where he lived, but I prefer that environment. I've never lived inside the city limits in my life.

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I've always been in a rural area.
Q: And you said you prefer it; can you tell me why you prefer it?
A: I cannot -- I couldn't stand the thoughts of having a house real close to me, and it's very, very quiet and peaceful on Poole Town Road.
Q: And what do you like to do out at your place?
A: I don't really work in the yard. I like to get out in the yard with my dogs. I don't walk the distance every day that Terry does with them because I work eight to ten hours a day.
Q: And where do you work?
A: CeramTec North America, Laurens.
Q: And what do you do at CeramTec?
A: I'm the team lead over the kiln department.
Q: Okay. And what is that?
A: That's the furnaces.
Q: Okay. And have you had some past experience with farming in general?
A: In general, yeah. When I was little we had pigs and cows that were in pastures separated, but not in confinement. We had chickens, ducks, guineas when I was small, a goat every now and then. Well, my daddy had pigs and cows until he died.

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Q: Okay.
A: In later years he did not fool with the chickens, but they were free to roam around.
Q: And you understand the type of operation that Mr. Sumerel wants to open near your house?
A: Yes, I do.
Q: Do you consider that different than the type of traditional farming that you're talking about?
A: Yes, sir.
Q: And tell me what your concerns are with the proposed Sumerel operation.
A: I know I'm not an expert, but I know at some point there's going to be strong odors. I feel that there will be litter, be it feathers or whatever you want to call it from the houses, more traffic; even if it's not on our end of the road there will be more traffic, and I feel like that's going to cause more litter. And our property values will decrease. I understand that's not this Court's problem, but our property value will go down if this is allowed to be built.
Q: And would it ---
A: In my opinion.
Q: Yeah, absolutely. And that's all you can offer

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today. And you just mentioned it's not in the regulation, but you stand to take a large financial hit if this thing's opened?
A: Yes, sir.
Q: Do you think the enjoyment and use of your land will be negatively impacted?
A: Oh, absolutely. I -- may I say something?
Q: Absolutely.
A: I said I don't get out in the yard as much as he does; I very much enjoy sitting on my front porch, reading a book, enjoying the quiet. That's my weekend thing.
Q: Yeah. Understood. You don't want to lose that, do you?
A: No.
Q: Anyone from DHEC ever come out and talk to you about the proposed operation?
A: No.
Q: Anyone from DHEC ever seek any input from you as a nearby resident beyond the public meeting?
A: Mr. Chaplin called me one time but I honestly -- I don't recall what it was. Maybe it was in response to a -- something I had filled out at the meeting.
Q: All right. Because we're not offering any

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testimony on your medical issue, but you submitted a medical issue from ---
A: I did.
Q: And why did you do that?
A: Because I suffer from COPD.
Q: And that's a concern you have?
A: Yes.
Q: I have nothing further right now ---
A: Okay.
Q: --- Christine. I appreciate it. Please answer these gentlemen's questions.
A: Okay.
THE COURT: Mr. Hightower.
MS. ORR - CROSS-EXAMINATION BY MR. HIGHTOWER:
Q: Good afternoon, Ms. Orr.
A: Hello.
Q: You grew up in a rural area?
A: Uh-huh.
Q: And there were farms in that area? Your father had dairy cows, if I understood?
A: Beef cows.
Q: Okay. Beef cows. Had pigs and other animals, correct?
A: Correct.
Q: Okay. You were aware of odor from those

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animals, correct?
A: Yes, sir.
Q: Okay. And you didn't feel that your father shouldn't have had that farm because of the odor, did you?
A: No.
Q: Okay. Now, you understand that as times change, methods of farming also change?
A: That doesn't make it right.
Q: Okay. But you are -- you do understand that the ways that animals are raised on farms have changed over time?
A: They have.
Q: Okay. But what hasn't changed is odor from manure, correct?
A: I have been around -- I have been past these kind of chicken operations and they were -- it was much, much more odor than I ever smelled coming from a cow pasture or a pig pen.
Q: Well, that's a subjective determination, correct?
A: True.
Q: You would agree. Okay. Now, you acknowledge that the Department did hold a public meeting?
A: Yes, they did.

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Q: All right. And the purpose of that meeting was to give the community information and to receive information from the community, correct?
A: Correct.
Q: Okay. And you did say that you had a medical issue that was an issue for you, correct?
A: Correct.
Q: And you provided information to the Department, correct?
A: Correct.
Q: And the Department notified you that they considered that information, correct?
A: They did.
Q: Okay. And you're not challenging the Department's specific decision on that; you're just challenging the fact they're issuing the permit itself, correct?
A: Yes, sir.
Q: Okay. And you acknowledge that property value is not something that the Court is capable of looking at, correct?
A: Yes, sir.
Q: Okay. Now, you said something about litter from the house. I didn't understand ---

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A: I feel like the more traffic that is on any road, people tend to litter. I don't know whether it would be people actually littering or when these chickens are transported, aren't feathers floating throughout the air? I've never been around -- I've never been around that part of a chicken operation.
Q: So when you're talking about litter, you're talking about things being deposited, either someone throwing ---
A: Yes.
Q: --- what we would -- garbage ---
A: Yes, nothing that nobody did intentionally.
Q: --- or something coming off of a vehicle?
A: Yes.
Q: Okay. You're aware that the Department's agricultural animal facility permitting regulations do not take into account anything with vehicles and their operation?
A: Uh-huh.
Q: Okay. And you said someone from the Department did actually, beside the public meeting, did come out and actually kind of see ---
A: Called me.
Q: They called you. So you ---

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A: And I honestly don't remember the circumstances ---
Q: Okay.
A: --- but he did give me a telephone call. And I don't know if it was about the medical condition or maybe it was just the fact that he received ---
Q: Okay.
A: I'm sorry. I don't remember.
Q: Okay. But it would be fair to say that the Department has reached out to you to try to get information, you've given information, and the community in general, correct?
A: May I say something? At the public meeting they were there, people had an opportunity to talk, and I did not speak because I was very nervous. But the people that did try to speak were cut off. They did not let them finish their statements. They gave them a five minute limit and that was it.
Q: Well, you would understand that a time limit, especially I would assume there was more than just a few people there.
A: There were very many people there.
Q: Very many people.

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A: There were very many people there that were against it.
Q: Well, but there were a lot of people, and people -- there were probably more than just a few people wanted to get up and speak, correct?
A: Not really.
Q: Not really. Okay. Well, anyway, you personally are not arguing that at the public meeting you didn't get to speak?
A: No.
Q: Okay. So. And you work in a -- you work for -- let's see -- well, you work as a team leader dealing with kilns, correct?
A: Correct.
Q: CeramicTec, I think it was?
A: Just one word, CeramTec.
Q: CeramTec. I'm sorry.
A: That's okay.
Q: So that's working around a furnace that's used to bake some type of pottery-type things?
A: Huh-uh.
Q: No? What exactly is it?
A: It's more technical ceramics. We make parts for automobile engines.
Q: Oh, okay. So industrial ---

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A: Industrial ceramics ---
Q: --- uses ---
A: --- yes.
Q: --- of ceramics? Okay. So you'd be around a lot of chemicals and things like that?
A: Not really chemicals, just gas-fired kilns.
Q: Gas fired kilns, okay.
MR. HIGHTOWER: No further questions.
THE COURT: Mr. Hite.
MR. HITE: I don't have any questions for this witness, Your Honor.
THE COURT: Re-direct, Mr. Smith?
MR. SMITH: Nothing further from me, Your Honor.
THE COURT: You may step down now. Thank you.
MS. ORR: Thank you, sir.
THE COURT: Next witness.
MR. SMITH: Petitioners calls Rick Still.
THE COURT: Step up and be sworn, please, sir.
MR. SMITH: Let's see if I can focus this up a little better.
RICK STILL, being duly sworn, testifies as follows:
MR. STILL - DIRECT EXAMINATION BY MR. SMITH:
Q: All right. Mr. Still, good afternoon.
A: Good afternoon.
Q: Just tell the Court a little bit about yourself

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and living out at Poole Town and what you do for a living.
A: Okay. I'll start a little further back. I grew up in East Tennessee, and I grew up at that time in a rural area. My father had some beef cattle that we raised. And at that time, I helped with the hay, the feeding, you know, actually delivered some calves. And so I was very active at a young age on the farm. After I got out of school there, I went to work in a major appliance industry within the same area and did that for about six years. And then after that I went into a 3M company in Chattanooga, Tennessee, that was -- was a sister company to CeramTec at the time; it was a technical ceramics manufacturer. And how I got into the area of Laurens is transferred over with 3M, and I was with them and GE a total of about six years. I have since been with Fluor Corporation in Greenville, South Carolina. And I've been with them now about 25 years. And with them I was -- I've been involved with machine design groups, equipment groups. I've been heavily involved with plant layouts, site layouts for various industries in

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the heavy industrial sector.
Q: You're an engineer, right?
A: Well, actually my title is senior design supervisor, so.
Q: Okay.
A: But I've been around engineering for roughly 40 years now.
Q: Okay. And what currently, I think you kind of went into it a little bit, what currently are you doing for Fluor?
A: Right now I am working on a retrofit project; it's an extension of one I've worked on for about three years. It's actually in this state, and it's a retrofit project that's just getting kicked off. And it's an environmental project that is being mandated by DHEC.
Q: And I lucked up on the monitor -- what's the Bates stamp on that? What's a map from Exhibit 1 provided by DHEC.
MR. HITE: I think that's 107, isn't?
MR. SMITH: No, it's not 107. It's a wider shot.
MR. HIGHTOWER: I think it's 108.
MR. SMITH: Yeah, DHEC 108.
MR. HIGHTOWER: I think he's right; it is 107.
MR. SMITH: Yeah, you're right. It's DHEC 107.

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MR. STILL: Is that what's on the screen?
MR. SMITH: Yes, that is what's on the screen; we're confirming that.
Q: Could you point out for the Court ---
THE COURT: Now, wait a minute, it's not the same as DHEC 107.
MR. SMITH: Right. Hold on a second, I can tell you.
MR. HIGHTOWER: It's not Bates ...
THE COURT: It's larger than 107.
MR. SMITH: I can tell you, because 107 is what I've been referring to. It is 108. Yeah. Okay. So for purposes of the record, it's DHEC 108 from Exhibit 1. And that's what's up on the monitor right now.
Q: Now, Mr. Still, could you point out for the Court where your house is?
A: Yes, sir. I'm located east of the Sumerel proposed site and just north of the Duckett proposed site.
Q: And ---
A: And that didn't put it in the right place, but it's the house ---
Q: Right there, yeah.
A: --- just there.

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Q: That green -- it's a green indication?
A: Yeah, I guess your arrow's pointing to it.
MR. HITE: Your Honor, I would just object to the testimony as it regards to any Duckett site references.
MR. STILL: I'm sorry. It was just here.
MR. SMITH: Hold on a second, Rick. Sorry. Your Honor, I would say this is a DHEC provided map, Joint Exhibit 1. And Mr. Still can indicate where the Duckett site on this map is.
THE COURT: Well, I understand where his house is; that's the important thing.
MR. SMITH: Yes, sir.
MR. HITE: That's fine. I'm okay with that, Your Honor.
THE COURT: Overrule the objection.
MR. SMITH: Thank you, Your Honor.
Q: So that's where you live?
A: Uh-huh. Yeah.
Q: And how long have you lived out there?
A: We moved in, I think it was spring of 2003, so ten, eleven years now.
Q: Did you build the house out there?
A: We did.
Q: And how much of an investment was that?

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A: At the time, it was somewhere around $300,000.
Q: And you obviously had to buy the land to move out there too?
A: Well, fortunately, this was land that belonged to my father-in-law, and so he was able to allow us to build on just a portion of the land.
Q: But you spent a substantial amount of your income you built up over the years and put a lot into this property, say,it that way?
A: Well, certainly. Certainly. We looked at this as a place that we could possibly retire, a place that we could enjoy. When we first went out there we looked the area over. And, you know, one of the things when I was young, I remember my father said that land with water is good and valuable. And, you know, I could see, you know, see where there was a lot of water around. At the time I didn't know exactly how much, but I knew there was water behind, in front, and you know, basically surrounding the area. So it seemed to be a good home site.
Q: And you touched on it some, why move out to this area in the country?
A: Well, we actually thought it would be a good

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place to raise our son and to be able to enjoy some of the outdoors. We looked at it as a place that we could grow. We also looked at it as a place where we possibly could raise a couple horses, and we have. So it's just a -- it was kind of a combination of things why we moved there. We enjoy the outside, so we wanted -- we wanted to be where we could enjoy the outside.
Q: And how do you use your land and your property out there?
A: Well, do a lot of mowing, but basically we, just previous to when this all got started, we'd just finished up with a very -- you know, with a large outdoor living area that we spent at least $50,000 on. And it was natural rock. We've got a fireplace out there that we enjoy on a regular basis. We've got a grilling area that I cook outside at every chance that I can. And so it's a great place to go out in the mornings and sit and have coffee. So we built that to have kind of an outdoor living space that we could use.
Q: So it's fair to say you use the outdoor space on a very regular basis?

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A: Yes, sir.
Q: And had you known at the time you purchased and built your home on this property that either a concentrated operation such as the Sumerels or any other type operation of a similar kind were being built out there, would you have built your house out there?
A: Absolutely not. At the time of course I did not know the regulations and, you know, from a -- I'm a very practical person and from a practical standpoint, I just couldn't see how anything -- I couldn't dream anything like that could happen.
Q: During this permitting process -- it's been going on a while, right?
A: Yes, sir.
Q: Have you had any interaction with DHEC?
A: No. Just at the March hearing and then a little bit of a discussion with Mr. Chaplin after the meeting; just some communication to write a letter of whatever we needed, supposed to do. But outside of that, no. They've not contacted us and we've not contacted him.
Q: And how far away approximately are you from the Sumerel operation?

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A: I'm thinking somewhere in the neighborhood of 1,500, 1,600 feet or something along those lines. But it's hard to tell.
Q: Right.
A: I don't know exactly where they're going.
Q: And then the Duckett operation down there, how far away from that are you?
MR. HITE: Objection, Your Honor. That's the exact -- we had that yesterday. That's what ---
THE COURT: Sustained. I ruled on that. Don't want to hear any more about it.
MR. SMITH: Yes, Your Honor.
Q: What are your concerns with the Sumerel operation, Mr. Still?
A: Well, the concerns are our basic human rights to use our property is my main concern. Once this gets put in, my fear is multiple things; I fear for the air quality that we're going to have to be able to use our outdoor living space. And from everything I've heard, and I don't -- I'm not an expert at this, but it can even creep into your house. I have concerns of someone operating this that is not trained. I have concerns when I ride down the road ---
MR. HIGHTOWER: Objection, Your Honor. Assuming

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facts that are not in evidence.
MR. SMITH: I asked him what he was concerned about, Your Honor. It's a valid -- the witness has testified his concerns as to the property.
MR. HIGHTOWER: But he said about someone and not being trained.
THE COURT: Overruled.
MR. SMITH: Thank you, Your Honor.
Q: You can continue, Mr. Still.
A: It concerns me a bit of the -- of when conditions -- I obviously being very concerned with this went out and did a lot of reading, and not claiming to be an expert on a lot of things, but I don't think it takes an expert to read and see some pros and cons to this. The upland condition is just one that from what I've read that Clemson discourages. And it also speaks to erosion. There's no evident plan that I saw. When I ride down the road I don't think erosion is going to be a big enough concern with the applicant because the bank in front of their house is evidence that it's not important to them, I will say. And erosion along the east side is probably the most evident of my concerns. And I have not been to

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that site, not been allowed to go to that site, but the topos as proved, pretty steep drop on that site. And so -- I mean, I obviously looked at this with a lot of concern, and I questioned it, and have continued to question it. And we're here now because I still continue to question it. I want it -- you know, like I said, I'm a practical guy, and being from an engineering background, I expect to see things in writing, especially when it comes to something that has potential harm. Like I say, I'm not an expert, but I've been involved in plant sitings, plant arrangements, and one of the things that bothers me a little bit is the discussion about this water permit. I know ---
Q: What's your concerns about that?
A: Well, just from my experience working with a large engineering construction firm, this -- the civil guys are -- that's one of the first things they do; it's part of the engineering plan. And so I didn't know if there was going to be one or not; not really until this Court I didn't know if there was going to be one. So I obviously have concern about that.

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Q: Is odor a concern of yours?
A: Oh, absolutely.
Q: And do you think that's going to have an impact on the use of your land?
MR. HIGHTOWER: Objection, Your Honor. Leading.
THE COURT: Sustained.
A: I can speak to that.
Q: Sure. Are you concerned about odor?
A: Yes, sir. I've been concerned about odor in these type facilities since I was young. My father gave me the pleasure of having to -- or cleaning one of these out. And when they're wet, have any moisture at all, they're horrendous. I have yet to see one that didn't smell, in my experience. And even riding down the road I had the pleasure -- not the pleasure, but I visited my mother in east Tennessee back a couple weeks ago, went through Oconee County, and there are quite a few scattered and dotted along that area. And I, just passing through in the car, I could smell those.
Q: And could you describe that smell to the Court?
A: Yeah, chicken poop. I mean, it's pungent and it smells -- well, manure smell. It's a little

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bit nitrogen kind of sulfur-type smell some. So it's not a pleasant smell.
Q: Would you want it out -- would you want that smell in your outdoor kitchen while you're out there?
A: No, sir.
Q: Would you want to smell that on your property at all?
A: No, sir.
Q: Do you -- in your opinion, do you think DHEC adequately evaluated the impacts of this operation?
MR. HITE: Objection, Your Honor. I don't think he's qualified as an expert to give his opinion.
MR. STILL: I'm not ---
MR. SMITH: Your Honor, I'm asking his personal opinion as a petitioner in this case whether or not he feels the Department did their job.
THE COURT: I'm going to allow that. Overruled.
MR. HITE: Yes, sir.
Q: Mr. Still, in your opinion, in your lay opinion, do you think DHEC adequately evaluated the impacts of this operation?
A: No, sir. Like I said, I obviously started

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looking at things and felt that, it's just my personal opinion that things were very generalized. A lot of things were not noted. Things were not oriented. All the buildings aren't shown. I just -- I felt like -- I honestly have felt like for two years we have been building their plan. We've spent tens of thousands of dollars to help them build their plan. I'm obviously a little bit angry; I'm discouraged. I would expect the organization that claims that they're the Department of Health and Environmental Control to be that and protect the citizens and the taxpayers of this state.
Q: Nothing further right now, Mr. Still. Please answer these gentlemen's questions.
THE COURT: Mr. Hightower.
MR. STILL - CROSS-EXAMINATION BY MR. HIGHTOWER:
Q: Mr. Still, I'm showing you what is marked as Joint Exhibit 19, which is a map of the proposed facility with a indicator of where the 1,000-foot residential setback is and the location of your residence and the Orr residence. In looking at that, is the placement of your residence accurate?

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A: Yes, sir.
Q: So there are trees between your residence and where the proposed facility will be?
A: Well, those trees have been cut and there are some sparse amount of trees left. Yes, but those -- the trees primarily between where we are and back across the Sumerel property, the mother, if you will, has been cut.
Q: When were these trees cut?
A: I'm not sure exactly. I don't know if it's been before or after this process has started.
Q: If I told you eight years ago, would that be about right?
A: Yes, but I just was looking at this and it shows trees.
Q: Correct. There are trees there now though?
A: Well, there are the ones that were left, yes, sir.
Q: You're a senior design engineer, I think you said that?
A: Yeah, senior design supervisor.
Q: Supervisor, okay. And you work for a company, correct?
A: Correct.
Q: Now that company, it's regulated by some

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governmental entity; isn't that correct?
A: The company itself?
Q: Well, is the industry that the company's in ---
MR. SMITH: Objection, Your Honor. This is irrelevant.
THE COURT: I'm going to agree with you. I sustain that objection even though it's cross-examination.
MR. SMITH: Thank you, Your Honor.
THE COURT: Unless you can show me the relevancy.
MR. HIGHTOWER: Well, I'm trying to find out -- the witness has testified about, I guess you would say the sequencing of the Department's review, and I just wanted to see is he familiar with that in his workplace where governmental entities will get various -- do things with separate permits that are reviewed differently. But it's not important. I'll find ---
THE COURT: I think that's pretty far afield.
MR. HIGHTOWER: Okay.
THE COURT: Let's move back where we were.
Q: You grew up in a rural area?
A: Correct.
Q: There were farms?
A: Yes, sir.

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Q: And some of these farms had livestock?
A: That's correct. A lot of them had livestock.
Q: And livestock produce manure?
A: Yes, sir.
Q: So there would have been odor around?
A: Yes, there is, but not to the amount that we're talking here.
Q: Well, you would agree that in a rural community, farming would be a normal activity?
A: Yes, sir.
Q: Okay. And you would agree that farming includes row crops or raising of animals, correct?
A: Yes, sir.
Q: Okay. Do you dispute the fact that the Department has regulations governing the production of animals such as poultry?
A: I would like to answer this if you will allow me to, because it's very -- it almost has two answers.
Q: Well then, let me restate my question then. 61-43 Part 200 specifically regulates the construction and operation of animal facilities for animals other than swine, are you aware of that?

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A: Yes, I'm aware of that.
Q: Okay. Are you disputing the legitimacy of those regulations?
A: I'm not disputing that particular note that you just said, and I'm not really disputing industrialized farming. What I am disputing is the placement of those.
Q: Placement is in part determined by setbacks, correct?
A: Yes, sir.
Q: Okay. And as that map indicates, and I believe as you testified, your residences -- excuse me, your residence is located more than 1,600 feet away from the proposed facility?
A: Yes, sir.
Q: And the regulatory -- the minimum requirement is 600 feet closer to that, correct?
A: Yes, sir.
Q: Okay. So the facility as it's placed, it's at least 50 percent further than the minimum distance required?
A: How much?
Q: I said it's at least 50 percent greater than the minimum distance required. If the minimum distance is 1,000 feet, it's more than 500 feet

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further than that, correct?
A: Yes, sir. I'm sorry, I didn't understand the question.
Q: I'm sorry. The legislature passed or reviewed these regulations, correct? If you know.
A: I assume they did.
Q: Okay. So it would be -- in that situation it would be fair to state that the legislature's determined that an agricultural facility can be placed in a location where with regard to the setbacks from a residence you have at least 1,000 feet of separation; isn't that correct?
MR. SMITH: I'm going to object, Your Honor. I'm not sure Mr. Hightower's question there. I'll object as compound.
THE COURT: All right. I understood although it was rather lengthy, but I overrule the objection.
MR. SMITH: Thank you, Your Honor.
Q: You can answer the question if you can.
A: I'm sorry, would you mind repeating it.
Q: Okay. The legislature passed on the regulations; you agree with that, correct?
A: The ---
Q: Let me restate. The regulations are the law, correct?

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A: I'm assuming so, yes, sir.
Q: Okay. Well, assuming that they are the law that governs the siting of animal facilities, you would agree that if the minimum setback from a residence is 1,000 feet, you are significantly further away from the facility than the minimum setback?
A: Yes, I'm outside the 1,000 feet.
Q: Okay. You were at the public meeting that was held in this case?
A: Yes, sir.
Q: And that public meeting was sponsored by the Department, correct?
A: Yes, sir.
Q: And Department staff was available?
A: There was probably six or eight of them.
Q: Okay. And Department staff, you know, explained a little bit about what was going on with the application and they provided the public with an opportunity to provide comments; was that correct or not?
A: Yes, sir. I was one of the ones to have an opportunity to comment.
Q: Okay.
A: I didn't get to complete my comments. One of

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the ladies there cut me off.
Q: Okay. Attorney Josh Smith was representing you at that time, correct?
A: Yes, sir.
Q: You're aware that he did put in a lengthy document he submitted into the Department with concerns about the facility?
A: Yes, sir.
Q: Do you believe -- were your concerns contained in that document?
A: I don't know that they were all in there because I'm not familiar with the law like let's say Josh and yourself might be. So what he -- you know, he may have put in what was pertinent to law and not necessarily my personal concerns.
Q: Okay. Well, you do know that the Department is required to review comments and to consider comments that are relevant to agricultural permitting?
A: Yes. There was -- one of the ladies there, again, stated at that meeting that when, not if but when, these were permitted that we would have an opportunity to fight it in Court. Or fight it; I don't know if she said Court;

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express our concerns. Whatever the words were at the end, I'm not sure was said, but I distinctly picked up that it was said when and not if.
Q: You had a discussion with Mr. Chaplin, didn't you?
A: I did after the meeting.
Q: Okay. And Mr. Chaplin, you're aware, reviewed these plans?
A: I am.
Q: At that time, did you convey your concerns?
A: Yes, I did.
Q: Okay. So it would be fair to say that the permit reviewer was aware of your specific concerns as expressed by you?
A: Yes, we had some discussion; not at length. We some discussion.
Q: He didn't prevent you from giving him information, did he?
A: No, sir. We had some discussion about why any best available control technology was not considered for these poultry industrial sites. Had a little bit of discussion about some lady that had used the manure bed or something to try to hold down odors, but we didn't get into

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it. I showed him a magazine, it was an air control -- air pollution type magazine and, you know, asked him why, you know, things weren't -- since these type technologies are available now and maybe not in the 1950's or '70s or '90s, why that that wasn't considered since they were such an issue.
Q: This magazine that you showed, was it specific to animal feeding operations?
A: Well, it dealt with omissions. I would have to look back to see if it dealt specifically with ammonia. But it dealt with scrubbers, and I know that a lot of industries now, due to regulations, have to use scrubbers when they omit particulate matter and also gases into the air.
Q: And those industries, you would agree, are regulated, correct?
A: Yes, sir.
Q: There are regulations that tell you what type of chemicals they can emit, what type of control technology they may use. If there are no control technologies for agricultural facilities, you would agree that the Department cannot ask somebody to do something that it

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cannot show is going to help in any way?
A: Well, yes, sir, that was part of our conversation is why not.
Q: And you were given an answer, correct?
A: Not necessarily an answer. That was about the time that our conversation came to an end, and the integrator made a point to come over my shoulder and tell Mr. Chaplin we appreciate you.
Q: Well, you are aware, I believe, at the beginning they probably told you how long they had access to the premises?
A: You mean the school?
Q: Yes.
A: I wasn't aware how long they had, but it did -- it was breaking up at that time.
Q: Okay. Now, you talked about air quality. You don't have any specific information that would show this facility will increase air pollution in the surrounding area?
A: I don't see how it can't.
Q: But do you have any specific information that shows it will, or is this based on just your belief?
A: Well, just the fact that it brings fresh air in

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and Mr. Parkhurst mentioned this morning that it spits out 20,000 to 40,000 cfm of air that has been -- that has this ammonia and compounds in it along with the feathers and the dander and the dust coming out of the fans, and honestly, to me this has to go somewhere. And by -- the confusing thing to me is, and again me being somewhat practical is, I'm really confused with why are we calling these no emission or no -- that type of wording on this type of industrial site, which it is.
Q: But it would be fair to say that you have no particular -- you cannot as you're sitting here today point to something specific that would show that there will be an increase in air pollution within the vicinity; is that correct?
MR. SMITH: Objection. Asked and answered. He just asked the same question he asked before, and Mr. Still provided a response.
MR. HIGHTOWER: He provided a long response; it wasn't a yes or no, and I'm trying to make sure. On cross-examination I believe I have the right to get a yes or no answer.
THE COURT: I'm going to overrule you and let him for forward.

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MR. SMITH: Yes, Your Honor.
Q: Yes or no, do you have, as you sit here today, any evidence to show that there would be an increase in air pollution as a result of the permitting of this facility?
A: No, sir, I'm not an environmental engineer.
Q: Finally, you're aware that stormwater, and that's water that would run off of the site due to construction and the placement of buildings is going to be dealt with in a separate permit? You're aware of that, correct?
A: Yes, sir. From work, I understand that. That's what they -- a civil engineer refers to as swips.
Q: Okay.
A: And I understand that is a separate, and always I've seen that it's very early in the engineering process.
Q: Maybe early in an engineering process for an industry, but it is a separate permit, correct?
A: Yes, sir.
Q: Okay. And you understand from listening to the testimony yesterday and today that the Sumerels, if they are issued a permit and they decide to go forth and actually construct their

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facility, will have to before they construct that facility get that stormwater permit?
A: The problem, sir, is yes ---
Q: Okay.
A: --- there's a lot of things that aren't in writing. Again, I'm very practical and when it's in writing, it makes more sense to me.
Q: But you've heard testimony from witnesses, including DHEC witnesses, that stated there -- that the Sumerels will have to get a stormwater permit before the construction of this facility; is that not correct?
A: I've heard that.
Q: Okay. And you don't have any independent evidence that would say that that representation is incorrect?
A: If I understand your question, no. No, sir.
MR. HIGHTOWER: No further questions.
THE COURT: Mr. Hite.
MR. HITE: Yes, sir, Your Honor.
MR. STILL - CROSS-EXAMINATION BY MR. HITE:
Q: Mr. Still, is this your property here?
A: Yes, sir.
Q: Okay. And is this also your property?
A: Yes, sir. This is property that belongs --

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it's in my wife and her father's name; the 038 parcel.
Q: But y'all cut off a portion of that property; is that correct?
A: That's correct.
Q: What's the purpose of that cut off?
A: Well, it was a gift.
Q: But isn't it true that in Laurens County under the taxation rules and laws this is still taxed at agriculture; isn't that true?
MR. SMITH: Object, Your Honor. The taxation of my client's land has nothing to do with this permit.
THE COURT: You went into it on the other witnesses. I'm going to overrule.
MR. SMITH: Mr. Hite went into it on other witnesses, Your Honor. I'd point out I never asked that.
THE COURT: You know you're objecting. I'm going to allow it here.
MR. SMITH: Yes, sir.
Q: Mr. Still, this property here can remain forest agriculture for tax purposes; is that correct?
A: My understanding is that I guess in Laurens County, and I don't know if it's statewide, but

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my understanding is that if it doesn't have a residence on it or it can be parceled off as agricultural.
Q: And so you actually paid an attorney for a surveyor to cut off a portion that encompasses your house?
A: Yes, sir.
Q: So that the remaining portions of your property remain forest agricultural tax based?
A: Yes, sir.
Q: And that saves you money?
A: Yes.
Q: And isn't it true that you want the benefits of living in the forest agricultural area, but you don't want a farm in the forest agricultural area?
A: Would you repeat that?
Q: Isn't it true that you're thankful for the benefits of living in a farm and agricultural area?
A: Yes, sir, that's why we moved there.
Q: Benefits such as the rural aspect of it as well as the lesser tax burden?
A: Yes, sir.
Q: But today you're testifying that you don't want

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a farm on near property in that same area?
A: No, it's what I don't want them to build on the farm. The farm's okay.
Q: Okay. Now, you also testified in this other picture that there were trees cut down. Is it your testimony today that these trees are no longer there? That's not your testimony today, is it?
A: No, sir. There are some trees up front that were left, and then, let's see, somewhere parallel or just a little, I guess if we call north to the top of the screen, somewhere parallel with our house, a little north of there, most all of the trees were cut off of that property back to -- back to the lake that looks kind of like a boomerang, if you will.
Q: And on whose property were those cut?
A: Margaret Sumerel.
Q: And you believe that it was clear cut?
A: No, I said it's close to clear cut but there are some trees left. They left some trees.
Q: Isn't it true that you initially thought when these farms, these barns were going to go in this field?
A: No, sir. I didn't know where they were going.

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We just were told that they were planning on putting them on their property, and not until we realized they'd sectioned off part of Margaret's property for Mike that it kind of come light where they were, you know, the general property that they were going on.
Q: And just so the record's clear, I want to make sure we understand. Your testimony is not that these trees between your house and the prospective barns has been clear cut, correct?
A: No, sir. Those between south of the house or just about parallel going across to Margaret, his mother's house, and then generally to his property line are still there.
Q: Thank you. Now, let's also talk about Dr. Parkhurst testified that generally wind direction's to the west; is that not true?
A: I think I understand -- my understanding is that prevailing winds are out of the southwest, yes.
Q: Okay. But Dr. Parkhurst said that it goes to the west ---
A: Yes.
Q: -- not -- that's what I remember his testimony to be; do you remember that?

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A: No, sir.
Q: Okay.
A: I don't.
Q: Which direction are your houses from the Sumerel prospective farm?
A: I'm confused on your last question. I thought you meant -- did you say the winds were coming from the west or going to the west?
Q: If you don't remember Dr. Parkhurst's testimony then that was the question, if you remember that testimony.
A: Okay.
Q: I'm not asking your recollection of the ---
A: Okay.
Q: --- wind direction. I'm just asking if you remember his testimony as I'd asked it.
A: Okay. Thank you.
Q: And I'm asking now are your houses to the east -- your houses are to the east, correct?
A: That's correct.
Q: Okay. And you now know from testimony that the prospective for the fans are on the northwest side of the prospective barns?
A: Yes, as of late yesterday.
Q: And that's away from your houses, or your home?

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A: It would be the direction away, yes, sir.
Q: Now, you were just testifying about going to the public meeting but not having an opportunity to -- or not having enough of an opportunity to speak?
A: Well, I didn't think that I'd gotten to the five minutes, but someone apparently thought it was time to cut me off.
Q: But isn't it true that you also submitted to DHEC a three-page letter to them with all of your concerns?
A: I gave that to Mr. Chaplin at the time I was cut off.
Q: Thank you.
A: He asked me for a copy.
Q: Now, y'all hired experts to come in on this case, didn't you?
A: Yes, sir. We spent a lot of money.
Q: And you paid those experts a lot of money?
A: We have to.
Q: And Dr. Hargett came, and he testified. You heard his testimony, correct?
A: Yes, sir.
Q: You were in the courtroom?
A: Yes, sir.

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Q: And the majority of his testimony was his major aspect -- I asked him your major concern with the property and with the permit is that it didn't properly address stormwater; isn't that true?
A: That was his concern, yes, sir.
Q: And now you understand that that -- he was also referring to an antiquated section of the regulations. Do you remember that part of his testimony?
A: Right now I'm not sure if that was Dr. Parkhurst or whether that was Dr. Hargett.
Q: Okay. And he also testified -- or he testified that he understood that stormwater permitting was a separate permit; isn't that true?
A: Yes, sir. I agree with that.
Q: And you also paid Dr. Parkhurst to be here?
A: Yes, sir.
Q: And Dr. Parkhurst when asked the question, did DHEC issue this permit improperly, he couldn't answer yes. Do you remember hearing that testimony?
A: Yes, I heard the testimony.
Q: And those are the people that you paid to be here to testify that the permit was issued

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improperly?
A: Yes, sir.
MR. HITE: No further questions, Your Honor.
THE COURT: Re-direct?
MR. SMITH: Very briefly, Your Honor.
THE COURT: What was rolled out on cross.
MR. STILL - RE-DIRECT EXAMINATION BY MR. SMITH:
Q: Mr. Still, do you consider this type operation to be farming?
A: No, sir.
Q: What do you consider it to be?
A: I consider it to be industrial just because of the capacity. I'm all for farming, free-range farming. And I know this is necessary for feeding; it's just we didn't feel like the placement was ...
Q: And do you recall Mr. Hightower asked you a lot about regulations?
A: Yes, sir.
Q: In your opinion, do you believe those regulations adequately protect the environment and your health and property?
A: I would not be here today if I felt that.
Q: And that is why you're here?
A: Exactly.

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MR. HIGHTOWER: Objection, Your Honor. Leading. Mr. Smith's question was that is the reason why you're here. This is direct testimony.
THE COURT: I feel it's harmless. I'm going to overrule the objection.
Q: And Mr. Hite, I believe, asked you about prevailing winds. From your understanding, what are the prevailing winds in your area?
A: I thought they were out of the southwest. We get winds from all the directions there, but typically, you know, in this part of the country we get things kind of coming across the southern states and sometimes up from the Gulf. We get northwestern and northeastern winds as well.
Q: So based on your experience on your own land, you get wind from all directions?
A: Yes, sir.
Q: And there's been a whole lot of discussion -- do you recall a lot of discussion about exhaust direction in this hearing and today and yesterday; do you remember that?
A: Yes, sir. I recall from going from not really knowing what direction to trying to firm up a direction. That's what I recall.

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Q: And why didn't you know the exhaust direction as someone who has looked at all the plans and the permit in this case?
A: I didn't see it written down.
Q: It wasn't -- was it anywhere in the plans?
A: I didn't see it.
MR. SMITH: Thank you, Mr. Still. That's all I have.
MR. HIGHTOWER: No re-direct, Your Honor. I mean no further cross from the Department.
MR. SMITH: Tombo?
MR. HITE: That's it. I'm sorry, I didn't hear you.
MR. SMITH: Petitioners rest their case at this time, Your Honor.
THE COURT: You may step down, Mr. Still.
MR. HIGHTOWER: At this time, Your Honor, the Department would just want to take care of a housekeeping matter. Joint Exhibits 16, which is the curriculum vitae of Stephen Smutz, Joint Exhibit 19, which is the aerial map that's displayed on the Elmo, and Respondent's Exhibit 1, which was the email and attachment that Mr. Chaplin testified that he sent to the Sumerels, the Department would like to make sure that they have been admitted into evidence by the

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Court.
THE COURT: I apologize, give me the numbers again.
MR. HIGHTOWER: I'm sorry.
THE COURT: I was looking for them.
MR. HIGHTOWER: Sure. Joint Exhibit 16, the CV for Mr. Smutz.
THE COURT: Nineteen.
MR. HIGHTOWER: And 19, which is the aerial map that's up on the Elmo right now. And Respondent's 1 is an email with an attachment. The email is from Mr. Chaplin to the Sumerels, and it's with regard to the need for them when they -- before they construct their facility to apply for and obtain coverage for a stormwater permit. And this is Respondent's Exhibit 1, which is the email.
THE COURT: Any objection, Mr. Smith?
MR. SMITH: No, Your Honor. And we just have one housekeeping matter of our own as well.
THE COURT: Let me admit these first.
MR. SMITH: Sure thing.
THE COURT: Joint Exhibits 16 and 19 and Respondent's Exhibit 1 are admitted without objection.
(Joint Exhibit Numbers 16 and 19 were admitted into

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evidence.)
(Respondent's Exhibit Number 1 was admitted into evidence.)
MR. HIGHTOWER: Thank you.
THE COURT: Now yours, please sir.
MR. SMITH: Yes, Your Honor. Your great court reporter brought to our attention Joint Exhibit Number 14, which is Dr. David Hargett's CV was presented but not asked to be admitted into evidence, and we would ask that it be admitted now.
MR. HIGHTOWER: No objection, Your Honor.
THE COURT: Joint Exhibit 14 admitted into evidence without objection.
(Joint Exhibit Number 14 was admitted into evidence.)
MR. SMITH: Thank you.
MR. HITE: Your Honor, I just have a couple of witnesses. I was wondering if I could just take a five-minute break to make sure I've got them in order?
THE COURT: It is 2:20. Let's come back at 2:30.
MR. HITE: Yes, sir. Thank you.
MR. HIGHTOWER: Thank you, Your Honor.
THE COURT: Be in recess.
(Break from 2:22 p.m. until 2:34 p.m.)

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THE COURT: Gentlemen, the court reporter called my attention to the fact that Dr. Parkhurst's CV was not admitted. We qualified him, but do you want to admit it as Exhibit 15?
MR. HITE: No objection.
MR. SMITH: Yes, Your Honor.
MR. HIGHTOWER: No objection, Your Honor. We agreed on ---
THE COURT: Okay. Without objection Dr. Parkhurst's CV is admitted as Exhibit 15 Joint Exhibit. Proceed.
(Joint Exhibit Number 15 was admitted into evidence.)
MR. HITE: Yes, sir, Your Honor. Your Honor, the respondents call Leon Fulmer to the stand.
LEON FULMER, being duly sworn, testifies as follows:
MR. FULMER - DIRECT EXAMINATION BY MR. HITE:
Q: Mr. Fulmer, please just state your name for the record.
A: Leon Fulmer.
Q: And what do you do for a living?
A: I'm an agricultural engineer.
Q: And what's your educational background?
A: I have a BS degree from Clemson University.
Q: Okay. Do you have any further education after that?

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A: No.
Q: And where do you work currently?
A: Currently I work with Shealy Consulting.
Q: Okay. Is that Joy Shealy's company?
A: Yes.
Q: Or the company ---
A: That's right. The company ---
Q: --- that you were previously working for, Joy Shealy, Shealy Engineering, LLC?
A: That's correct, yes.
Q: And you were a part of the company that built or constructed the plan in this case?
A: That's correct.
Q: And what else -- what is your work history prior to coming on as a consultant or coming on as an employee of Shealy Engineering?
A: Prior to, I was employed with DHEC in their agricultural permitting program.
Q: Okay. For how long?
A: From 1997 through 2006, somewhere in there.
Q: So since 2006, you've been with Joy?
A: Yes.
Q: Okay. And that DHEC job, was that permitting agricultural facilities like this one?
A: That's correct. I was a permit writer.

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Q: Were you the lead permit writer?
A: At the time we didn't have a lead permit writer. I was the full-time employee.
Q: So is that essentially Bill Chaplin's job now?
A: In essence, yes.
Q: And how long did you tell me you did that for?
A: From '97 through 2006.
Q: Nine years?
A: Yes.
Q: And what did you do before that?
A: I worked with WP Law, Incorporated. They were an irrigation company I did irrigation design work for farms, agricultural farms.
Q: And do you have a farm?
A: Yes, I do.
Q: What kind of farm do you have?
A: We do a lot. We have beef cattle; we do row crop. We sell fresh vegetables during the summertime. We sell hay, and we also grow birds for Amick Farms, broilers for Amick Farms.
Q: And how many houses do you have?
A: Right now we have one layer barn that we converted over from layers to broilers about five or six years ago. So we just have the one

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barn right now.
Q: And that's permitted via DHEC?
A: Yes, that's true.
Q: And that's the Department of Health and Environmental Control?
A: That's correct, yes.
Q: And just so you know, for the record we try not to use acronyms in the courtroom, okay?
A: Okay.
Q: If you can, anytime there's an acronym that comes up try and go ahead and fully define it.
A: I'll use the whole thing.
Q: And in your facility, did you actually unload broilers last night?
A: Yes, we moved birds last night.
Q: How often do you move birds?
A: About every 63 days. Well, 63 days is the full flock, but it will usually run about four to five flocks a year, so about every two to three months we're turning a flock.
Q: And tell the judge about in your experience as a farmer as well as permitting these types of facilities a little bit about how you would come about finding an average live weight on a mature chicken.

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A: Well, it'll be -- I guess the equation that you would use would be entrance weight plus the exit weight divided by two, would be how you would come up with the average normal production live weight for the farm.
Q: On an annual basis though, how does that fluctuate throughout the year?
A: Well, the exit weight is going to vary. One, it will depend on from one integrator to the next depending on what size bird the integrator wants at the time. They may have sales for larger birds so they'll keep them the full 63 days. If they have sales for smaller birds I may pull them a couple of days early. It's going to vary from the time of the year. During the wintertime whenever the growing conditions for the birds are good you'll get a heavier weight. It'll be, you know, nine, nine-and-a-quarter pounds. During the summertime whenever growing conditions are not quite as good you'll get a lighter weight bird; it will be eight-and-a-quarter, eight-and-a-half during the summertime flocks.
Q: Is eight-and-three-quarters a fair number for an average live weight?

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A: Absolutely. I mean, if you're -- typically right now the broilers that we're growing in South Carolina, that would be a good estimate of an average live weight for most any farm right now.
Q: And the flock that you just sent out to Amick Farms yesterday?
A: Yeah, I don't know the average weight, the exact average weight because they haven't given us those numbers back yet, but they had me projected at about eight-and-a-half to -- around eight-and-a-half pounds is where they had me projected.
Q: Thank you. Now did you have the -- did you go out and visit the Sumerel site?
A: Yes, I did.
Q: You're the representative from Shealy Engineering that visited the site?
A: That's correct.
Q: And did you review the site?
A: Yes.
Q: Tell the Court a little bit about what you did when you went out there.
A: Well, I meet with the owners of the property. They'll normally have an aerial map that I can

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look at and get an idea as to where they're wanting to locate the barns. And then I'll take a look at the site with them. We'll kind of get a little bit of an idea whether they can meet the setbacks or not and do a few preliminary sketches on a map to make sure that we think we can meet that. I'll, you know, look at the topography on the site, kind of get an idea about where the barns are going to be laying in, do I think it's going to work from the standpoint of the setbacks, the layout of the area, you know, where the residence is located. You know, are there any streams that may come into play that, you know, that we may be getting too close to. Things that would automatically jump out at you, you know, from looking at the site.
Q: And in your job have you had the occasion to go out to sites and say, yeah, this is not going to work?
A: Oh, yeah. Absolutely. I mean, I -- of all the sites I look at, you know, we probably -- I would estimate probably one in five actually gets to the point of getting a plan drafted. So you know, out of five sites you may look at

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four of them that just are not going to work, so.
Q: So it wouldn't surprise you that the DHEC approval rating is high on these permits?
A: Oh, absolutely. I mean, I -- you know, we're weeding them out, you know, before they ever get to that point.
Q: I do want to point out something to you. On Exhibit 1, this is the comprehensive nutrient management plan that was prepared by your employer, Shealy Engineering.
A: Okay.
Q: I'm going to show you on page one, actually, of the plan, but it's DHEC 12 on the plan.
A: Uh-huh.
Q: Could you read for me and the Court this sentence here, starting with "the birds."
A: "The birds will we brought into the house as chicks and confined for a period of 63 days or until they reach an exit weight of eight-and-three-quarter pounds."
Q: So the plan already specifies that they'll be held essentially until they reach a weight of 8.75 pounds; is that correct?
A: That's correct.

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Q: Okay. Now, on your facility where you operate broiler houses or house, do you have a vector and odor abatement plan?
A: Yes, we do.
Q: And you understand that inside this comprehensive nutrient management plan that was prepared there is a vector and odor abatement plan?
A: Yes, that's correct.
Q: And let's -- we might as well go ahead and flip to it. It starts on DHEC 37 here.
A: Okay.
Q: And it goes over to DHEC 38; is that right?
A: Yes ---
Q: And specifically -- I'm sorry.
A: Yes, yes.
Q: Does that specifically address insects?
A: Yes, it does.
Q: And rodents?
A: It does.
Q: As well as scavenging animals?
A: That's correct.
Q: And in the plan, is it possible for a plan to specifically identify and address every potential vector problem?

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A: No. No, there's no way a plan's going to address every possibility. I mean, every site's different, every farm's different, every barn's going to be different so ---
Q: And every vector problem is going to be different?
A: Absolutely. Absolutely. There's no way you can address every 100 percent possibility.
Q: And do you believe this plan is sufficient to layout a specific plan for the site?
A: Yes. Yes, I do.
Q: Now, while you were at DHEC, did you have an occasion to address stormwater permitting?
A: Yes. I did stormwater permitting for a short time right after I was hired at DHEC.
Q: What do you understand as the process for a farm such as the Sumerels to be fully permitted?
A: Well, to be fully permitted they will have to get a stormwater permit; land disturbance permit, whatever you want to refer to it as. That will be one of the permits they will have to obtain.
Q: But you understand that it's not contingent upon the agricultural permit?

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A: No, they're two separate permits.
Q: Did you see anything out at the site that would cause you concerns for the stormwater permitting?
A: No, absolutely not.
Q: There's also been testimony -- let's talk about the hay bale composting plan that's in the plan.
A: Okay.
Q: First of all, the plan calls for incineration or composting; is that true?
A: I believe that is correct, yes.
Q: And an addendum to the plan was filed as Exhibit 2 in this case, dead animal composting facility. Are you familiar with that document?
A: Yes, I am.
Q: Now, in your experience as a chicken farmer and your experience at DHEC, are you familiar with these hay bale composters?
A: Yes. Yes, I'm familiar with them.
Q: And do you know anybody that has one?
A: Yes, I do. I know a couple of people that have them.
Q: Okay. Tell the Court a little bit about that.
A: Well, the one individual that I probably know

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the best, he actually has a poultry farm, he grows turkeys as well as hogs; he grows hogs for Orangeburg Foods. And he actually uses his hay bale compost for both; for a short time he used it for the turkeys and the hogs together, and at this point right now, he's still using it for just the hogs.
Q: And as far as you can tell or under your understanding, it's properly permitted?
A: That's correct. That's correct.
Q: And do you know of any problems that he's had with it?
A: No. No. No, I questioned him as to whether DHEC had ever taken any issues with it or given him an unsatisfactory inspection because of it, and in his recollection he was not able to say that they did.
MR. SMITH: I'll object to any -- since this third party is not here in Court it's hearsay, Your Honor.
THE COURT: Sustained.
MR. SMITH: Thank you.
Q: You can't say what other people said.
A: Okay.
Q: After speaking with people and your own

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knowledge, do you believe there was any problem with the hay bale compost in the Sumerel plan?
A: No. No, I don't believe there were any issues with it.
Q: And in the hay bale composters in the state that you know about and that you've seen, are they operating with a clay floor or a concrete floor?
A: Clay base. Both of the ones that I can recall off the top of my head both have clay base.
Q: And one of them has been in operation for how long?
A: A little over ten years.
Q: With no roof over it?
A: No, no roof.
Q: Now I'm going to show you in the plan an appendix that's attached to the plan here. It's on DHEC 307; it's in Exhibit 2.
A: Okay.
Q: Do you see that diagram?
A: Yes, I do.
Q: Okay. Can you tell the Court essentially what that diagram is.
A: It's a diagram of basically how to layer the bin in a composter.

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Q: Thank you. And that would be -- that bin would be relevant in a hay bale composter?
A: Yes, it would.
Q: As well as a composter that's sided with what, wood?
A: Wood sides. Whatever type of confinement area you could use. It would be the same.
Q: And that plan and your plan has concrete at the bottom?
A: Yes, it does indicate concrete as a base.
MR. HITE: I beg the Court's indulgence for just one minute.
THE COURT: Yes.
MR. HITE: No further questions, Your Honor.
THE COURT: Cross-examination, Mr. Smith.
MR. SMITH: Thank you, Your Honor.
MR. FULMER - CROSS-EXAMINATION BY MR. SMITH:
Q: Good afternoon, Mr. Fulmer.
A: Good afternoon.
Q: Now, you testified you worked for the Department for nine years, correct?
A: Yes, I believe that's correct.
Q: In the ag permitting section ---
A: Yes.
Q: --- right?

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A: Yes, mostly.
Q: And do you recall Mr. Hite asking about the high percentage of these type permits that are approved by the Department, correct?
A: Yes, I believe that's correct.
Q: Did you have you any experience while you worked for the Department of there being complaints of odor and pollutants from these type operations?
A: There's -- yes, I mean, typically there are complaints come in about odors.
Q: Are there enforcement actions taken for these type of operations polluting the surround areas?
A: Generally the enforcement actions I was aware of were related to non-compliance with permits. I'm not aware of any enforcement actions related to actual pollution discharges.
Q: In your own broiler houses, what integrator are you working with?
A: Amicks. Amick Farms.
Q: Amicks?
A: Yes, that's correct.
Q: I couldn't hear you well.
A: Amick.

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Q: So not Columbia Farms?
A: No. No, it's not Columbia; Amick Farms.
Q: And I believe you said in your testimony that the integrator determines the average weight they want, correct?
A: Typically they will -- they don't necessarily dictate the exact weight, but they will determine exactly when they want the birds pulled from the farm, which normally will then dictate the live weight coming out.
Q: So what I'm hearing you say now is the growth cycle dictates the weight based on what the integrator classifies as growth cycle duration; is that fair?
A: That's part of the variable, yes.
Q: What's the other part of the variable?
A: Time of the year, the feed composition that they're on based on the time of the year, the -- how good the growing conditions were.
Q: Sure. Could you refer to me -- Mr. Hite looked with you, it's going to be Exhibit Number 1, DHEC -- when we say Bates stamped, I think Mr. Hite explained to you we're talking about the Bates in the bottom right corner. It says DHEC 12.

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A: Okay.
Q: And let me know when you're there, please.
A: I'm here.
Q: All right. And Mr. Hite highlighted that sentence, the birds will be brought into the houses as chicks and are confined for a period of 63 days until they reach an exit weight of eight-and-three-quarter pounds. Do you see that sentence?
A: Yes, I see that.
Q: Now how does anyone -- is it common for a grower to go in there and determine he's got an 8.75 pound bird, in this instance, and then tell the integrator to come pick it up, or does the integrator run on a 63-day growth cycle?
A: It's -- repeat your question.
Q: Sure thing.
A: I'm not following you.
Q: It's a bad question; I'll admit that. This plan's designated a 63-day growth cycle for these birds, correct?
A: Yes, that would be considered a maximum of 63 days. A general maximum of 63 days.
Q: So it's just a general fluid standard or direction in this plan?

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A: It would be a typical period of about 63 days.
Q: What's Mr. Sumerel's flock cycle duration?
A: About 63 days.
Q: About?
A: Based on what I see here.
Q: Okay. And in your experience has anyone as a grower gone in and weighed their chickens and gone off the duration cycle? Is that a standard practice?
A: There are scales. There are growers that have scales in their barns and will get an average weight of their birds as they grow based on what those scales will generate. And you can request that the integrator pull them early; that is a possibility, it could be done.
Q: Is it typical?
A: I'm not sure what you would define as typical.
Q: Is it common?
A: I'm probably not knowledgeable enough in order to answer whether it would be common. I mean, I know a lot of growers that have scales, and I know a lot of growers that will request them be pulled at a certain time.
Q: So you don't have enough knowledge or experience to comment on the duration cycle

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when they pull the birds?
A: I don't have enough knowledge to say whether that would be a common practice or not. I'm not sure how you would define common.
Q: It's much more frequent, let's say that. It's much more frequent for the integrator to abide by the duration, the flock duration cycle as laid out in the plan; is it not?
A: Well, the integrator will keep up with what the weight of the bird is throughout the flock. They'll come in and weigh birds periodically. And they'll base their time of birds to be pulled off of that weight. Generally, that will be a 63 period -- 63-day period, but it could be less.
Q: So is it fair to say your plan that you submitted to -- or your firm's plan, I don't want to say your plan, because ---
A: Right.
Q: --- I understand it's a plan that you helped prepare ---
A: Right.
Q: --- submitted to the Department just gives a general guideline; it doesn't determine the flock cycle?

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A: It is as accurate as what you could possibly get.
Q: Just one second. Let me look through my notes.
A: Okay.
Q: Now, based on some of the numbers you talked about in determining the average live weight, you said the low end numbers on average are going to be about eight-and-a-quarter to eight-and-a-half; is that right?
A: That would be what would be considered a typical low end, yes.
Q: And then you also just testified that the high end number's going to be between nine and nine-and-a-half pounds, correct?
A: It could be that high, yes.
Q: That's what you testified to; is it not?
A: Yes, that's correct.
Q: And what's that yield as far as an average weight based on those numbers?
A: I haven't generated that average.
Q: When you went out to the site visit for the Sumerel facility, do you recall that?
A: Yes.
Q: And you talked to Mr. Hite about that a bit.
A: Yes.

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Q: Any time in your site visit did you go and look for and identify intermittent streams?
A: Yes. Yes, we did walk down in the wooded area and evaluate approximately where we thought that area -- that wooded area would be -- excuse me, that wetland area would be.
Q: A wetland area or ---
A: The stream. The stream area.
Q: An intermittent stream or perennial stream?
A: Well, just any stream. I mean, I'm not going to make a determination on what's intermittent or ephemeral.
Q: Okay. Is it your understanding the regulations require you to identify and consider any downslope – intermittent streams that are from ---
A: That's a part of the permitting process, but that's not a part of the initial site language.
Q: And I'm asking you now as a whole in the permitting process, did you go out to the site or in any way identify those intermittent streams?
A: Yes. Yes, I will look at those stream areas while we're onsite.
Q: So you just said a second ago you did not look

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at them in the site evaluation. Now you just said you looked at them during the site evaluation. Which one?
A: No. No, we do look at the stream areas. That's one of the things I look for is where the streams are located onsite.
Q: Okay. I'm just having a little trouble following you. It might be my questioning, Mr. Fulmer. When did you identify and how did you identify the intermittent downslope streams in this particular operation?
A: At the site inspection. That's whenever I look at where the streams are located downstream from the facility.
Q: And did you find any on this facility or down the downslope area?
A: I looked at where the stream was located downslope. Yes, that's correct.
Q: Are there any?
A: There is a stream within the wooded area downslope from where the site's located, yes.
Q: And harking back to the lake a little bit because obviously that's a big issue in these, as you understand, because that affects setback distances, right?

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A: Correct.
Q: The Department doesn't issue a permit for a fair estimation of the average live weight, do they?
A: They issue a permit for a maximum allowable normal production live weight.
Q: And that's based on a specific calculation, correct?
A: That's correct.
Q: And the numbers you use in that calculation are going to have large implications on whether or not the site is feasible; is that fair?
A: That's correct.
Q: Now, Mr. Hite asked you about the vector abatement plan and the comprehensive nutrient management plan, I believe.
A: Okay.
Q: And let me find a reference for you. It's going to be on DHEC -- starting on DHEC 37, Mr. Fulmer.
A: Okay.
Q: If you could flip to that for me and let me know when you're there, please.
A: In Exhibit 1?
Q: Yes, sir.

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A: Okay.
Q: And on DHEC 37, and I think it goes on to -- through 38 there. Can you put out language in here or show me where it says what Mr. Sumerel and Ms. Sumerel are going to do to abate vectors on their facility, not what they might do?
A: All of these are things that they would do in an effort to abate vectors. I'm not sure exactly -- I mean ---
Q: Let me ask a different ---
A: --- what your question would be.
Q: --- question. Sure. I'll ask it a different way.
A: Okay.
Q: Is this essentially a form list of best management practices that could be employed to abate the vector problem?
A: There are measures that could be taken in order to abate a vector problem, yes.
Q: Yes, there are measures. I'm asking if this document right here and the things listed, is this a general list of some best management practices that may be implemented to abate a vector problem?

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A: Yes, I would say that would be accurate.
Q: Thank you. You talked a little bit about stormwater permitting with Mr. Hite; do you recall that?
A: Yes.
Q: Now, based on your experience with stormwater permitting, when the Department evaluates that permit, do they take into consideration any of the emissions from the poultry or the ag operation that's going to be on that site?
A: Not from a stormwater standpoint, no.
Q: Thank you. You said earlier, and I might have missed it Mr. Fulmer, how long have you been with Ms. Shealy at Shealy Engineering?
A: I believe since 2006.
Q: And tell me what y'all do as your business.
A: Well, we specialize in engineering services to the agricultural community.
Q: Is a primary part of your business doing permits similar to this one?
A: That's a good portion of it, yes.
Q: And as a business model, is it your goal to get a permit for your client, whatever you call them, customer, as quickly and as efficiently as possible?

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A: I think it would be the goal of any business to provide work as quickly and efficiently as possible.
Q: It's good business practice, right?
A: Well, like I said, you don't want to necessarily want to charge people for bad work, so.
Q: Absolutely. And in doing so, do y'all have a form plan that you utilize for these type permits?
A: To my knowledge, each one is written individually for the farm.
Q: Each one of your plans for any customer you're telling me today is written individually for that customer?
A: I don't deal -- your question would probably be better answered by Ms. Shealy, because I don't ---
Q: Fair enough.
A: --- deal with the writing of the plan portion.
Q: Okay. So Ms. Shealy's the one who actually writes these plans?
A: Based on she and I working together with the development, yes.
Q: In evaluating these sites as professional

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engineers, or Ms. Shealy being a professional engineer and you being an agricultural engineer?
A: That's correct.
Q: Do y'all consider the necessary grading that's going to have to happen to the site when evaluating it and in putting together the plan?
A: Yes. Initially whenever I do a preliminary site inspection I will try to get an idea as to where the barn area is located, what the orientation is going to be just to determine the general location of the barns.
Q: So you get a general idea where the barns might be, right?
A: In order to determine if we feel like they're going to fit, yes.
Q: All right. And you get a general idea of where they're going to be oriented, correct?
A: That's correct. That's correct.
Q: But at the time, and before you had this plan submitted, y'all didn't have in place any kind of grading plan for the Sumerel site; is that right?
A: Not at the time.
Q: And there's none today at this point, is there?

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A: No, there's no requirement for it to be there at this point.
Q: Sure thing. And obviously it wasn't in consideration when you did the plan and evaluated the site?
A: Other than my own personal experience of looking at the site, no.
Q: Sure. That's all I have for you right now, Mr. Fulmer. Thank you.
THE COURT: Mr. Hightower.
MR. FULMER - CROSS-EXAMINATION BY MR.HIGHTOWER:
Q: Mr. Fulmer, as part of the management plan, do you look at NRCS requirements?
A: Yes.
Q: And NRCS is the National Resource Conservation Service, correct?
A: That's correct.
Q: Part of the United States Department of Agriculture?
A: Yes, sir.
Q: Okay. And there are certain practices that they require in management plans for poultry facilities, correct?
A: If -- that's correct. If we want our plan to meet their standards then, yes, there are

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certain things we have to meet.
Q: Okay. So if one plan or -- strike that. So would it be fair to say that requirements that NRCS requires or the Department requires are going to show up in basically every plan, correct?
A: Absolutely. They're going to be the same requirements for most any plan.
Q: Okay. But there are differences because farmers have different integrators, correct?
A: That's correct, yes.
Q: And you do to the extent that the integrators have requirements that do not conflict with the regulatory requirements, you do incorporate them, correct?
A: Yes, that's correct.
Q: Okay. When you look at the average live weight, you stated that the integrator gives you a time for the flocks, and they give you what at that time they believe would be the weight of the birds, correct?
A: That's correct, yes.
Q: And it is just an average, correct?
A: That's correct.
Q: So I believe in your direct testimony you had

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stated that you have to look at the time of the year also as part of the requirement?
A: Come up with a reasonable average, yes.
Q: Would it be fair to say that birds in the summer are going to be smaller than birds in the wintertime?
A: Yes, that's correct.
Q: So but if you averaged up those flocks throughout the year, it's going to come to a certain number, correct?
A: That's correct, yes.
Q: And that number's reflected as the live average weight, correct?
A: That's correct. That's the intention, yes.
Q: Okay. You stated that you've operated -- let me strike that. Did you testify that you personally have operated a hay bale composter?
A: No, I have not personally operated one.
Q: You know of people who have operated that?
A: Yes, I've worked really closely with a guy that has one and manages it, yes.
Q: And does he have a -- some type of roof structure over that?
A: No. No, it is open.
Q: To the best of your knowledge, has he ever had

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any problem with rain getting onto the composter and somehow affecting the compost inside?
A: No, not to my knowledge.
Q: Okay. And you said that approximately four out of every five sites that you go out on you've turned down, correct?
A: Generally that's the case. I mean, we'll get requests for people that just obviously have a site that's not going to work.
Q: But it's safe to say that a significant number of sites that you have gone out on to do a site inspection, you have found some problems with it and have told the potential applicant this won't work, correct?
A: Yes, that's true.
Q: Okay. And that could be for various reasons like setbacks to waters of the state, setbacks to residences, property line setbacks, things like that, correct?
A: That's correct, yes.
Q: Okay. And in this case, you didn't find any of those problems; is that correct?
A: No, no that is correct.
Q: With stormwater permitting, you've stated that

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that's a separate permit, correct?
A: That's correct, yes.
Q: And when you go out to a site you're cognizant that they have to get that separate permit, but you're not specifically looking at how you're going to address all the potential stormwater issues; would that be correct?
A: That's right. We're not evaluating it to that extent at that point, no.
Q: That gets evaluated when and if the applicant gets a permit and has the authority to go ahead and construct the facility, correct?
A: That's correct, yes.
Q: And at that time they go to an engineering firm, it could be yours or any other to get specific site plans for the grading of the facility; isn't that correct?
A: That's correct, yes.
Q: And those plans you actually have engineering drawings, correct?
A: Yes, that's correct.
Q: And you have what is called a stormwater pollution prevention plan, correct?
A: Yes, that's correct.
Q: And that could be something -- sometimes

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they're in looseleaf binders like this and they tell you how you're supposed to sequence doing things and what practices you will use in different areas to deal with specific problems that a site has, correct?
A: That's correct.
Q: Based on your site visit at this site, do you believe that there's any problem that would come up in grading that could not be addressed with an engineered solution?
A: No. No, certainly not. I don't see any reason why it couldn't be graded.
Q: Okay. And as you pointed, out the Sumerels applied for authorization to either use an incinerator or to compost the mortality of the birds?
A: That's correct.
Q: Okay. One moment. And you stated that when there are compliance issues, the Department does in appropriate cases seek and take enforcement action?
A: Absolutely.
Q: Okay.
MR. HIGHTOWER: One moment, Your Honor.
Q: Mr. Fulmer, you're familiar with the setback

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distances from waters of the state, correct?
A: Yes, that's correct.
Q: Isn't it true that the setback distance from a perennial stream is identical to the setback from an intermittent stream?
A: That's correct, yes.
Q: Okay. Same thing with ephemeral streams, correct?
A: Yes.
Q: So even if they're not classified maybe scientifically, if they are waters of the state, you've identified them on the site, correct?
A: That's correct, yes.
Q: And they would have the same regulatory setback?
A: Yes.
Q: And that setback is 100 feet, correct?
A: That's correct, yes.
Q: Okay. And in this case, the setback, or I should say the distance from the closest waters of the state, was greater than 100 feet?
A: I believe that is the case, yes.
Q: And just in case you need to refresh your recollection, you could look at Joint Exhibit

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1, and it would be DHEC Bates stamp number 21. And if you look at section five it says, waters of the state located downslope ---
A: Yes.
Q: --- 100 feet is required, 150 feet is there.
A: That's correct.
Q: There are no standing resource waters, critical habitats for endangered species or shellfish harvesting waters located nearby?
A: No.
Q: And then for ephemeral or intermittent streams located downslope it's 100 feet and the actual distance is 150, correct?
A: Yes, that is correct.
MR. HIGHTOWER: Okay. No further questions.
MR. HITE: No redirect, Your Honor.
MR. SMITH: I have a couple more questions if the Court will allow.
THE COURT: Yes.
MR. SMITH: Thank you, Your Honor.
MR. FULMER - RECROSS-EXAMINATION BY MR.SMITH:
Q: We'll be brief, Mr. Fulmer.
A: Okay.
Q: Can you flip with me to DHEC 1 -- excuse me, Joint Exhibit 1, DHEC 27. And you testified

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earlier that these plans are shifted around for the particular integrator; is that right?
A: In what way? I mean, yes, they're going to be somewhat particular to the different integrators.
Q: Right. But my understanding from your earlier testimony was many aspects of this are controlled and integrator specific; controlled by what the integrator wants. Is that fair?
A: Yes, I would say so.
Q: Okay. If you look for me down, it's DHEC 27 at subpart four right there, subpart B, what integrator is plainly identified as the integrator for the Sumerel site?
A: Subpart four?
Q: Yes. For catastrophic deaths, disaster related, 4B.
A: Perdue Farms.
Q: Columbia Farms is the integrator, isn't it?
A: At that time, yes, it was I think Columbia. Or at the time the permit was issued I think it was Columbia.
Q: Okay. Thank you. Now, were you here earlier during Dr. Parkhurst's testimony?
A: No, I was not.

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Q: You were not. Are you aware of some kind of a weekly work average live weights of birds that's issued by some conglomeration of integrators?
A: No, I'm not aware of that.
Q: Does the Sumerel site, is it fair to say, has a large amount of -- large number or area of waters of the state in the US in proportion to what is normally permitted?
A: No, I would not say that's a large amount.
Q: And can you identify for me, and you can use any exhibit you've got in front of you -- excuse me -- in front of you or any materials that you've used and are in evidence here, can you show me where the intermittent streams you testified you identified are on the Sumerel property?
MR. HITE: Objection, Your Honor. I think the testimony was that he was not going to say whether it was intermittent or annual or other words. I mean, I don't think he ever said they were intermittent.
THE COURT: He can show where they are.
MR. HITE: Okay. That's fine. I just didn't want there to be a misstatement of his previous

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testimony.
MR. SMITH: That's fine, I'll clarify.
Q: You understand the regulations require the identification of intermittent streams as well as perennial streams ---
A: Correct.
Q: --- for a first site plan, because there is 100-foot setback for each under the applicable regulations, right?
A: Waters of the state carries a 100-foot setback, yes.
Q: And the regs also require the 100 foot from any downslope intermittent intermittent streams?
A: Intermittent is considered to be waters of the state, yes.
Q: Okay. Thank you. I wasn't clear on that. So can you show me on this map that's up in front of you here or anywhere in the plans that you have in front of you where you identified those streams and where they're denoted on these maps?
A: Well, the stream that I would have looked at is directly to the east of where the barns are located.
Q: Okay. And you can actually -- it's a

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touchscreen; you can draw on it if you don't mind, best you can; it's difficult.
A: Yeah. The nearby stream that we looked at would be directly in, I guess in this area (indicating).
Q: Okay. And based on this map and your analysis, is that stream -- does that interconnect all those larger waterbodies as ponds?
A: There was a drainage-way located there.
Q: Okay.
A: Does that answer your question?
Q: It does. And you mentioned you have one house on your own property; how close do you live to it?
A: I live three miles from that house.
Q: And do you ever smell it at your house?
A: Not at my house, no.
Q: Do you smell it within a mile?
A: No, you would not smell it a mile away.
Q: Based on your experience with, say, you had four houses, could you smell that within a mile?
A: No, you should not be able to smell it a mile away.
MR. SMITH: That's all I have for you. Thank you.

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MR. HITE: No questions.
MR. HIGHTOWER: No questions, Your Honor.
THE COURT: You may step down, sir. Thank you.
MR. HITE: Your Honor, the Respondent calls Joy Shealy to the stand.
THE COURT: Be sworn, please, ma'am.
JOY SHEALY, being duly sworn, testifies as follows:
MR. SHEALY - DIRECT EXAMINATION BY MR. HITE:
Q: Please state your name for the record.
A: Joy S. Shealy.
Q: And what do you do for a living?
A: I do several things. I work for the Department of Transportation as a project manager, and I also still work for -- the company is now Shealy Consulting; it was purchased, and under our merger agreement I'm still employed there during the transition period.
Q: How long have you been in that business?
A: Well, it was Shealy Engineering before. I started that business in 2004.
Q: What did you do -- how long have you been with the DOT, the Department of Transportation?
A: About five years.
Q: And what did you do before that?
A: Before the DOT?

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Q: Yes, ma'am.
A: Well, I was doing Shealy Engineering; I was running that business from 2004. Until about 2009, I was still running that business while I was working at DOT, but I started DOT in a temporary position. We just didn't have a lot of work going on with Shealy Engineering so I had to take another job, and here recently, I've taken on a full-time position at DOT. So I sold the business, but I'm still working with the new owners during the transition period.
Q: And prior to that employment at Shealy Engineering and part time at DOT, Department of Transportation, where did you work?
A: I worked for DHEC. And I started out there in 1997. I worked for a year in the stormwater permitting, and then in '98 I went to work for the agricultural permitting, and I was there for probably six-and-a-half years. So I was there for seven-and-a-half years; just a year in stormwater and then six-and-a-half years in agricultural permitting.
Q: So you've also worked alongside Mr. Fulmer?
A: Yes.
Q: And did you ever work alongside Mr. Chaplin?

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A: I don't think so, no. I think he was at -- he may have worked at DHEC, but he didn't work in the agricultural.
Q: Okay. So in your professional career, you've actually evaluated and issued these agricultural permits?
A: Yes, sir.
Q: And where did you get your education?
A: Clemson University.
Q: And what is your highest level of education?
A: Bachelor of science degree in agricultural engineering.
Q: Do you hold any professional engineering licenses?
A: Yes.
Q: And tell the Court about what that license is.
A: I have a PE license in South Carolina, and I'm also licensed in North Carolina and Georgia.
Q: And did you use that license as a portion of preparing this plan?
A: Yes.
Q: And does the state require you to have a license to facilitate the growers with these plans?
A: Yes.

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Q: And what other requirements does the state have in terms of submitting these plans in terms of who can submit them? If you know.
A: Well, as far as I know, they require a PE to stamp the plans.
THE COURT: And that stands for professional engineer?
MS. SHEALY: Yes, sir.
Q: I'm sorry. Let's try not to use acronyms.
A: I'm sorry.
Q: I do it too, so. Did you have the occasion to represent or work for the Sumerels?
A: Yes.
Q: Tell the Court a little bit about your involvement with Sumerel plan.
A: Okay. Well, I do all of the mapping and putting together the actual plan. And so -- I mean, I had multiple conversations with them as well, answering their questions and talking about different options and things like that.
Q: And understanding the regulations, you feel qualified to perform that operation?
A: Yes.
Q: And when you created the maps, where do you get the information that goes into designating what

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we've referred to as waters of the state?
A: Well, we use digital mapping, so typically when I start to prepare maps I pull USGS, I pull National Wetlands Digital Inventory, which is their classification of wetlands and wet waters of the state, and then we also ---
THE COURT: Excuse me, you sort of chewed your words there. Something about wetlands and waters of the state, can you repeat that, please?
MS. SHEALY: Okay. The National Wetlands Inventory.
THE COURT: Yes.
MS. SHEALY: It will have -- in my experience it's marking wetlands but also waters of the state are considered wetlands. so many times it will cover both.
THE COURT: Thank you.
A: And we also use the field notes from Leon's site visit. And nine times out of ten, Leon's field notes will match up to what I'm finding on the digital inventory when I bring everything in. If there is a question, if he's marked something that doesn't show up on my inventory, then generally we bring in a sub-consultant that is a certified wetlands delineator that can go out there and make the

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call.
Q: Did you do that in this case?
A: No, there were no questionable areas in this case. All the areas that Leon had identified as wetlands on the site were already inventories in the databases, so we felt like there was -- it was covered.
Q: And from these maps you -- did you create this map that's DHEC 108 that's on the teleprompter now?
A: Yes.
Q: And can you tell the Court what these blue lines are?
A: Yeah. When we -- we bring in the digital wetlands inventory, and then what I do is I digitally draw a setback of 100 feet. So the system actually generates it, I just tell it how big to make the setback, and it basically buffers it and puts that setback on it so we can see the area that we don't want to get into; we need to stay out of that wetland area.
Q: And when you say don't want to get into, are you saying that you don't want to have a footprint of the buidling in that area?
A: Correct. We're not allowed to.

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Q: And why not?
A: Because of the DHEC setback regulations.
Q: And those are the state regulations?
A: Yes, sir.
Q: Okay. And this area here has the setbacks that are accurate?
A: Correct, yes.
Q: And through this drawing, can you testify that these houses are not within that setback?
A: Correct.
Q: What is it -- how do you define waters of the state? You testified that you use the maps, is that ...
A: Yes. I mean, we use visual -- I mean, there have been cases where we've gone out and observed wet areas and then gone back and looked at the maps and it's not on the map. So maybe there's some question; we need somebody to go out there that's qualified to go out there and make the call on whether it's waters of the state or not.
Q: And in this case like you said, it wasn't any close enough to ---
A: No, we had -- this was not the case in this situation; we didn't have any areas that

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required that. But generally, if we did we would get, like I say, a certified sub-consultant; there are several that we use. And then we would submit that as a part of our application to DHEC, and DHEC would either concur or not concur with that evaluation.
Q: All right. Tell the Court a little bit about -- let's talk about Joint Exhibit 1, which is the comprehensive nutrient management plan that's in front of you.
A: Okay.
Q: Can you tell the Court a little bit about how you've come to create these plans.
A: Okay. You know, we've done it different ways over the years. I think initially when I started the business I kind of came up with my own thing. I did that for a little while, but we found that NRCS, which is Natural Resource Conservation Service, they're the leading authority; they're the people that actually have been doing this type of engineering work for years and years before us. The only way -- the only reason I was able to start a business was because they stopped doing engineering work for free for this industry. So they are the

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leading authority on this type of work. But they came out -- shortly after I started my business, they came out with the comprehensive nutrient management plan. It was what they started requiring for all farmers that participated in USDA Natural Resources Conservation Service programs; they have lots of different programs and services. So -- and if you read the regulation, the regulation refers in numerous places that certain items have to meet Natural Resources Conservation Service requirements. So they go hand-in-hand. A lot of our clients needed plans that met this. DHEC, you know, we already had to meet their requirements on certain items, so we ended up going to start using the comprehensive nutrient management model, the plan model. Lots of other consultants in other states use this model, and so we started using that. It's not that different from what we were using before, but it's basically a model and you go in there and, you know, add certain things. There's optional things that you can go in there and add based on what that particular farm wants to do or how they want to operate.

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They have some choices in certain things, and so we go in and make it specific for that farm.
Q: And so would you say that your plan models the regulations?
A: Yes.
Q: And if you can with me flip to -- it would be DHEC 12.
A: Okay.
Q: It's the first page of the plan. What -- would this be a summary sheet? What would this be, a cover sheet?
A: I would call the first page a cover sheet, but ---
Q: All right.
A: --- this is basically just a project narrative, project description and, you know, basic contact information. You know, gives you all the locations, you know, watersheds, things like that.
Q: Tell the Court where you would have gotten the numbers that are written in the final paragraph as it relates to the exit weight, amount of days that the broilers would be there. Where would you have gotten that information?
A: That's part of the information that we gather

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when we go out and meet with the client on the site. In regards to weights and confinement periods, generally that comes from the integrator. That's provided to the farmer.
Q: And in this case, where did that number come from?
A: Columbia Farms, I believe.
Q: Okay. And let's flip to page 22 of the plans, DHEC 37 as a Bates number. Bates number 37.
A: Okay.
Q: Tell the Court what 7.2 is.
A: This is the operation and maintenance plan.
Q: What is 7.2 of that operation and maintenance plan.
A: Oh, I'm sorry, vector control and abatement plan.
Q: And again, that section covers insects, rodents, as well as scavenging animals?
A: Correct.
Q: Would you consider this a site-specific plan?
A: No, this is not necessarily site-specific; this is more just general, you know, farms of this nature typically may encounter these issues, and these are best management practices that you can use in order to prevent these issues

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from occurring.
Q: But each potential vector is listed there?
A: Yes.
Q: And practices or steps or remedies are doing -- designated underneath each one?
A: Correct. You can't necessarily predict in a certain area, you know, what exactly they're going to be dealing with, but at the bottom of this plan it does refer them to their local Clemson Extension office. And that's typically the service that extension agents will serve to help them identify if there's things in here, you know, or maybe something comes a long that they're not familiar with or these things aren't working, they can go for additional guidance on that.
Q: And then on page that's marked DHEC 47. 7.6, what is that subject line there?
A: That's the site-specific vector and odor abatement plan.
Q: And those are specific tools or treatments that are permitted by the integrator; is that correct?
A: Correct.
Q: And this would qualify under the statute for

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site-specific odor and abatement plan?
MR. SMITH: Objection, Your Honor. It's leading.
THE COURT: Sustained.
Q: Let me rephrase that. What is the purpose of 7.6?
A: To meet the requirement for a site-specific vector and odor abatement plan.
Q: Do you believe it does?
A: Yes.
Q: We also, or you also submitted on behalf of the Sumerels what's called a dead animal composting facility management plan; is that correct?
A: Correct.
Q: And the plan calls for either incineration or, pursuant to this dead animal composting facility management plan, a hay bale composter; is that accurate?
A: Yes.
Q: And was your desire in creating this plan to articulate the actions of the hay bale composter or the actions that need to be taken on behalf of the Sumerels for the hay bale composter?
A: Yes, it's a management plan for that operation.
Q: And if a hay bale composter is operated

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properly, would you suspect any problems with it?
A: No.
Q: Do you feel comfortable with the plan that's provided for DHEC?
A: Yes.
Q: And if the Sumerels follow that plan, would it operate properly?
A: Yes, it should.
Q: And not discharge any pollutants?
MR. SMITH: Objection. Again, Your Honor, it's leading.
THE COURT: Sustained.
Q: Would a hay bale composter in general or at the Sumerel site if it's operated properly discharge anything?
A: It shouldn't.
Q: I would lead you to -- or show you to DHEC 151. Do you have that one?
A: I ---
Q: It's in this one.
A: Oh, sorry.
THE COURT: Which exhibit is that in?
MR. HITE: I'm sorry. I have a different Bates stamp number on mine. Let me find it in ---

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THE COURT: Are we still talking about dead animal?
MR. HITE: I'm talking about Exhibit 2, Your Honor.
THE COURT: I have Exhibit 2. Mine starts at 284.
MR. HITE: Yes, sir. And we're looking at DHEC 307.
Q: Do you see that diagram on DHEC 307, Ms. Shealy?
A: Yes.
Q: And is this diagram consistent with any composting plan?
A: For bin composting systems, yes.
Q: And it would be the same consistency for a hay bale composter as well?
A: Yes. Regardless of what you construct your bin with, this would be the layering recommendations.
Q: In this Exhibit 2 that we have in front of us I want to draw your attention to what's -- I've got a different number, I'm sorry. Let me find it in yours. It's DHEC 299. And what is -- can you show the Court or tell the Court in DHEC 299 what that rectangular object is at the top of the houses?
A: Per the key, it's the location of the hay bale composter.
Q: Okay.

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THE COURT: Are we certain that's the same as DHEC 307?
MR. HITE: No, sir. It's DHEC 299.
THE COURT: My DHEC 299 is ...
MR. HITE: And she was testifying, Your Honor, to the location of the hay bale composter.
THE COURT: I see.
Q: Ms. Shealy, I'm also going to direct your attention to, of this plan, it would be -- it's DHEC 292. And if you could, Ms. Shealy, read that last paragraph there.
A: "Specific actions for abatement on this form are outlined in the integrator-specific odor and vector abatement plan, which is included in appendix D of this plan."
Q: Okay. Could you flip to appendix D for me in this plan. And is that the odor and abatement appendix that you thought it was and directed it to?
A: No. No.
Q: And can you explain ---
THE COURT: Give me the Bates number on it.
MR. HITE: I'm sorry. Bates number DHEC 318.
A: That was obviously an error.
Q: You just made a mistake in this aspect?

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A: Yes.
Q: But the plan that you referenced, is it in the comprehensive nutrient management plan?
A: It's exactly the same one that we provide. It just has the methods that that integrator has approved for that farm.
Q: So it's already provided?
A: Correct.
Q: And that's not a defect in your plan that that was a -- that mistake was made?
MR. SMITH: Objection, Your Honor. That's leading.
THE COURT: Sustained.
MR. HITE: I don't need to ask that one. I beg the Court's ---
THE COURT: I need to ask what's supposed to be on DHEC 318?
MR. HITE: I can ask that, Your Honor.
THE COURT: She said it was an error. What's supposed to be there?
Q: What is supposed to be at 318?
A: The way it should be is appendix D should be the site-specific odor and abatement plan, and then we should have made appendix G the sample record-keeping forms.
Q: And appendix D is located -- the document that

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was supposed to be at appendix D is located somewhere else in the plan?
A: It's in the main -- it's in the comprehensive nutrient management plan.
Q: So it does contain that document?
A: Correct.
Q: Okay.
THE COURT: Let's identify it.
MR. HITE: Okay. I'm sorry.
Q: On page DHEC -- in Exhibit 1, I'll draw your attention to DHEC 47 in Exhibit 1. And Ms. Shealy, are you there yet?
A: Yes.
Q: Is that the document that would be attached as Exhibit D?
A: That's correct. That's the site-specific vector and odor abatement plan.
THE COURT: Thank you.
MR. HITE: No further questions, Your Honor.
THE COURT: Cross, Mr. Smith.
MR. SMITH: Yes, Your Honor.
MS. SHEALY - CROSS-EXAMINATION BY MR. SMITH:
Q: While we're on it, Ms. Shealy, just keep 47, DHEC 47, right there in front of you. You got that open?

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A: Yeah.
Q: Now, you testified just a moment ago this is exactly the same one we provide for the integrator; isn't that right?
A: I don't provide these to the integrator. The integrator provides them to us.
Q: Right. And I might not have spoken clearly. Your testimony was this is exactly the same one we provide for the integrator. Do you recall that?
A: I don't -- if I said it that way that's not what I was trying to communicate, because we don't provide -- we don't write these site-specific plans.
Q: Yeah. Let me ask a better question. Does that sound good?
A: Sure.
Q: What's labeled as site-specific odor and vector abatement plan here at DHEC 47, does this always look the same if it's Columbia Farms as the integrator?
A: Yes.
Q: Thank you. And on DHEC 47, where does it say what the Sumerels are going to do on their site specifically, not what they could do or what is

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approved?
A: These are the integrator-approved methods that they can use on their site.
Q: Okay. And that's what they are?
A: Yes.
Q: Fair enough. You never visited the Sumerel site in person, did you?
A: No.
Q: You send Mr. Fulmer out to do that work?
A: Yes.
Q: And you mentioned earlier he had some field notes ---
A: Yes.
Q: --- on the Sumerel site he provided to you?
A: Yes.
Q: Did you ever provide those to the Sumerels?
A: They may have seen them when Leon was out there taking the notes, because he was meeting with them when he was making all those notes, but no, we don't make copies and provide them to the Sumerels.
Q: That's fine. It's not typical for you to provide them to the clients?
A: No. I mean, it's what we use internally to go back and write our documents and put our

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documents together.
Q: Sure. And you mentioned your former works with DHEC. If I had the dates right, are these right, you were there from '97 through -- what year did you leave DHEC?
A: 2004.
Q: So you spent six years as you testified, six-and-a-half years in the ag permitting section, correct?
A: Correct.
Q: And in that time, how long was Regulation 61-43 applicable?
A: I was involved with the promulgation of that regulation during my employment there. So I think that regulation came into effect maybe '98. I'd have to look at that.
Q: That sounds about right. Okay. Since you were involved in the promulgation of the regulation, can you tell us how it was determined that the 200 feet from a property line was an appropriate setback?
A: I don't know that I was involved with choosing that distance. I think this regulation that's in effect now was based on some previous guidelines that had some setbacks in them, and

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it's been a long time. I don't remember if that was the same setback that was applied earlier and that we just carried it over in the regulation or if it was something that we talked about and promulgated during that process.

Q: So is it fair to say that you can't testify as to the reasoning and scientific evidence behind these particular setbacks today?

A: I don't know that there is any scientific evidence behind them.

Q: Thank you. When you're putting together the maps for these type operations, tell me how you ensure that the barns drawn on them are to scale.

A: We draw everything digitally. So, I mean, it's a GIS mapping system. So all I have to have is a starting point, and I tell -- I'll tell the system how long to make the barn; if it's 500 feet or whatever it is, I enter that distance and it draws a line that distance, and I just line it up. And then I tell it how wide and it draws that distance.

Q: And as far as separation distances between the barns, how is that measured -- excuse me -- and

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determined?

A: Everything we do is digitally, so we offset it digitally a certain number of feet to the next barn.

Q: On the Sumerel site, how far is the barn -- what's the barn separation on the Sumerel site?

A: I have to look in here to see to remember correctly. Usually we note it at the top of the map, but I can't see that on here.

Q: You're welcome to look through the plan and find a place where you think that number would be.

A: It looks like we state 55 feet.

Q: Separation distance?

A: Yeah, on the top of that map.

Q: And when you're mapping these things you ensure that there's 55 feet separation distance on the barns?

A: That's how we draw the distance they tell us they want to separate.

Q: And earlier in your testimony we were talking about these plans in general, you said you utilize -- I forgot the acronym now -- the Natural Resource Conservation, their form plan?

A: Correct.

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Q: Model plan, I think is how you ---

A: Correct.

Q: And tell me what you did specifically for the Sumerel site that wasn't part of the form plan that you utilize?

A: Well, the Natural Resource Conservation Service basically has a software program called AFOPro; that's what we use to create these plans. You go in and enter -- it's like -- I think it's off Microsoft Access, so you're basically going in and entering all the site-specific information and it creates the basic template plan based on that.

Q: And what site-specific information did you enter for this plan?

A: I mean, everything that the program asks you for. Pretty much everything that we take in field notes. I don't know that I can sit here and go line by line without something in front of me to look at.

Q: What would you need?

A: Well, I mean, you can pull up the program and it has a prompt screen; everything -- you enter information on every screen and then go in. We further do work on it after it comes out of the

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program just to make it a better and easier to use plan. But in order to meet NRCS requirements, we have to have their basic information from their recommended CNMP plan in order to meet their requirements. So that's why we start at that point and then we move forward from there.

Q: And you understand you're here to testify as to what you did as far as putting together the Sumerel plan today, correct?

A: Right.

Q: And the only source of information for me to get that today is asking you what did you do specifically for this site. So is it fair to say that you also did the maps ---

A: Right.

Q: --- site-specific?

A: Right.

Q: All right. You put in the numbers for the chickens and the weight site-specific?

A: I mean, if you want to go through the plan page by page ---

Q: I do.

A: --- I can tell you.

Q: I know no one else in here probably wants to,

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but I want to know what you did site-specifically for this plan.
A: I mean, if you look on DHEC 12, almost every single thing on this page is something that I entered specifically.
Q: Okay. Let me flip to that with you. Okay. So address?
A: Everything. Your things that are lined up on your left-hand column are just the, you know, description of what I entered, but everything that's to the right of those -- that, you know, description is site-specific information I entered.
Q: Okay. And the majority of the rest of the plan is the form NRCS plan?
A: No. I mean, we can go through it page by page.
Q: I think we got the point. That's all right.
A: Pretty much DHEC 15 is a signature page; that has some site-specific information in it, but the, you know, it's mainly for signatures and certifications.
Q: Now back to 12 real quick.
A: Okay.
Q: We don't have to go through each one, but let's go back to 12. Where do you get part of this

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information; from the integrator, as far as the weight of the birds?
A: All of the information I use here -- I mean, some of it I'm pulling from my digital information ---
Q: Yeah.
A: --- such as watershed, flood plain, coordinates, hydrologic unit code, looking at zoning restrictions. Things like that I'm pulling from my research.
Q: I don't mean to interrupt you. Going down specific item on this, talking about the weight, okay.
A: Okay.
Q: Now this weight you get, do you get it from -- you said -- you testified earlier that you got it from Columbia Farms, right?
A: I do not get it specifically and directly from Columbia Farms. When we meet with a client in the field, they already have talked to the integrator they wish to go with.
Q: Okay.
A: And that integrator has provided them with a spec sheet. And that spec sheet will show -- because you know, now we're not building 52 by

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500; this integrator's building a larger barn. His placement numbers are different; his weights are different. So depending on when you're coming in the business, you're going to have a spec sheet that's going to be what you're going to be contracted to build and to grow at your facility.
Q: Okay. So depending on where you are, the integrator's -- and I believe you just testified they've been ramping up the size of these facilities they've been doing over time. Is that fair?
A: Well, it might be different now than it was then.
Q: Right.
A: Right.
Q: Okay.
A: Because this was several years ago.
Q: So at the time, you got this number from Columbia for the Sumerel site?
A: Well, I got it from Mr. Sumerel or my -- Leon got it from Mr. Sumerel, but they get that information from their desired integrator. They -- by the time we've come out there, they've already, you know, talked with an

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integrator, they've got a verbal commitment from that integrator, they've wrote a contract with them to grow.
Q: Okay. And my question's pretty simple if I can say it right. Same time period, if Columbia Farms is proposing the exact same size operation, would their numbers all be the same for the average live weight they're looking for at that time?
A: I don't know that I can testify to that. I don't know what they're giving out to potential growers. And I don't know if they're giving out the same information to all of them.
Q: Would you expect it to be uniform across a particular integrator's growers?
A: From my experience in writing these plans, it tends to be similar between the integrators. But again, that's dependent on the time period in which you started your operation.
Q: Right. In a ---
A: Yeah.
Q: --- static time period as I understand that?
A: Ones that were started ten years ago are going to be different than the ones that were started last year.

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Q: Fair enough. Now, you've heard a lot of testimony already with Mr. Fulmer about grading and stormwater permits, right?
A: Correct.
Q: And you can confirm that when you did this plan for Mr. Sumerel and Ms. Sumerel for their site, grading plans were not done for the facility, right?
A: No. We do provide them with the USGS topo and advise them to talk with graders..
Q: And who has to put together those grading plans, the professional engineer or civil engineer?
A: Yes. As far as I know, a professional engineer has to do them.
Q: Do you put together those type plans?
A: We have done that for the clients, yes.
Q: And is that the NRDS plan? Is that short for one of those plans, am I right?
A: The grading plan?
Q: Yeah.
A: No. NRCS does not ...
Q: I mean, NRCS.
A: Yeah, NRCS does not have -- they don't really get involved with stormwater plans per se.

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Q: Okay. You said you've done them for clients before. Did you use to have a form plan you used for those?
A: For stormwater plans?
Q: Yeah.
A: They -- we were using a template plan for a while; that was something that we put together. That didn't come from NRCS.
Q: Do you still use that?
A: No. DHEC no longer allows that.
Q: On the Sumerel plan there's a few issues that Mr. Chaplin pointed out to you along the way; is that right?
A: During his review, permit review?
Q: During his review.
A: Yes.
Q: And what were those issues?
A: I have to go back and look at the correspondence, but I believe we changed the dead animal disposal methods because there were some concerns with the burial.
Q: Did the Sumerels point to you that you had the wrong operator listed at some point?
A: I don't recall. I mean, we -- sometimes we make mistakes sometimes in our plans and our

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clients point them out and we correct them.
Q: Would it surprise you if you had the wrong operator listed at some point because it's a form plan that y'all utilize across different operations?
A: Are you referring to the Perdue Farms in there?
Q: The Perdue Farms ---
A: Because there was an issue with the AFOPro software was not updating that particular location in -- and when we put it in and it feeds it in, it wasn't updating there. And until we figured out that that was a glitch, that was always occurring in all of our plans.
Q: So it's a field that just automatically fills in when you put in Columbia it should fill in all the particular ---
A: Correct.
Q: --- gaps in your plan?
A: That's the way their software works.
Q: Just like any form document where you put in the gaps; people do it. I don't estate planning, but you see it with lawyers with wills, okay. That's all I have for you right now, Ms. Shealy.
A: Okay.

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THE COURT: Mr. Hite. Mr. Hightower.
MS. SHEALY - CROSS-EXAMINATION BY MR. HIGHTOWER:
Q: Good afternoon, Ms. Shealy. When you were in the process of putting together this plan, you had contact with the Department; is that not correct?
A: Yes, sir.
Q: And in fact, it would have been Mr. Chaplin, correct?
A: Yes.
Q: And if he found a problem, he would tell you about it, correct?
A: Correct.
Q: And you would correct that problem or provide him with additional information to support whatever you were proposing; is that not correct?
A: Yes.
Q: Is that unusual?
A: No.
Q: Indeed, isn't it the fact that these reviews tend to be a collaborative process in trying to see if there would be a facility that could be permitted that meets the requirements; isn't that correct?

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A: Yes. We collaborate on pretty much all of them.
Q: Okay. But when you're told that there's a problem, you have to address that problem, correct?
A: Yes, sir.
Q: So in this case, you were told that burial was not suitable for this site, correct?
A: Correct.
Q: And based on being told that, you filed the dead animal composting facility management plan that's in evidence as Joint Exhibit 2, correct?
A: Correct.
Q: Okay. You stated that the Natural Resource Conservation Service requires certain items to be in all their plans, correct?
A: Correct.
Q: And that they are, in fact, the go-to agency at the federal level, correct?
A: Correct.
Q: And the Department, based on your experience working at the Department and subsequently with your business, we also require you to have those requirements; isn't that correct?
A: Correct.

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Q: When you were discussing digital mapping that you do you used the term USGS. That refers to the United States Geological Service, correct?
A: Correct.
Q: And that's a federal agency, correct?
A: Yes.
Q: And part of their duties is to map the United States, correct?
A: Correct.
Q: In your time as a reviewer with the Department, did you ever review an ag facility -- let me strike that. As part of your review of agricultural facilities when you actually worked with the Department, you never looked at stormwater permitting per se; is that correct?
A: No, not in the ag permitting section.
Q: Okay. That was never a part of the review process when you were with the agency, correct?
A: Correct.
Q: And as far as you know since you've been submitting plans to the Department since 2006, has it ever been part of the review process for getting the agricultural permit that you have stormwater permitting?
A: No.

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Q: Okay. That's a separate permit that when and if the Department issues a permit, the permittee could then apply for that, correct?
A: Correct.
Q: And, in fact, when you do that you would have to prepare actual engineering drawings as part of that; isn't that correct?
A: Correct.
Q: Okay. And you were not required to do that in this case, correct?
A: I believe Mr. Sumerel is required to do that, but he can wait until after he gets this permit to do that.
Q: Yes. Well, when I asked you I meant as part of this particular permit that we're here today for the agricultural permit, he was not required to submit any engineered drawings about land disturbance activities he was going to take to construct the buildings, correct?
A: Correct.
Q: Okay. And with setbacks, the setbacks are from the animal facility, correct?
A: Correct.
Q: And the animal facility is defined by regulation; isn't that correct?

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A: Correct.
Q: And the regulations state that it would be the houses for the animals where any waste that they produced is stored or going to be managed and where any disposal of mortality would be; isn't that correct?
A: I believe so.
Q: Okay. Now you stated you -- so -- strike that. So that would mean other parts that may become part of the farm or the facility in general are not considered part of the facility with regard to setbacks; isn't that correct?
A: I'm not sure what you're referring to other parts.
Q: The setback distance from the facility, let's say from the property line, is going to go from the barn or whatever area that's considered part of the facility to that property line, correct?
A: Correct.
Q: Okay. And it's not going to -- when you were putting that into your program you're not going to include other things that may actually be physically at the site, let's say a well head or something like that or an irrigation system;

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you're not going to include that as part of the facility, correct?
A: No. We do set setbacks from wells if there are wells onsite; we'll draw a setback on that.
Q: Yes. And while I shouldn't have used the well because there's a setback. Let's say irrigation system.
A: But we wouldn't consider that part of the animal facility.
Q: Right. That's not part of the animal facility and that's what I was trying to get to. Okay. You were asked questions about best management practices for vectors, and you stated that these were required -- these were requirements of Columbia Farms, correct?
A: In the site-specific vector -- odor and vector, those are the approved treatment methods by Columbia Farms. I don't know that Columbia Farms per se requires that you use them, but they are the ones that you can choose from.
Q: Did Mr. Chaplin contact you concerning any problems he found with the vector or odor abatement plans that you provided?
A: I don't recall him having any issues with those aspects of the plan.

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Q: And if he did have any issue, you would have corrected that?
A: Correct.
MR. HIGHTOWER: No further questions.
THE COURT: I have one before Ms. Shealy leaves the stand. You referred to USGS as the United States Geologic Service?
MR. HIGHTOWER: It's ---
THE COURT: In fact, it's survey.
MR. HIGHTOWER: --- survey. I'm sorry, Your Honor.
THE COURT: I just wanted to make sure.
MR. HIGHTOWER: That was my mistake.
MR. SMITH: If you don't mind I'll ...
MR. HITE: No re-direct.
MR. SMITH: If you don't mind a real couple brief questions, Your Honor, if the Court will allow.
THE COURT: Yeah.
MR. SMITH: Thank you.
MS. SHEALY - RECROSS-EXAMINATION BY MR. SMITH:
Q: Ms. Shealy, you mentioned in your testimony to Mr. Hite you sold your business?
A: Correct.
Q: When did you sell it?
A: It was effective June 2nd of this year.
Q: Okay. 2014. So at the time you did the

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Sumerel plan and signed off on it, you were still the owner of your business?
A: Correct.
Q: And you mentioned wells need setbacks?
A: Correct.
Q: And as you understand this operation's going to have to have multiple wells to operate properly; is that right?
A: Correct.
Q: And the wells aren't provided for or sited in any of your maps, are they?
A: Correct. They're not in existent yet.
MR. SMITH: That's all I have. Thank you.
MR. HITE: The Respondent rests, Your Honor.
MR. HIGHTOWER: The Respondent -- I mean, the Department rests. I mean, Department has no questions. I'm sorry.
THE COURT: You may step down, Ms. Shealy. Anything in reply?
MR. SMITH: No, Your Honor.
THE COURT: No witnesses in reply?
MR. SMITH: No witnesses in reply. The Petitioner again rests.
THE COURT: All right. Do you want to make closing arguments?

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MR. SMITH: I'd like to make a closing argument, Your Honor. I would request a quick break so I can get my stuff together.
THE COURT: Five minutes?
MR. SMITH: I can try five to ten, yes, Your Honor.
THE COURT: Need ten?
MR. SMITH: I think I -- I'd rather say I need ten and not use it all rather than say I need five and run over.
THE COURT: We'll be in recess for ten minutes.
MR. SMITH: Thank you.
MR. HITE: Thank you, Your Honor.
(Break from 4:07 p.m. until 4:21 p.m.)
THE COURT: Mr. Smith.
MR. SMITH: Thank you, Your Honor.
CLOSING STATEMENT BY MR. SMITH:
MR. SMITH: As the Court's aware, my clients challenge the issuance of the agricultural permit 19-6-47 AG to the Sumerels to operate this concentrated animal feeding operation poultry houses near their homes and land. We believe the evidence has shown that the plan itself is deficient and that DHEC's evaluation has been inefficient, inadequate, and not in compliance with its own regulations. Now, as

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the testimony of Dr. Parkhurst, the only expert testimony offered here in this Court as to poultry science, and the man's intimately familiar with the industry more so than anybody who testified in these proceedings, he testified that the process weight or the exit weight of these birds is going to be over the 8.75 pounds called for in the plan. As is illustrated through his testimony, that is going to cause the calculation of the average live weight for this particular operation to go over half a million pounds. Now, per the regulations, over half a million pounds requires a 400-foot property line setback and not a 200-foot property line setback as is delineated in all these maps. And every single witness that testified, including Bill Chaplin, including Mr. Sumerel, I believe Ms. Sumerel, and every other witness that I asked the question to or other counsel asked the question to conceded without a doubt that this land cannot accommodate a large operation, the over half a million pound live production weight operation. And it's the petitioner's contention this is a large operation, and so

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the setbacks as called for here are inadequate. Dr. Parkhurst also testified, and I think it's illustrated through the testimony of Ms. Shealy herself, that she utilizes a form model, boilerplate plan that has very few site-specific items, including the odor and vector abatement plans. Now, the regulations for odor under Part 200, 150(A) through (C) and (E) all require a site-specific odor abatement plan, same as vector abatement. And Part 200, 160 subparts (A) through (D), the Department's own regulations require a comprehensive nutrient management plan to have a site-specific vector abatement plan. These are two huge issues that can cause all kinds of damage in addition, you know, to odor, it being a nuisance, vectors also being a nuisance, flies and rodents and things like that. Now, Dr. Parkhurst testified this is just a form plan. Ms. Shealy conceded in her testimony that it is a model and form plan and when asked about, because we went in great detail about the site -- what was labeled site-specific plan in the comprehensive plan, Ms. Shealy conceded that it was "just an approved treatment"; that it was "she didn't

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know if Columbia says that Mr. Sumerel's going to have to do it." So it's just a general approved treatment. Everything else as far as odor abatement and vector abatement in these plans is just a form; it says you may or might do this; you could do that. It might be a listing of potential best management practices, but what it surely is not is a site-specific plan as required by the regulations. So we think the plan is deficient in that respect. There was testimony and discussion that Mr. Sumerel is going to have to utilize a stacking shed on this operation to house the manure, and I believe he said he's not going to do that anymore; he's going to use a pad and just pile it up and cover it. That is not provided for in these plans, and if he's going to have to do that, which is going to be a necessary component of this operation because he intends to compost, he's going to have to provide for that and have that approved by the Department, something he has not done. The DHEC evaluation of the site, we believe the evidence has shown by a preponderance of evidence that DHEC only evaluates to the setbacks. Mr. Chaplin

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testified that the way he looks at it he does the measurement, and I will concede he went through a detailed description of how he tries to position the barns and look at the setback distances. But he also had to concede that that's all he evaluates. And if the setbacks are there then it's approved, because the form -- he gets an application in, testifies and these forms are automatically generated and sent over to the bureau, the air folks and the water folks within their respective bureaus. Now it's sent to Mr. Smutz who testified here and Mr. Smutz testified what he looks at, he harkens back to an EPA 2002 report. And what his stance was in his testimony and has been consistent in the documents submitted as evidence that all the Department considers are regulated pollutants. They know these operations emit what many would consider copious amounts or at least large and harmful amounts of ammonia and other emissions, particulate matter, dust, heat; all that can be considered harmful. Mr. Smutz said anything that wasn't regulated is not considered by the Department. And we contend that that is an

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absolutely ineffective and incomplete evaluation, because the Department is charged specifically by the regulations and generally as the Department of Health and Environmental Control to protect the environment of the state of South Carolina and the health of the people in it. And the regulations specifically say the Department must act to prevent an increase in pollution to the air and water of the state. And that tunnel vision type evaluation is completely inadequate. As far as the evaluation of the water impacts of this proposed operation, again, the evidence has shown that DHEC evaluated only the proposed burial site; that's it. That's all the exhibits in evidence, Mr. Chaplin's testimony, and anybody else from the Department that had knowledge of this testified that the only thing that the Department looked at was the setback distance and the burial site as far as water impacts; that's it. It has been driven into the ground, I think it's clear, there's no grading plan for the site, nobody knows the slope and pitch this thing's going to be. Dr. Hargett testified extensively how that affects

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runoff and impacts to what the Court has seen are the many downslope waters of the state in this -- from this operation, including the ten-acre lake owned by one of the petitioners or two of the petitioners, more exactly the Orrs, that Terry Orr testified he utilizes every day, that could and will likely be greatly impacted by this operation. The Department did not evaluate any of that. It went and drilled some holes where they felt the burial was going to be, said it wasn't adequate, measured from here to there, and said that's it. Dr. Hargett's testimony made clear that's not enough and that's not upholding the charge in their own regulations to prevent an increase in pollution to the air and water of the states of South Carolina -- state of South Carolina. It's clear and indisputed that the Department got in a major plan amendment, change in the dead animal disposal plan in late May of 2013. They issued the permit June 12th of 2013 and then 12 days later send out somebody to do a preliminary site inspection for that particular dead animal disposal method. Now that's not how things are supposed to work. I think it's

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clear you do a preliminary inspection before you say you're approved to do something, and again, illustrates the Department's rubber stamp process for these things, because as Mr. Chaplin, the numbers he gave us show, 98 and 99 percent of these things are approved. That's troublesome. And that is just an absolute indication to the petitioners in this case, and I think anyone who were to look at the process for evaluating these things, it is a foregone conclusion that it's going to be approved. Mr. Still actually testified that the language used in the public meeting was when the permit's approved, and we believe that's the mind set of the Department of Health and Environmental Control in permitting and evaluating these type permits. Now they segmented off stormwater and said, look, that's another permit so we're going to deal with that later. Well, if that aspect of an operation has potential impacts, it needs to be considered as a whole. And Mr. Fulmer testified today, and based on his experience, that when stormwater permit is evaluated the emissions from the agricultural operation are not a consideration whatsoever.

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The bureaucratic segregation of two considerations that are linked, that are inextricably and necessarily linked, should not be allowed to be separated like that, a box is checked, and then a harmful operation go into existence. That's not fair for anyone, the permittee included, because they spent all the time, money and effort in getting this thing and then all the sudden they get two separate permits that say you can do one and two, but when you combine one and two you're suddenly out of regulatory compliance, whether it be discharge, whether it be nuisance or anything like that. I believe that the evidence has shown the plan's inadequate, the evaluation by the Department's completely inadequate. Their plan lacks necessary components, that it is a large operation, and also that, based on what's been submitted and as Dr. Parkhurst testified, there's going to be odor and without a site-specific vector abatement plan, the petitioners contend there's going to be abnormal amount of vectors, flies and other nuisances generated from the site; again, something that is prohibited from being permitted by the

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Department per its own regulations. So we would ask, it is the petitioners' position that DHEC's findings, inferences, conclusions, and decisions in this permitting process constitute a violation of constitutional statutory regulatory provisions as we outlined, were made upon unlawful procedure, including not adhering to Part 200.50(A), 200.70(D) through (F), were affected by errors and misinterpretations of the law and are clearly erroneous in light of the reliable, probative and substantial evidence. The weight calculations were off and affected the applicable siting, and the decision, therefore, was arbitrary, capricious and abuse of discretion by the agency and it prejudices, as the testimony of my clients highlighted, their substantial rights of the quiet enjoyment and use of their property as well as the 24 other houses that are on Poole Town Road. So we'd ask the Court to please overturn and deny this permit that was wrongfully issued on this improper procedure and inadequate evaluation. We ask in the alternative should the Court find it was properly issued that it require permit

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conditions to address the inadequate air and water evaluations to ensure that those resources are not negatively impacted as required by the statue and to reduce, at a minimum, reduce the allowed number of birds allowed on the site per the weight requirements so that a -- or require adherence to the large facility setbacks. We thank the Court for its time, and the petitioners rest.

THE COURT: Mr. Hightower. Mr. Hite.

CLOSING STATEMENT BY MR. HIGHTOWER:

MR. HIGHTOWER: The petitioners have the burden in this contested proceeding to show that the Department's review and ultimate decision to issue agricultural permit 19-6-47 to Lisa Sumerel was improper. They have failed to meet that burden. They have failed to show that there would be any adverse problems caused, or I should say, and I should actually read from the statute itself, part -- excuse me, 61-43 Part 200.70(E) specifically says that, the Department shall as on all permits to prevent so far as reasonably possible considering relevant standards under state and federal law an increase in air pollution and -- excuse me,

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an increase in pollution of the waters of the state or of the state from a new or enlarged source. Specifically in this case they failed to show that. Both Dr. Parkhurst and Dr. Hartwell -- Hargett, excuse me, specifically acknowledged with regard to air impacts, there are no standards for ammonia in ambient air. Yet the petitioners request that the Department should somehow arbitrarily pick a number so that it could then evaluate to that. That would be arbitrary and capricious and they cannot do it. The regulation requires there must be a standard. If there is no standard, the Department correctly does not impose some arbitrary standard. There's a reason why EPA nor the Department has been able to come up with a standard. It is the petitioners' burden to show that the Department's reasoning is improper, and they could not do that. With regard to water impacts, Dr. Hargett, who was put on the stand as an expert, specifically said his primary objection to this permit was that the Department does stormwater permitting as a separate permit review process from the agricultural permit. He did not say that it

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could not be done. Indeed when Mr. -- excuse me, Dr. Parkhurst was asked that question he admitted he didn't see any reason why there couldn't be a facility put there with stormwater controls. Indeed even Dr. Hargett said it. Dr. Hargett's argument was well, it may be costly for the petitioner -- excuse me, for the permit holder. That's not the standard. The Department has a prescribed process. That process is an applicant who wants to construct and one day operate an animal facility must first get an agricultural permit that says you can do this. That permit determines the number of houses, their sizes, and their locations with regard to setbacks. If and when they get that permit then and only then do they need to deal with, well, now that we have this how can we construct it and have it in operation so that stormwater runoff will not be an issue. That's a legislative function that was determined, and this case is not the case in which one could argue that. If the petitioners do not feel that that is the proper way they can petition the legislature to amend the statute, or excuse me, the regulation so

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that they can have them done at the same time. But more importantly, they were talking about the Department only looked at water impacts to the extent of burial. The reason why there are no water impacts in this case is twofold. First, there will not be any burial of birds. Second of all, and probably most important, is the fact that no waste is going to be discharged into the environment. All of the waste produced is going to be taken offsite as part of a contract with a manure broker. There will be a little bit retained that will be used for composting. Dr. Parkhurst, who the petitioner had said is the foremost expert up there said you can compost bird mortality; that that is a proper way to do it. The testimony came in from Ms. Shealy and from her partner, Mr. Fulmer, that there will be a pad on -- at this site. So there won't be any discharge to the waters of the state. The fact that the Department chooses not to allow facilities to discharge water from these facilities into waters of the state is something that has been done and has been approved by the legislature where in, I believe it is 61-43, Part 200, and

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I believe it is 20(B), it says, permits issued under this regulation are no discharge permits. That was the legislature's determination that no animal facility, such as poultry farms, would discharge any type of liquid waste into the environment. That's why South Carolina does not have many, if any, confined animal feeding operations, which the testimony came in are only in areas where you do have a need, a National Pollution Discharge Elimination System permit. There was testimony about the process weight. Dr. Parkhurst says, well, he didn't believe that the 8.75 figure was correct, but he couldn't prove it; he had no information to prove it. He specifically said he did not contact Columbia Farms to verify and say oh, well no, that's not the average live weight. The regulations go by the average live weight; they do not go by the process weight. And the fact that the Petitioners may want that weight because they feel that that would somehow make this a larger facility than what it is, and it is indeed considered a small facility, a facility that produces less than 500,000 pounds of average live weight; that is the definition

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in the regulation. And Dr. Parkhurst agreed that based on that regulation that is what this facility would be. About the odor plan, part -- excuse me, 61-43 Part 200.150, excuse me, talks about an odor abatement plan. First of all, 150 is truly applicable only to operating facilities because it talks about what the Department can do to remedy the situation. But more importantly, there was testimony from the permit writer, Ms. Shealy, that there was an odor abatement plan. I specifically asked Dr. Parkhurst that if the permittee follows the requirements set forth in the plan, would it control any type of odor and also with vectors, and he said yes. What petitioners asking is somehow the plan specifically states you can only do this but not this here. Well, that's not how the plan is written. The plan is written with these are things that you should do to control odor and vectors. Indeed when it talks about vectors it splits it up. It doesn't lump them all together because it realizes insects are different than scavenging animals and it has different requirements for each ones. Again, it is the petitioners'

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burden to show that those requirements cannot work, and they failed to do that. Petitioner talks about the need for a stacking shed. A stacking shed is not a requirement of this permit. Indeed no operator of an animal facility by regulation needs a stacking shed. Stacking sheds can be requested at anytime; they can be proposed in the beginning when an applicant applies for a permit, or after they have the permit and they're operating and they decide that they want a stacking shed. If they do that, they will file an application with the Department, and the Department will review that stacking shed. But the fact that this application does not have it is of no import because it is not a regulatory requirement, and the petitioners have not shown that there is any specific site reason for why there should be a stacking shed in this particular case. The evaluation of setbacks, Mr. Chaplin explained that he uses GIS in order to determine setback distances. Indeed I believe it was Dr. Hargett stated he did the same thing, that he used GIS to determine distances. There's been no evidence presented by the

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petitioner that GIS somehow produces inaccurate measurements. And indeed, in this case the facility is shown to actually meet or in many cases exceed the regulatory requirements. The nearest petitioners' home is more than 500 feet greater than the minimum distance required by regulation. The nearest waters of the state, which must be 100 feet away from the facility, are at their closest point 150 feet. No one has disputed that. Dr. Hargett said, well, there may be a potential. He was a little concerned that the hash marks showing what the setback was for waters of the state overlap the setbacks for the facility, but what he failed to show the Court, provide any evidence, is how that is -- has a meaningful distinction. Indeed it doesn't for the simple fact that the setbacks are just how far away you have to be. The property line setback is 200 feet. Nothing -- and none of the buildings or any of the site-specific requirements that are considered regulatorily part of the facility can be within 200 feet of the property line. Well, that's met here. The nearest waters of the state is 100 feet, but it's overlapped because it's

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actually 150 feet, and it's covered in that property line waiver. There's no issue there. That's just smoke and mirror; it creates what appears to be a problem, but if one looks at it, one realizes that it is not actually a problem. Finally, the petitioner hasn't shown that stormwater controls could -- that this site could not be graded. Again, it came -- it comes down to how much it costs and how you do the review. Indeed when asked about this, the petitioner did not know that there are regulatory time frames for when permits have to be done, and the regulatory time frame for the stormwater permitting is totally different than the regulatory time frame for an agricultural facility. Indeed agricultural facilities must be permitted within 90 days; stormwater permitting must be done within 20 days. Clearly, you can't do them at the same time. But that is -- excuse me a minute. The final thing is is that with regard to Mr. Smutz's memo, he stated that yes, there hasn't been a change in the guidelines provided by the Environmental Protection Agency with regard to emissions from poultry facilities. That is why

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he uses the 2002 guidelines. I asked both Dr. Hargett and Dr. Parkhurst if they were aware of any final guidelines or guidance from EPA that is more recent than the 2002 and neither one could state that there is one. Again, the burden is on the petitioner to show that there was -- there is in existence some newer guideline, and they did not dispute what the 2002 emission guidelines were and that they specifically stated that there would be no air pollutant of concern, or I should say, one that is regulated that would come from a dry poultry facility, and that is what this is. Therefore, the fact that the memo may be standardized does not change the fact that Mr. Smutz stated for every single permit that he reviews, he goes and looks to see is there something new, any new guidance that has come out that he can apply that provides him with a standard. And when he is satisfied that there is none, he looks and sees if there are any other issues that would have to come into play. Indeed in this case he said he made a second review. He made a review after his initial determination that there would be no air impact because the

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plan changed with the submission of the dead animal composting management plan, and that he reviewed that particular plan to see if there were any problems. And he stated that he told Mr. Chaplin that if he found a problem he would contact him, otherwise, that he wouldn't hear from him and that he could rely on his prior determination. And in this case, that is what has happened and there has been no evidence presented by the petitioner that changes or somehow contradicts that information. Indeed as I stated and as was testified to by Dr. Parkhurst, composting is perfectly normal; it produces a beneficial product that he thought is one of the best ways to deal with mortality of animals. For all of these reasons, the Department believes that the Court should uphold its issuance of agricultural permit 19-6-47 based on the clear and substantial evidence in the record that the Department complied with the requirements of 61-43 and applied all applicable standards to this case and made determinations. Thank you.

THE COURT: Mr. Hite.

CLOSING STATEMENT BY MR. HITE:

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MR. HITE: Thank you, Your Honor. As has been well stated and as you know, the petitioner bears the burden in this case. So when we look at the evidence as presented by the petitioner, the two most important witnesses that I believe they've called are the ones that they paid for. And they paid for Dr. Hargett to come down, and you heard his testimony, the best that he could get that the plan was deficient on is something else -- is permitted via something else by DHEC. And they paid for that testimony. There was nothing else that's regulated. He talked about ammonia, he talked about other pollutants, but none of those things are regulated. And that's an expert witness that they had come testify. I would say that doesn't get anywhere close to getting over the burden of preponderance of evidence to say that the permit was issued improperly. In fact, when asked about that he said that the plan does talk about wastewater, and it says that it will be handled via further permit. The next witness that they rely on is Dr. Parkhurst who when asked the direct question, the smoking gun question if you will Judge, was the permit

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issued properly, he couldn't answer that. He could not say that it was issued improperly. He had another way of saying that the plan wasn't adequate, but he did not say from the witness stand that the permit was issued improperly. That speaks volumes to me listening to the and hearing all the evidence. If the plan or if the permit was issued improperly an expert that's been paid by the petitioners should be able to clearly state that. That would be evidence potentially that could reach over the preponderance of evidence, but their experts couldn't even say that. He mentioned live weight of birds, but he didn't have any testimony, he couldn't state that he even spoke to Columbia Farms as to the live weight of a full broiler. That evidence doesn't reach the level of preponderance of the evidence. If they were to show or prove somehow that we were going to produce chickens that were over or exceeded the permittable size then they should have produced that evidence. They could have easily gone to Columbia Farms, they could have gone to other farms that are integrated with Columbia Farms and weighed

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birds that way. But there's been no evidence of that. And if there was, then that could have helped the case to reach the preponderance of evidence, but it's nonexistent, so they're not anywhere close to reaching the burden of proof in this case. Now, in evaluating these permits DHEC is faced with a very difficult burden; they have to weigh the rights and the freedoms of the person petitioning for or asking for the permit as well as the local property owners. So the way they do that, the only way they can do that is to evaluate those permits pursuant to regulations. And that's what we have here is the regulations allow for up to 500,000 live weight, average live weight per year. And we're -- our plans are below that. It would be arbitrary and capricious on the other side for DHEC to say well, you're close to the permit line so we're not going to allow you. So when evaluating these things DHEC has to make sure that they follow the regulations, and in this case they did because the plan calls for 8.75 pound chicken. And at the end of the weight and at the beginning of the plan you can see, you can read there that

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that's when the birds will come out, and that's what Columbia Farms is asking for. So to say that well, we're getting close to 500,000 then you're in violation of the permit and the chickens in North Carolina weigh more than the chickens in South Carolina and the chickens I know about weigh more, so since that's the case this is a large facility and it shouldn't be in place and it violates the setbacks. But then I've got a question or a point about setbacks if you want to -- if they want to talk about setbacks. My client's mother owns the property that surrounds the facility, and I will submit to you that if evidence came in and the evidence did come in as it relates to adjoining property owners and the setbacks, Your Honor, I believe the questions were directed to this property as it's cut out of my client's mother's property would not meet the 400-foot setbacks. But it's my opinion that if they -- if his mother gave him more property he could meet the 400-foot setbacks if he needed to. But in this case, he doesn't have to because he's all -- he's underneath every setback that is required by regulation. They want to talk

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about defects in the plan, to say that the odor abatement plan, and it's really essentially a play on words; what should the Sumerels do or what could the Sumerels do. And I would charge the Court that it's a plain meaning of a statute that site-specific odor and vector abatement plan. For a permit to fail it would essentially, in my opinion, need to have absolutely no mention of a site-specific or no mention of an abatement plan. That could justify the plan being defunct and not qualifying under the permit. But what good does it do for justice in this case if we say that because the wording is different or we do a play on words and the odor and vector abatement plan is not sufficient. Well, that's not something that can't be fixed by my clients if they were to come back and issue another permit. So when we're looking at a whole grand scheme of justice that would be unjust to not issue the permit based on a technicality or a interpretation, a wrong interpretation if you ask me, of what the Sumerels should or could do because it's remediable, it's fixable by my clients. And that only -- that doesn't provide

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any justice; that just kicks the can down the road and puts more expenses on all parties in this litigation. So Your Honor, through the evidence that's been submitted you'll find once, and when you do review all of the exhibits as well as recollect and remember on the testimony, that the Department properly issued this permit, and the petitioners have not shown that it was improperly issued. And even like I said, their expert witnesses could not give us the answer that it was issued improperly. Thank you, Your Honor.

THE COURT: Briefly in reply.

MR. SMITH: Yes, Your Honor, I'll be brief.

REPLY BY MR. SMITH:

MR. SMITH: I don't like to read to the Court because I'm very confident in the Court's ability to read certain things, but I want to point out some parts to the regulations and read slightly because I find the Department's selective adherence and desire to adhere to the wording of the regulations inconsistent in this circumstance. So looking at 200.7(A) says, no permit shall be issued before the Department receives a complete application for a permit.

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Part D says, a site inspection shall be made by the Department before a permit decision is made. Those weren't done in this case. I point to 200.150(A) on the odor, and it says, an animal management facility plan shall contain an odor abatement plan. 200.160(A) on vectors, that actually says, the vector abatement plan shall at a minimum consistent of the following, subpart two, a list of specific actions to be taken by the producer. Plain and ordinary meaning of that, Your Honor, specific actions to be taken by the producer; there's no other interpretation. The plan fails on those points. Now, petitioners are not asking DHEC to make some arbitrary and capricious determination about air emissions. We're asking them to evaluate what are recognized harmful emissions and their impact on the surrounding air environment, something that they have said just because it's not regulated we will not look at even though it may be harmful and recognize ammonia and things of that nature are harmful, but just because the feds tell us -- don't have some standard in place, find the standard in place although

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there's plenty of information, we're not going to look at it. We're asking the Department -- petitioners ask the Department to do their job and abide by their own regulations, which we don't think they've done completely and fully and adequately here. And Mr. Hite makes a point about justice. Well, I agree there's been injustice done here. And injustice is for a form plan to be submitted that doesn't comply with the applicable regulations, have nearby landowners who are going to be devastated financially and the health and environment, all that devastated from this operation, come in and spend a lot of money to try to show, and we contend successfully show, that there's problems with these plans. That's not how it's supposed to work. The permitting agency is supposed to be the gatekeeper here to protect the environment, and they haven't done their job. And the injustice is the fact that the Stills and the Orrs are having to do this today. And we ask the Court for those reasons and the reasons we've stated and due to the preponderance of evidence, overturn the wrongful issuance of this permit and protect my

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clients and the surrounding environment from the harmful effects of this operation.

THE COURT: Thank you, Mr. Smith. Well, first of all, I want to thank you lawyers on both sides for the excellent presentations today, as well as your witness who were straightforward and unemotional. I would say this is perhaps one of the best trials, even with a few blips, that have been conducted by me, not on my part but on your part. I'm going to take this matter under advisement. I'm going to ask that you submit briefs in the form of proposed orders. I want to do it a little bit differently because I do want specific -- specifically addressed the issues regarding the asserted failure to comply with the mandatory regulations regarding odor and vector abatement. So I want Mr. Smith to complete his within 30 days of receiving the record.

MR. SMITH: All right, Your Honor.

THE COURT: And submit it to the respondents of what in effect will be a reply brief. I'm not going to cut you off; you'll have a chance to saw at that.

MR. SMITH: Thank you.

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THE COURT: I don't like to delay this thing any longer than possible, but there do appear to be issues that need to be clearly and concisely addressed. I ask that you annotate your statements with references to page and line of the record, and woe betide any lawyer who gives me an incorrect annotation. Am I clear?

MR. SMITH: Yes, Your Honor.

MR. HIGHTOWER: Yes, Your Honor.

THE COURT: All right. With that being said, if there are no clean-up details, nothing from you, then we will adjourn. And if you feel compelled to pay respect to the peace and dignity of the State, you may stand. Thank you.

(There being nothing further, the hearing was concluded at 5:08 p.m.)

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

DHEC Copy

Comprehensive Nutrient Management Plan

for

Sumerel Poultry Farm

Laurens County

RECEIVED

OCT 11 2012

Stormwater, Construction & Agricultural Permitting Division

In Cooperation with the United States Department of Agriculture
Natural Resources Conservation Service

Prepared by:
Joy Shealy, P.E.
Shealy Engineering, LLC
132 Red Alder Court
Lexington, SC 29072
(803)238-8410
shealyengineering@sc.rr.com
www.shealyengineering.com

Comprehensive Nutrient Management Plan

United States Department of Agriculture
Natural Resources Conservation Service
Laurens County, SC

RECEIVED
MAR 0 5 2013
Stormwater, Construction & Agricultural Permitting Division

Operation Name:	Sumerel Farms
Owner Name:	Lisa Sumerel
Operation Address:	Poole Town Road Laurens, SC 29360
Owner Mailing Address:	2044 Poole Town Road Laurens, SC 29360
Operation Telephone Number:	(864) 682-5487
Operator's Name:	Mike Sumerel
Operator's Phone Number:	(864) 923-9137
Integrator:	Columbia Farms

Driving Directions: Take exit #44 on Interstate 26 and travel west on Highway 49. Travel for approximately three (3) miles and take a right onto Granny Apple Road (SSR 314). Travel approximately one (1) mile and take a left onto Poole Town Road (SSR 313). The farm is located on the right.

County or Local Zoning Restrictions: There are no county or local zoning restrictions that impact this CNMP.

Hydrologic Unit Code (Facility): 03050108030020

Watershed: Broad Watershed

Flood Plain: The facility is not located in the FEMA designated 100-year floodplain.

Coordinates (Facility): X: 412236
Y: 3826870

Basic Operation Description: This is a new proposed poultry broiler farm consisting of four (4) poultry broiler barns. Each barn will house approximately 27,400 broilers for a total facility capacity of 109,600 birds. The birds will be brought into the houses as chicks and are confined for a period of sixty-three (63) days or until they reach an exit weight of eight and three quarter (8.75) pounds. The normal production live weight of the animals in this operation is 493,200 pounds. The birds are raised on an earthen floor, which will be covered with wood shavings. The litter, or mixture of manure and wood shavings, will be completely cleaned out of the poultry houses at least once each year. The litter from this operation will be handled by contract disposal with a permitted manure broker. The signed contract with the selected broker is included in Appendix B of this plan. If the operation decides to handle the manure from this operation by any other

Comprehensive Nutrient Management Plan

United States Department of Agriculture
Natural Resources Conservation Service
Laurens County, SC

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OCT 1 1 2012

Stormwater, Construction & Agricultural Permitting Division

Operation Name:	Sumeral Farms
Owner Name:	Lisa & Mike Sumeral
Operation Address:	Pooletown Road Laurens, SC 29360
Owner Mailing Address:	2044 Pooletown Road Laurens, SC 29360
Operation Telephone Number:	(864) 923-9737
Operator's Name:	Mike Sumeral
Operator's Phone Number:	(864) 682-5487
Integrator:	Columbia Farms

Driving Directions: Take exit #44 on Interstate 26 and travel west on Highway 49. Travel for approximately three (3) miles and take a right onto Granny Apple Road (SSR 314). Travel approximately one (1) mile and take a left onto Pooletown Road (SSR 313). The farm is located on the right.

County or Local Zoning Restrictions: There are no county or local zoning restrictions that impact this CNMP.

Hydrologic Unit Code (Facility): 030501080300020

Watershed: Broad Watershed

Flood Plain: The facility is not located in the FEMA designated 100-year floodplain.

Coordinates (Facility): X: 412236
Y: 3826870

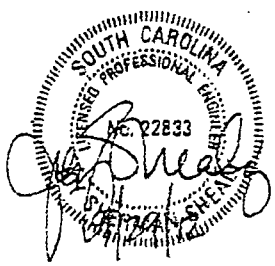
Basic Operation Description: This is a new proposed poultry broiler farm consisting of four (4) poultry broiler barns. Each barn will house approximately 27,400 broilers for a total facility capacity of 109,600 birds. The birds will be brought into the houses as chicks and are confined for a period of sixty-three (63) days or until they reach an exit weight of eight and one-half (8.75) pounds. The normal production live weight of the animals in this operation is 493,200 pounds. The birds are raised on an earthen floor, which will be covered with wood shavings. The litter, or mixture of manure and wood shavings, will be completely cleaned out of the poultry houses at least once each year. The litter from this operation will be handled by contract disposal with a permitted manure broker. The signed contract with the selected broker is included in Appendix B of this plan. If the operation decides to handle the manure from this operation by any other

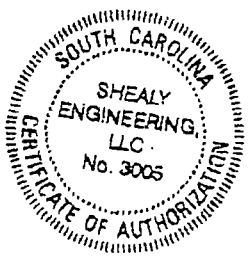
DHEC 000013

methods, then an updated Animal Facility Management Plan must be submitted to DHEC for approval.

Assisted by: Joy Shealy, PE

Date Prepared: 9/17/2012





1. CNMP Signature Page

Owner/Operator

Owner/Operator: Lisa & Mike Sumerel	Phone:(864) 682-5487
Address: 2044 Pooletown Road City: Laurens, South Carolina 29360	

The following people have assisted with the development of the CNMP and certify that their element meets all applicable NRCS standards.

Manure and Wastewater Handling and Storage

Signature:	Date: 9/29/12
Name: Joy S Sheely, PE	
Title: Technical Service Provider	

Nutrient Management

Signature:	Date: 9/29/12
Name: Joy S Sheely, PE	
Title: Technical Service Provider	

Land Treatment Practices

Signature:	Date: 9/29/12
Name: Joy S Sheely, PE	
Title: Technical Service Provider	

Comprehensive Nutrient Management Plan

I certify that I have reviewed this plan for technical adequacy and that the elements of the CNMP are compatible, reasonable, and able to be implemented. All elements meet NRCS standards and specifications as well as requirements set forth by the South Carolina Department of Health and Environmental Control.

Signature:	Date: 9/29/12
Name: Joy S Sheely, PE	
Title: Technical Service Provider	

Owner/ Operator

As the owner/operator, I certify that I, as the decision-maker, have been involved in the planning process and agree the items/practices listed in each element are needed. I understand that I am responsible for complying with SCDHEC Regulation 61-43 and for keeping all necessary records associated with the implementation of this CNMP. It is my intent to implement /accomplish this CNMP in a timely manner as described in the plan.

Signature: Lisa Sumerel Mike Sumerel	Date: 10-10-12

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2. South Carolina Animal Facility Management Plan

2.1. South Carolina DHEC Application:

D H E C
PROMOTE PROTECT PROSPER

Standard Application Form for
New or Expanding Agricultural Animal Facilities
(other than swine)
Please Type or Print

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Stormwater, Construction & Agricultural Permitting Division

Section 1 - FACILITY INFORMATION

DATE _____ FACILITY NUMBER ND 0088307

NEW ☒ OR EXPANDING ☐ FACILITY
IF EXPANDING: PERMIT NUMBER _____ DATE ISSUED _____

FARM NAME Sumerel Farms
COUNTY Laurens COMMUNITY Laurens
LOCATION Poole Town Road, Laurens, SC
IS THIS FARM PLANNING TO BE A CONTRACT GROWER WITH AN INTEGRATOR? ☒ YES or ☐ NO
NAME OF INTEGRATOR Columbia Farms

Section 2 - CONTACT INFORMATION

PERMIT APPLICANT Lisa Sumerel
ADDRESS 2044 Poole Town Road, Laurens, SC 29360
PHONE NUMBER (WORK) _____ (HOME) (864) 682-5487 (CELL/BEEPER) (864) 923-9137

ARE YOU THE PROPERTY OWNER OF RECORD? ☒ YES or ☐ NO IF NO, PROVIDE INFORMATION:
PROPERTY OWNER OF RECORD _____
ADDRESS _____
PHONE NUMBER (WORK) _____ (HOME) _____ (CELL/BEEPER) _____

OPERATOR'S NAME Mike Sumerel
ADDRESS _____
PHONE NUMBER (WORK) _____ (HOME) _____ (CELL/BEEPER) _____

PLAN PREPARER Joy S. Shealy, P.E.—Shealy Engineering, LLC
TITLE/SC REGISTRATION NUMBER 22833
ADDRESS 132 Red Alder Court, Lexington, SC 29072
PHONE NUMBER (WORK) _____ (FAX) _____ (CELL/BEEPER) (803)238-8410

Section 3 - ANIMAL TYPES & NUMBERS

AVERAGE ANIMAL LIVE WEIGHT = average exit weight + average entry weight = (6.76) ÷ 2 (0.25) = 4.5 pounds

Type(s) of Animals	Maximum # of Animals (at any one time)	Normal Production Live Weight (pounds)	Total Manure (tons/yr or gal/yr)	Manure to Treatment System	Additional Scraped Solids or Compost	Acres for Land Application
Broilers	109,600	493,200	668	N/A	NA	0

DHEC 3560 (08/2002) SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

DHEC 000020

Section 4 - MANURE HANDLING & TREATMENT

MANURE HANDLING: ☒ DRY or ☐ WET COMPOSTER: ☐ YES or ☒ NO STACKING SHED: ☐ YES or ☒ NO
TREATMENT PROPOSED Contract disposal with a permitted manure broker
ARE YOU LAND APPLYING THE MANURE? ☐ YES or ☒ NO
DO YOU OWN ALL OF THE MANURE UTILIZATION AREAS? ☐ YES or ☐ NO N/A
CONTRACT DISPOSAL OF MANURE WITH BROKER? ☒ YES or ☐ NO
NAME OF BROKER _____
IS INNOVATIVE OR ALTERNATIVE TECHNOLOGY BEING PROPOSED FOR THIS FACILITY? ☐ YES or ☒ NO
ARE YOU APPLYING FOR EXCEPTIONAL QUALITY COMPOST QUALIFICATION? ☐ YES or ☒ NO
NUMBER OF GROUNDWATER MONITORING WELLS PROPOSED 0
VOLUME OF LAGOON OR STORAGE POND (if applicable) N/A cubic feet
NUMBER OF HOUSES/GROWING AREAS: Existing 0 Proposed 4
ARE YOU A TRAINED MANURE MANAGER? ☐ YES or ☒ NO TRAINING DATE _____

Section 5 - FACILITY SEPARATION DISTANCES

SEPARATION DISTANCES:	ANIMAL GROWING AREA (HOUSES OR BARNS)		LAGOON, STORAGE POND OR TREATMENT SYSTEM	
	Required	Actual	Required	Actual
POTABLE WELLS	200 feet	1300 ft	200 feet	N/A
POTABLE WELLS OWNED BY THE APPLICANT	50 feet	500 ft	100 feet	N/A
WATERS OF THE STATE LOCATED DOWNSLOPE (excluding ephemeral & intermittent streams)	100 feet	150 ft	100 feet	N/A
OUTSTANDING RESOURCE WATERS, CRITICAL HABITATS FOR ENDANGERED SPECIES, SHELLFISH HARVESTING WATERS	100 feet	N/A	500 feet	N/A
EPHEMERAL OR INTERMITTENT STREAMS LOCATED DOWNSLOPE	100 feet*	150 ft	100 feet*	N/A
DITCHES OR SWALES LOCATED DOWNSLOPE	50 feet*	50 ft	50 feet*	N/A
PROPERTY LINE (500,000 lbs or less) (can be reduced or waived with written consent)	200 feet	200 ft	300 feet	N/A
PROPERTY LINE (500,001 lbs or greater) (can be reduced or waived with written consent)	400 feet	NA	500 feet	N/A
OCCUPIED PERMANENT RESIDENCE (can be reduced or waived with written consent)	1000 feet	1300 ft	1000 feet	N/A

*distance may be reduced if a vegetative water quality buffer that meets NRCS guidelines is installed and maintained.

Section 6 - MANURE UTILIZATION AREA SEPARATION DISTANCES

For more fields please make copies of this page and add as additional sheets.

SEPARATION DISTANCES:	Tract #							
	Field #							
POTABLE WELL	200ft							
WATERS OF THE STATE LOCATED DOWNSLOPE	100ft*							
EPHEMERAL & INTERMIT. STREAMS DOWNSLOPE	100ft*							
DITCHES DOWNSLOPE	50ft							
RESIDENCE	300 ft**							

DHEC 3580 (08/2002)

DHEC 000021

MANURE UTILIZATION AREA TABLE CONTINUED

SEPARATION DISTANCES:	Tract # →								
	Field # →								
POTABLE WELL	200ft								
WATERS OF THE STATE LOCATED DOWNSLOPE	100ft*								
EPHEMERAL & INTERMIT. STREAMS DOWNSLOPE	100ft*								
DITCHES DOWNSLOPE	50 ft								
RESIDENCE	300 ft**								

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MAY 29 2013
Bureau of Water, Construction & Agricultural Permitting Division

* Reduced to 75 ft for incorporated manure, and 50 ft for injection or incorporation within 24 hours.
**If method of application is injection or immediate incorporation, then manure may be spread to the property line. All residence setbacks may be reduced by consent of the owner of the residence.

Section 7 - PERMIT APPLICATION SUBMITTAL REQUIREMENTS

SUBMITTAL PACKAGE SHOULD INCLUDE 2 COPIES OF THE FOLLOWING ITEMS (CHECK EACH ONE SUBMITTED):

- ☒ 1. ORIGINAL APPLICATION (and 1 copy of the original)
- ☒ 2. ANIMAL FACILITY MANAGEMENT PLAN
  - a. Animal Manure Management System Description
  - b. Design Calculations and Construction Details for treatment/storage structure, including exact location and design information.
  - c. Concentration of Manure Constituents
  - d. Crop Management Plan (including contracts for each field not owned by the applicant, field owner's name and contact information)
  - e. Type of Waste Transport/Spreading Equipment (if applicable)
  - f. Spray Application System Specifications and Details (if applicable)
  - g. Manure Utilization Area Information and Maps
  - h. Soils information (maps & descriptions)
  - i. Location maps (showing facility, treatment/storage structure, and all fields)
  - j. Copy of Tax Map (identifying all adjoining property owners within 1320 feet of the facility with names & addresses)
  - k. 100 year floodplain locations (facility may not be located in the 100-year floodplain)
- ☐ 3. GROUNDWATER MONITORING WELL PROGRAMS DETAILS (if applicable)
- ☒ 4. ODOR ABATEMENT PLAN
- ☒ 5. VECTOR ABATEMENT PLAN
- ☒ 6. PRIMARY METHOD OF DEAD ANIMAL DISPOSAL Composting/Incineration
- ☒ 7. ALTERNATIVE METHOD OF DEAD ANIMAL DISPOSAL FOR EXCESSIVE MORTALITY: Contract Disposal
- ☒ 8. CONTRACTS FOR CONTRACT DISPOSAL OF DEAD ANIMALS OR MANURE (if applicable)
- ☒ 9. SOIL MONITORING PLAN
- ☐ 10. PLANS & SPECIFICATIONS FOR ALL OTHER TREATMENT OR STORAGE STRUCTURES (composter, stacking shed etc.)
- ☒ 11. NOTICES OF INTENT FROM ALL PROPERTY OWNERS WITHIN 1320 FEET OF THE FOOTPRINT OF THE FACILITY
- ☒ 12. EMERGENCY PLAN
- ☒ 13. WRITTEN CONSENT FOR WAIVING OR REDUCING SETBACKS (if applicable)
- ☐ 14. ALTERNATIVE TECHNOLOGY PROPOSAL (if applicable): Specifications, and a detailed report including purpose and expected benefits.
- ☒ 15. APPLICATION FEE: See instructions on the back of this page for amount.
- ☒ 16. ANNUAL OPERATING FEE: See instructions for amount (first year's fee must be submitted before permit is issued).

Section 8 - CERTIFICATION

I HEREBY CERTIFY THAT ALL OPERATIONS, MAINTENANCE AND ASSOCIATED ACTIVITY PERTAINING TO THIS SITE SHALL BE ACCOMPLISHED PURSUANT TO AND IN KEEPING WITH THE TERMS AND CONDITIONS OF THE APPROVED PLANS. I HAVE READ THIS APPLICATION AND AGREE TO THE REQUIREMENTS AND CONDITIONS THAT ARE CONTAINED WITHIN. THE INFORMATION SUBMITTED IS, TO THE BEST OF MY KNOWLEDGE AND BELIEF, TRUE, ACCURATE, AND COMPLETE. I HEREBY GRANT AUTHORIZATION TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL THE RIGHT OF ACCESS TO THE SITE AT ALL REASONABLE HOURS FOR THE PURPOSE OF SAMPLING AND ON SITE INSPECTIONS.

Lisa & Mike Sumerel — Printed Name /Owner or Lessee

Lisa Sumerel / Mike Sumerel — Signature/Owner or Lessee

I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THE DESIGN CONSISTENT WITH THE REQUIREMENTS OF TITLE 48, CHAPTER 1 OF THE 1987 SC CODE OF LAWS, AND PURSUANT REGULATION 61-43 AND APPROPRIATE NRCS STANDARDS.

Joy S. Sheaiv — Printed Name/Plan Preparer

Signature/Plan Preparer

DHEC 3560 (08/2002)

DHEC 000022

MANURE UTILIZATION AREA TABLE CONTINUED

SEPARATION DISTANCES:	Tract #→				
	Field #→				
POTABLE WELL	200ft				
WATERS OF THE STATE LOCATED DOWNSLOPE	100ft*				
EPHEMERAL & INTERMIT. STREAMS DOWNSLOPE	100ft*				
DITCHES DOWNSLOPE	50 ft				
RESIDENCE	300 ft**				

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Stormwater Construction
Agricultural Compliance

* Reduced to 75 ft for incorporated manure, and 50 ft for injection or incorporation within 24 hours.
**If method of application is injection or immediate incorporation, then manure may be spread to the property line. All residence setbacks may be reduced by consent of the owner of the residence.

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   c. Concentration of Manure Constituents
   d. Crop Management Plan (including contracts for each field not owned by the applicant, field owner's name and contact information)
   e. Type of Waste Transport/Spreading Equipment (if applicable)
   f. Spray Application System Specifications and Details (if applicable)
   g. Manure Utilization Area Information and Maps
   h. Soils Information (maps & descriptions)
   i. Location maps (showing facility, treatment/storage structure, and all fields)
   j. Copy of Tax Map (identifying all adjoining property owners within 1320 feet of the facility with names & addresses)
   k. 100 year floodplain locations (facility may not be located in the 100-year floodplain)
☐ 3. GROUNDWATER MONITORING WELL PROGRAMS DETAILS (if applicable)
☒ 4. ODOR ABATEMENT PLAN
☒ 5. VECTOR ABATEMENT PLAN
☒ 6. PRIMARY METHOD OF DEAD ANIMAL DISPOSAL Composting/Incineration
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Lisa & Mike Sumerel — Printed Name /Owner or Lessee
_____ — Signature/Owner or Lessee

I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THE DESIGN CONSISTENT WITH THE REQUIREMENTS OF TITLE 48, CHAPTER 1 OF THE 1987 SC CODE OF LAWS, AND PURSUANT REGULATION 61-43 AND APPROPRIATE NRCS STANDARDS.

Joy S. Shealy — Printed Name/Plan Preparer
_____ — Signature/Plan Preparer

DHEC 3580 (08/2002)

DHEC 000023

MANURE UTILIZATION AREA TABLE CONTINUED

SEPARATION DISTANCES:	Tract #							
	Field #							
POTABLE WELL	200ft							
WATERS OF THE STATE LOCATED DOWNSLOPE	100ft*							
EPHEMERAL & INTERMIT. STREAMS DOWNSLOPE	100ft*							
DITCHES DOWNSLOPE	50 ft							
RESIDENCE	300 ft**							

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- f. Spray Application System Specifications and Details (if applicable)
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- k. 100 year floodplain locations (facility may not be located in the 100-year floodplain)

☐ 3. GROUNDWATER MONITORING WELL PROGRAMS DETAILS (if applicable)

☒ 4. ODOR ABATEMENT PLAN

☒ 5. VECTOR ABATEMENT PLAN

☒ 6. PRIMARY METHOD OF DEAD ANIMAL DISPOSAL Burial/Incineration

☒ 7. ALTERNATIVE METHOD OF DEAD ANIMAL DISPOSAL FOR EXCESSIVE MORTALITY: Burial

☒ 8. CONTRACTS FOR CONTRACT DISPOSAL OF DEAD ANIMALS OR MANURE (if applicable)

☒ 9. SOIL MONITORING PLAN

☐ 10. PLANS & SPECIFICATIONS FOR ALL OTHER TREATMENT OR STORAGE STRUCTURES (composter, stacking shed etc.)

☒ 11. NOTICES OF INTENT FROM ALL PROPERTY OWNERS WITHIN 1320 FEET OF THE FOOTPRINT OF THE FACILITY

☒ 12. EMERGENCY PLAN

☒ 13. WRITTEN CONSENT FOR WAIVING OR REDUCING SETBACKS (if applicable)

☐ 14. ALTERNATIVE TECHNOLOGY PROPOSAL (if applicable): Specifications, and a detailed report including purpose and expected benefits.

☒ 15. APPLICATION FEE: See instructions on the back of this page for amount.

☒ 16. ANNUAL OPERATING FEE: See instructions for amount (first year's fee must be submitted before permit is issued).

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Lisa & Mike Sumerel — Printed Name /Owner or Lessee

Lisa H Sumerel / Mike Sumerel — Signature/Owner or Lessee

I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THE DESIGN CONSISTENT WITH THE REQUIREMENTS OF TITLE 48, CHAPTER 1 OF THE 1987 SC CODE OF LAWS, AND PURSUANT REGULATION 72-43 AND APPROPRIATE NRCS STANDARDS.

Jov S. Shealy — Printed Name/Plan Preparer

Signature/Plan Preparer

DHEC 3580 (08/2002)

DHEC 000024

APPLICATION INSTRUCTIONS - Agricultural Animal Facility Permit

Purpose: This form must be completed as part of an application package submitted for DHEC approval of proposed NEW or EXPANDING agricultural animal facilities. The required items should be checked to ensure that a complete administrative package has been submitted. If a complete administrative package is not submitted, the entire project may be returned.

Item-by-Item Instructions: Section 1 - Facility Information. *Data:* Enter the date of application. *Facility Number.* Leave blank, Department staff will assign a facility number. *New or Expanding Facility:* If this application is for an existing facility that has previously obtained an agricultural animal facility permit from DHEC, then indicate by checking EXPANSION or NEW if a new facility is being proposed. If an Expansion, provide the following: *Permit Number:* Provide the permit number for the permitted facility, and *Date Issued:* Provide the date on which DHEC issued the permit. *Farm Name.* Give the name of the proposed agricultural animal facility. *County.* Give the county in which the proposed facility is to be located. *Community.* Give the name of the community in which the proposed facility is to be located. *Location:* Give directions to the proposed facility from the nearest town or state road. *Integrator Information:* Circle YES or NO to indicate whether this farm will be under contract with an integrator or integrating company. Provide the Name of the Integrator for this facility.

Section 2 - Contact Information. Permit Applicant: Enter the name, address and phone numbers for the person who is applying for the permit. Circle YES or NO to indicate whether the permit applicant is the property owner of record. *Property Owner of Record:* Enter the name, address and phone number of the person who legally owns the property on which the proposed agricultural animal facility is to be located. *Operator:* Enter the name, address and phone number of the person who will be responsible for the daily operation of the proposed facility. *Plan Preparer:* Enter the name of the plan preparer. *Title/SC Registration Number:* Enter the title and SC registration number (if applicable) of the person responsible for the design of the Animal Facility Management plan. *Address, Phone Number.* Enter the business address and phone numbers for the plan preparer.

Section 3 - Animal Types & Numbers. *Average Animal Live Weight* Calculate the average weight of one animal unit by taking the average exit weight plus the average entry weight and divide by two. *Type of Animal Operation:* Indicate the type of animal proposed to be grown at this facility (i.e. dairy, turkey, broiler, etc....). *Maximum # of Animals (at any one time):* Indicate the maximum number of each type of animal at the facility at any one time. *Normal Production Animal Live Weight (lbs):* The maximum number of animals at the facility at any one time multiplied by the average animal live weight of those animals. *Total Manure Produced (tons/year or gal/year):* The total amount of manure produced by the animals in the span of one year. This amount should be represented in tons per year for dry manure and in gallons per year for wet manure. *Manure to Treatment System:* Provide the amount of manure or wastewater that is conveyed to a treatment system (if applicable). *Additional Scraped Solids or Compost:* Provide the amount of manure or solids that may be scraped at the barn, rather than conveyed to the treatment system. Or provide the amount of compost produced at a facility (if applicable). *Acres for Land Application:* The value here should be the number of acres available, that you would like to designate as manure utilization areas.

Section 4 - Manure Handling & Treatment. *Manure Handling:* Circle DRY or WET to indicate the type of manure handling for this operation. *Treatment Proposed:* Describe the type of manure treatment being proposed at the facility. *Land Application:* Circle YES or NO to indicate whether the manure will be land applied. *Owner of Manure Utilization Areas:* Circle YES or NO to indicate whether the permit applicant owns all of the manure utilization areas. If the applicant does not own all of the manure utilization areas, then owner information must be provided for each manure utilization area in the Animal Facility Management Plan. *Manure Broker.* Circle YES or NO to indicate whether a manure broker will be used for contract disposal of the manure from this facility and provide the name of the broker to be used (if applicable). *Treatment Technology:* Circle YES or NO to indicate whether innovative and alternative technology is being proposed for this facility. *Exceptional Quality Compost:* Circle YES or NO to indicate whether you are applying for the manure treated at your facility to qualify as exceptional quality compost (must meet product quality standards outlined in Part 300 of R.61-43). *Number of Groundwater Monitoring Wells:* Provide the number of groundwater monitoring wells that are proposed for this facility. *Volume of Lagoon or Storage Pond:* Provide the volume area of the proposed lagoon or storage pond. If more than one lagoon or storage pond is utilized, please provide the volume of each structure separately. *Number of Houses:* Indicate the number of existing and proposed houses that will be located on this property (All houses located on the same property/tract must be considered one facility). *Trained Manure Manager:* Circle YES or NO to indicate whether the operator of the proposed facility has attended the certified manure manager's training and certification class conducted by Clemson Extension Service. Indicate the date on which the certification or training was obtained.

Section 5 - Facility Separation Distances. *Separation Distances:* This table outlines the required setbacks for the barns, lagoons, manure storage ponds or manure treatment systems. Enter the actual separation distance for the proposed facility in the appropriate spaces.

Section 6 - Manure Utilization Area Information. This table outlines the required setbacks for manure utilization areas. Enter field identification information, tract number, field number, and the actual separation distances for each manure application field in the appropriate spaces. Make copies of this section if you need additional tables for the field information.

Section 7-Permit Application Submittal Requirements. Check each item that is being submitted as a part of this application. *All* items under Section 7 should be submitted to DHEC for review. In accordance with the **Environmental Protection Fee Reg. 61-30**, an application fee is required for submitting an Application for agricultural animal facilities. There is a requirement that DHEC meet certain time frames when processing permit applications. The "DHEC Time" is not the total time but rather it is the time that DHEC spends working on an application after a complete package is received. "DHEC Time" does not include the time an applicant takes to supply any information that may be requested by DHEC. The fees and time frames are as follows:

Agricultural Permit Application Fees

Facility Type	*DHEC Time*	*Fee*
Animal Facilities with wet manure handling	120 days	$240
Animal Facilities with dry manure handling	60 days	$165

Note: Please make **CHECKS** payable to SC DHEC/Bureau of Finance.

Regulation R61-30 also authorizes DHEC to assess annual environmental operating permit fees for certain permits. All new facilities must submit payment for the first years operating fee before the permit to construct is issued. The operating fee is $150 per year for animal facilities with wet manure handling operations and $75 per year for animal facilities with dry manure handling operations.

Section 8 - Certification. For this section, please read the certification statements and have the appropriate person(s) sign the certification.

DHEC Processing Procedures:

Two (2) copies of the submittal package are submitted to DHEC. After Permitting, DHEC files the original in the main project file, located in DHEC's central office. DHEC sends a copy of the approved package to the appropriate EQC District Office.

DHEC 3580 (08/2002)

DHEC 000025

2.2. Existing Waste Management or Nutrient Management Plans

This CNMP supersedes with respect to land applications and amends with respect to facilities any plan developed prior to the date of this plan.

2.3. Operator or manager certifications:

Certified Animal Manure Manager (CAMM)
Certificate Number: Not obtained yet

2.4. Notice(s) of Public Intent

See Appendix D.

2.5. Waivers (Neighboring Landowners)

Not applicable for this plan.

2.6. Manure Application Agreements

Not applicable for this plan.

3. Emergency Action Plan

This plan will be implemented in the event that animal by-products from your operation are leaking, overflowing, running off site or there is imminent danger that such may occur from damage or failure of the system or a threatening natural occurrence, such as a hurricane. You should not wait until manure reach surface water or leave your property to consider that you have a problem. You should make every effort to ensure that this does not happen. This plan should be posted in an accessible location for all employees at the facility. The following are some action items you should take.

1. **Threatening Natural Occurrences**
   Prevent or minimize damage caused by threatening natural occurrences, such as hurricanes or strong storms associated with approaching fronts - actions include:

   a. Do not spread manure on fields just prior to an approaching storm.
   b. Do not spread manure on fields that flood during high rainfall events.
   c. Notify State Veterinary Office - Animal Emergency Response Coordinator (See Table below) or Local Animal Emergency Response Coordinator for relocation of animals if needed.

2. **Personal Injury**

   a. Stop all other activities to deal with the emergency.
   b. Call for help (See Table below).

3. **Catastrophic deaths – Disease Related**
   a. Notify State Veterinary Office.
   b. Limit exposure to other animals.
   c. Prevent visitation by unnecessary people.
   d. Dead animals should be moved into a DHEC approved transport vehicle or a DHEC approved storage area or bin.
   e. Record date of catastrophic deaths, number of deaths, method and location of disposal.

4. **Catastrophic deaths – Disaster Related**
   a. Notify State Veterinary Office - Animal Emergency Response Coordinator immediately. (See Table below)
   b. Notify the integrator, Perdue Farms, or farm manager to remove useable animals.
   c. Dispose of mortality in the manner given in this CNMP for emergency dead animal disposal.
   d. Record date of catastrophic deaths, number of deaths, method and location of disposal.

5. **Land Application Manure/Waste Discharge Emergency**

a. Stop all other activities to deal with the emergency.
b. Assess the extent of the emergency and determine how much help is needed.
c. Call for help if needed.
d. If spilled on the road, call the sheriff's office for traffic control and clean the spill immediately from the road and roadside if needed.
e. Contain the spill or runoff from entering the stream or waterway using straw bales, saw dust, or soil material.
f. Prevent further runoff by incorporating the waste.
g. Initiate additional containment measures, corrective measures, or property restoration measures as directed by emergency agency officials.

6. **Manure Removal**
   a. Place manure in stacking structure if available. Do not stack old manure next to new or wet manure next to dry.
   b. Cover any manure stacks for temporary storage with plastic and weight down the edges. Cut a 4" diameter hole in the top and cover the hole with screen wire.

7. **Fire**
   a. Stop all other activities to deal with the emergency.
   b. Try to extinguish the fire with the appropriate rated fire extinguishers.
   c. If fire cannot be contained, call for help (See Table 4.)

8. **Assess the extent of the spill and note any obvious damages.**
   a. Did the by-product reach any surface waters?
   b. Approximately how much was released and for what duration?
   c. Any damage noted, such as employee injury, fish kills, or property damage?
   d. Did the spill leave the property?
   e. Did the spill have the potential to reach surface waters?
   f. Could a future rain event cause the spill to reach surface waters?
   g. Are potable water wells in danger (either on or off of the property)?
   h. How much reached surface waters?

9. **Provide the following information when reporting an emergency.**
   a. Your name and phone number.
   b. Directions to the farm.
   c. Description of emergency.
   d. Estimate of the amounts, area covered, and distance traveled.
   e. Has manure reached surface waters or major field drains?
   f. Is there any obvious damage: employee injury, fish kill, or property damage?
   g. What is currently in progress to contain situation?

10. **Implement procedures** as advised by SC DHEC and technical assistance agencies to rectify the damage, repair the system, and reassess the manure management plan to keep problems with release of manure from happening again.

11. **Documentation.** The following items shall be documented in writing and filed with the Emergency Action Plan for future reference and emergency response training.

a. Date and time, location of spill, affected landowners.
b. Affect of manure spill on any surface water body or potable water well.
c. Approximately how much manure was released and for what duration.
d. Amount of manure, if any, that left the farm property.
e. Any damage, such as personal injury, fish kill, property damage.
f. Cause of the spill.
g. Procedure to handle the emergency.
h. Clean up efforts.
i. List of authorities called, those that responded, and the time it took for them to respond.
j. Recommendations to prevent a reoccurrence

Biosecurity Issues

Steps to Take to Avoid Disease Spread - Poultry

To reduce the risk of introducing disease into a flock, maintain a biosecurity barrier (physical barrier, personal hygiene, and equipment sanitation) between wildlife, poultry facilities, other commercial avian facilities, and pet birds. Some examples of good biosecurity practices include:

a. Permit only essential workers and vehicles on the premises.
b. Provide clean clothing and a disinfection procedure for employees and visitors. Know your visitor's travel history.
c. Clean and disinfect vehicles at the farm entrance.
d. Avoid visiting other avian facilities.
e. Do not keep pet birds.
f. Protect the flock from exposure to wild birds.
g. Control movement associated with the disposal of bird carcasses, litter, and manure.
h. Quarantine new additions to the flock. Never allow people or material to move from the quarantined birds to the flock.
i. Report signs of disease to your veterinarian.

How Diseases Spread

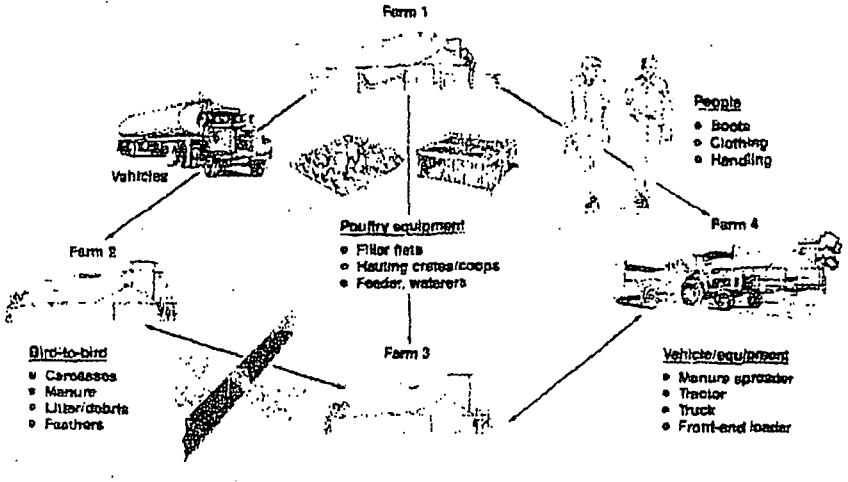

Table 1: Information and Important Phone Numbers for Emergency Response

Farm Information

Farm Name	Sumerel Farms
Address	2044 Poole Town Road Laurens, SC 29360
Farm Phone	cell: 864-923-9137
Permit #	
Directions to Farm	Take exit #44 on Interstate 26 and travel west on Highway 49. Travel for approximately three (3) miles and take a right onto Granny Apple Road (SSR 314). Travel approximately one (1) mile and take a left onto Poole Town Road (SSR 313). The farm is located on the right.

Farm Contacts

	Name	Daytime Phone	Farm Phone	Cell Phone	Night Phone
Farm Owner	Lisa Sumerel	864-923-9137		864-923-9137	864-862-5457
Farm Manager	Mike Sumerel	"		"	"
Fire or Ambulance	911	911	911	911	911
Equipment: Tractors/Dozer					

Agency Contacts

Contact Agency	Person	Day Phone	Emergency Number
DHEC	Regional Office	864-356-5559	1-888-481-0125
State Veterinarian Emergency	Animal Response Coordinator	1-800-788-2280	1-803-788-2280 ext. 700
Sheriffs Office			
NRCS	County Office	864-684-8921	864-684-8921
Clemson Extension	County Office	864-684-3514	864-684-3514
Integrator	Columbia Farms		

Property Owner Contacts

Name	Location of Property	Day Phone	Night Phone

4. Manure Handling and Storage

This element addresses the components and activities, existing and planned, associated with the production facility, feedlot, manure storage and treatment structures and areas, and any areas used to facilitate transfer of manure.

4.1. Planned Manure Handling and Storage

The signature of the Certified Specialist in Manure Handling and Storage indicates that this plan meets the minimum requirements as addressed in applicable conservation practice standards, contained in Section IV of the NRCS Field Office Technical Guidance.

4.2. Production Information

Manure production under these conditions is calculated as shown in the tables below. Data is from Animal Waste Management using NRCS data.

Table 2: Animal Type(s) and Location

	Poultry Broilers
Location (Structure/Pasture):	Structure (barns- 52 ft by 500 ft)
Animal Housed:	Poultry
Animal Phase:	Broilers
Number of Animals (In Structure):	27,400
Number of Structures (Per Animal/Phase)	4
Weight In (If Applicable):	0.25
Weight Out (If Applicable):	8.75
Average Weight:	4.5
Time In Location:	63 days
Number of Herds/Flocks (Per Year):	4.5
Storage Structure Receiving Manure:	Manure Broker

Table 3: Manure Quantities

Animal Type	Total Number of Animals	Average Animal Live Weight	Manure Production Rate	Total Manure Generated
Poultry Broilers	109,600	4. 5 pounds	6.1 tons/year per 1000 bird spaces	669 tons

Table 4: Animal Confinement Locations

Location	Animal Name	Percent
Broiler Barn #1	Poultry	25
Broiler Barn #2	Poultry	25
Broiler Barn #3	Poultry	25
Broiler Barn #4	Poultry	25
Totals	Poultry Broilers	100

4.2.1. Manure Storage Facilities

There are currently no manure storage facilities at this farm. Manure will be removed by the contracted litter broker immediately upon removal from the barns. If the manure is stockpiled more than three (3) days, the manure will be stored on a concrete pad or other approved pad (such as plastic or clay-lined) and covered with an acceptable cover to prevent odors, vector attraction, and runoff. The concrete pad, if chosen, should be constructed to a thickness of six (6) inches. The cover should be properly vented with screen wire to let the gases escape. The edges of the cover should be properly anchored.

4.2.2. Manure Composition and Testing

The following analyses were used in the calculations for the Nutrient Management portion of this document.

Table 5: Manure Nutrient Contents from Manure Analysis.

Storage Name	Sample Date	% Liquid	TKN	NH4-N	Org-N	NO3-N	P2O5	K2O	Units	Source
Poultry Broiler Litter	textbook	21.5	72	11	60	0.7	69	46	Lb/ton	Producer

4.2.3. Transfer and Application System(s)

Manure will be removed from the barns once each year and then removed by the contracted litter broker immediately.

The manure will be transported in a responsible manner. Manure will not be allowed to spill on roadways or other unauthorized areas. The body of vehicles transporting manure will be fully enclosed. While in transit, they will remain covered with a canvas cover provided with eyelets and rope tie-downs or another approved method which will prevent blowing or spillage of loose material. If the manure is very dry it may be wetted down slightly to prevent dust, and the spreader or truck will not be overloaded.

4.2.4. Nutrient Content and Volume of Manure (If Transferred To Others)

Table 6: Exported Manure Quantities and Analysis

Export Date	Exported To	Quantity	Units	TKN	NH4-N	Org-N	NO3-N	P2O5	K2O
3/1/2014	Manure Broker	669	Ton	72	11	60	0.7	69	46
3/1/2015	Manure Broker	669	Ton	72	11	60	0.7	69	46
3/1/2016	Manure Broker	669	Ton	72	11	60	0.7	69	46
3/1/2017	Manure Broker	669	Ton	72	11	60	0.7	69	46
3/1/2018	Manure Broker	669	Ton	72	11	60	0.7	69	46
3/1/2019	Manure Broker	669	Ton	72	11	60	0.7	69	46

4.3. Mortality Disposal

This operation will use a combination or composting and incineration for normal mortality and contract disposal for catastrophic mortality. Refer to Mortality Disposal in the Operation and Maintenance Section for the specifics of each method. See Appendix G: Maps (Page 64) for mortality disposal sites.

If the method of disposing of dead animals changes, the producer should notify DHEC and the local USDA-NRCS offices.

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4.3. Mortality Disposal

This operation will use a combination or incineration and burial for normal mortality and burial for catastrophic mortality. Refer to Mortality Disposal in the Operation and Maintenance Section for the specifics of each method. See Appendix G: Maps (Page 64) for mortality disposal sites.

If the method of disposing of dead animals changes, the producer should notify DHEC and the local USDA-NRCS offices.

5. Land Treatment Practices

This element addresses evaluation and implementation of appropriate conservation practices on sites proposed for land application of manure and organic by-products from an Animal Feeding Operation. On fields where manure and organic by-products are applied as beneficial nutrients, it is essential that runoff and soil erosion be minimized to allow for plant uptake of these nutrients.

5.1. Land Application Site Information

Not applicable for this plan – No land application sites are included in this plan. All litter generated at this farm will be removed under contract disposal with a permitted manure broker.

5.1.1. Application Fields Summary

Not applicable for this plan.

5.2. Nitrate Leaching Index

Not applicable for this plan.

5.3. Risk Assessment for Potential Phosphorous Transport from Fields

Not applicable for this plan.

5.4. Land Treatment Practices and Expected Results

5.4.1. Implemented Land Treatment Practices for Production Facilities

The following practices have are currently in place at this farm.

Table 7: Conservation Practices Implemented for Production Facilities

Tract Number	Field Number	Field Name	Practice Name (Code)
-	-		None Proposed at this time.

Conservation Practice Description

6. Nutrient Management

The goal of this section of the plan is to develop a nutrient budget for nitrogen, phosphorus, and potassium that includes all nutrients sources. Since the litter generated at this farm is being removed by a permitted manure broker, this section does not include any planned land application of litter or nutrient allocations. However, litter removal procedures must still be planned and implemented in a way that minimizes potential adverse impacts to the environment and public health.

6.1. Crop Types, Realistic Yields, Sequences and Application Periods

Not applicable for this plan. All litter removed by a permitted manure broker.

6.2. Soil Test Requirements

Not applicable for this plan. All litter removed by a permitted manure broker.

6.3. Manure Analysis Reports

The producer shall be responsible for having representative samples of the manure collected and analyzed at least once per year and when the feed composition significantly changes. The amount of manure to be land applied so that the permitted application rate (normally the agronomic rate) is met will be determined using a rolling average of the previous analyses. The documentation must be maintained for at least eight years, longer if it relates to a USDA program. These analyses are part of the required Record Keeping and are stored under the Record Keeping element of this CNMP.

6.4. Application Summaries

Table 8: Total Nutrient Source Balance for Plan

Source Name	Total Inflow[1]	Total Outflow[2]	Balance for Plan	Units
Poultry Broiler Litter	4,014	4,014	0.00	Tons

[1] All nutrient loading to the system by the associated source.
[2] Includes all allocations and exports from the associated source.

Table 9: Accounting of Each Nutrient Source by Plan Year

Nutrient Source Name	Year	Available during Year(A)[1]	Stored from Previous Year(B)[2]	Allocated or Exported Amount(C)	Stored Current Year(D)[3]	Units
Poultry Broiler Litter	2014	669	0	669	0	Tons
	2015	669	0	669	0	Tons
	2016	669	0	669	0	Tons
	2017	669	0	669	0	Tons
	2018	669	0	669	0	Tons
	2019	669	0	669	0	Tons

[1] Stored Quantity from previous year of the given nutrient source
[2] Includes all allocations and exports from the associated source.
[3] D= A + B – C

7. OPERATION AND MAINTENANCE

This section addresses the operation and maintenance of the manure management system, conservation practices, soil testing, manure/compost testing, and equipment calibration.

Operation and maintenance of structural, non-structural, and land treatment measures requires effort and expenditures throughout the life of the practice to maintain safe conditions and assure proper functioning. Operation includes the administration, management, and performance of non-maintenance actions needed to keep a completed practice safe and functioning as planned. Maintenance includes work to prevent deterioration of practices, repairing damage, or replacement of the practice if one or more components fail. Listed below is the operation and maintenance for the structural, non-structural, and land treatment measures for Sumerel Farms.

7.1. Item Specific Operation and Maintenance

Manure Analysis
The producer shall be responsible for having representative samples of the manure collected and analyzed at least once per year and when the feed composition significantly changes. The amount of manure to be land applied so that the permitted application rate (normally the agronomic rate) is met will be determined using a rolling average of the previous analyses. The documentation must be maintained for at least eight years, longer if it relates to a USDA program. These analyses are part of the required Record Keeping and are stored under the Record Keeping element of this CNMP.

Obtaining a representative sample is one of the most important tasks in manure management because application rates are based on the concentration of nutrients in the manure. Samples should be taken as close as possible to the time of application. If several weeks elapse between sampling and land application, or if the manure is altered by rainfall or manure additions, another sample should be obtained. To take a representative sample, obtain a quart of manure from 15 to 20 locations in the pile or lagoon and place in a large clean plastic bucket. Mix this bulk sample thoroughly, and then place about a quart in a clean plastic bag or bottle. Seal tightly, but leave room for the sample to expand. Keep the sample cool. If the sample is not mailed to the laboratory on the same day it is sampled, it should be refrigerated.

Guidelines for analysis and application of manure may be obtained from Clemson Extension's EC 63, 1998, "Land Application of Animal Manure" (http://hubcap.clemson.edu/~blppr/manure.html).

Record Keeping
Records shall be maintained according to the Record Keeping Section of this CNMP.

7.2. Vector Control and Abatement

Management and sanitation are the real keys to preventing or eliminating any vectors' problems. If these weaknesses are not addressed, the problems will recur. Pesticides are the final tools in controlling the problem.
Most problems with insects (such as flies), rodents (such as rats and mice) and scavenging animals, (such as dogs, cats, foxes, possums, raccoons, etc.) can be minimized by keeping the facility and surroundings clean and properly maintained. This includes:

- Removing all excess building materials.
- Removal of any excess feed from the houses or around bins.
- Keeping grass and weeds mowed
- Keeping all buildings free of trash and debris.
- The proper use and servicing of bait stations.
- Proper and timely disposal of dead animals.

Keeping all manure cleaned up caused by spillage from around the houses. Keep all temporary stored manure covered and dry.
Any spillage of feed should be cleaned as soon as possible and all feed will be kept dry.
Covers on feed storage bins should be used. Drainage away from all feed storage containers should be provided to reduce moisture accumulation.

Actions to be taken for the abatement of an insect problem:
Mow vegetation around facility.
Clean up any spilled feed.
Repair or replace equipment that is spilling feed.
Use covers to prevent feed from getting wet.
Dispose of any wet or contaminated feed.
Check for leaks from waterers, etc. and repair as needed.
Remove any garbage or trash from the facility.
Remove and dispose of all dead animals immediately and appropriately.
Use approved baits, poisons, etc. as appropriate.

Actions to be taken for the abatement of a rodent problem:
Mow vegetation around facility.
Clean up any spilled feed.
Repair or replace equipment that is spilling feed.
Use covers to prevent feed from getting wet.
Dispose of any wet or contaminated feed.
Remove all excess building materials.
Remove any garbage or trash from the facility.
Check for damage or leaks from waterers, etc. and repair as needed.
Remove and dispose of all dead animals immediately and appropriately.
Use approved baits, poisons, etc. as appropriate.

Actions to be taken for the abatement of scavenging animal problems:
Remove and dispose of all dead animals immediately and appropriately.
Mow vegetation around facility
Clean up any spilled feed.
Repair or replace equipment that is spilling feed.
Use covers to prevent feed from getting wet.
Dispose of any wet or contaminated feed.
Remove all excess building materials.
Remove any garbage or trash from the facility.
Check for digging activities that could damage or weaken buildings and repair as needed.
Contact the proper officials for additional control measures.

For more details on specifics (rats, filth flies, etc.) information may be obtained from the Clemson Agricultural Extension Offices or the NRCS office. A source of information is also available from Clemson's South Carolina Confined Animal Manure Manager's program, in Chapter 10 of the applicable species, available at: http://www.clemson.edu/camm/

7.3. Air Quality

NRCS does not have specific technical criteria for these considerations that are required for CNMPs. However, the following items may be considered when addressing Air Quality, most Air Quality issues are associated with odor.

Air quality in and around structures, waste storage areas, and treatment sites may be impaired by excessive dust, gaseous emissions such as ammonia, and odors. Poor air quality may impact

the health of workers, animals, and persons living in the surrounding areas. Ammonia emissions from animal operations may be deposited to surface waters, increasing the nutrient load to these regions. Proper siting of structures and waste storage facilities can enhance dispersion and dilution of odorous gases. Enclosing waste storage or treatment facilities can reduce gaseous emissions from AFOs in areas with residential development in the region.

For an odor to be detected downwind, odorous compounds must be (a) formed, (b) released to the atmosphere, and (c) transported to the receptor site. These three steps provide the basis for most odor control. If any one of the steps is inhibited, the odor will diminish.

Growing and Storage Facilities

Odor problems can be prevented or reduced through adequate drainage, runoff management, proper care to keep animals and animal facilities clean and dry, and appropriate animal by-product removal, handling, and transport.

Locate animal by-product management facilities and utilization areas as far as practical from neighboring residences, recreational areas, or other conflicting land uses. Avoid sites where radical shifts in air movement occur between day and night, such as those near large bodies of water or steep topography. A component's location in relation to surrounding topography may also strongly influence the transfer of odor because of daily changes in temperature and resulting airflow. To provide optimum conditions, prevailing winds should carry odors away from nearby residences.

Providing conditions or design features that alter the microclimate around specific components can further mitigate odor. An abundance of sunlight and good ventilation helps keep livestock and poultry areas dry and relatively odor free. Southern exposure with adequate slope to provide drainage for runoff is a preferred condition. Keeping animal by-products aerated and at appropriate moisture and temperature levels slows the development of anaerobic conditions and reduces odor.

Mitigation of Odor

Odor-causing substances from animal by-products are frequently attracted to dust particles in the air. Collecting or limiting the transport of dust aids in reducing odor. Vegetation is very effective in trapping dust particles. For example, pine trees planted downwind trap odor-laden dust particles and can provide a visual barrier to the animal operation. In addition, vegetation, landform, and structures can channel wind to carry odors away from nearby residences.

Chemical additives for the control or reduction of odors may be added to the bedding in the house or during removal.

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7.4. Soil Testing

Not applicable for this facility – all litter is removed by a permitted manure broker.

7.5. Mortality Disposal

Mortality disposal shall be done so that offensive odors and air quality degradation will not be organized.

Incinerator

The producer must obtain and air quality permit from SCDHEC or must qualify for an exemption using the following criteria as given in SC Reg. 61-43 *Standards for the Permitting Agriculture Animal Facilities in South Carolina.*

the health of workers, animals, and persons living in the surrounding areas. Ammonia emissions from animal operations may be deposited to surface waters, increasing the nutrient load to these regions. Proper siting of structures and waste storage facilities can enhance dispersion and dilution of odorous gases. Enclosing waste storage or treatment facilities can reduce gaseous emissions from AFOs in areas with residential development in the region.

For an odor to be detected downwind, odorous compounds must be (a) formed, (b) released to the atmosphere, and (c) transported to the receptor site. These three steps provide the basis for most odor control. If any one of the steps is inhibited, the odor will diminish.

Growing and Storage Facilities

Odor problems can be prevented or reduced through adequate drainage, runoff management, proper care to keep animals and animal facilities clean and dry, and appropriate animal by-product removal, handling, and transport.

Locate animal by-product management facilities and utilization areas as far as practical from neighboring residences, recreational areas, or other conflicting land uses. Avoid sites where radical shifts in air movement occur between day and night, such as those near large bodies of water or steep topography. A component's location in relation to surrounding topography may also strongly influence the transfer of odor because of daily changes in temperature and resulting airflow. To provide optimum conditions, prevailing winds should carry odors away from nearby residences.

Providing conditions or design features that alter the microclimate around specific components can further mitigate odor. An abundance of sunlight and good ventilation helps keep livestock and poultry areas dry and relatively odor free. Southern exposure with adequate slope to provide drainage for runoff is a preferred condition. Keeping animal by-products aerated and at appropriate moisture and temperature levels slows the development of anaerobic conditions and reduces odor.

Mitigation of Odor

Odor-causing substances from animal by-products are frequently attracted to dust particles in the air. Collecting or limiting the transport of dust aids in reducing odor. Vegetation is very effective in trapping dust particles. For example, pine trees planted downwind trap odor-laden dust particles and can provide a visual barrier to the animal operation. In addition, vegetation, landform, and structures can channel wind to carry odors away from nearby residences.

Chemical additives for the control or reduction of odors may be added to the bedding in the house or during removal.

7.4. Soil Testing

Not applicable for this facility – all litter is removed by a permitted manure broker.

7.5. Mortality Disposal

Mortality disposal shall be done so that offensive odors and air quality degradation is minimized.

Incinerator

The producer must obtain and air quality permit from SCDHEC or must qualify for an exemption using the following criteria as given in SC Reg. 61-43 *Standards for the Permitting Agriculture Animal Facilities in South Carolina.*

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7.5. Mortality Disposal

Mortality disposal shall be done so that offensive odors and air quality degradation is minimized.

Burial

Dig a large pit or trench as located on the plan map.

Insert dead animals daily, and cover them with one to two feet of soil.

For animal facilities proposing an incinerator for dead animal disposal, either a permit for the air emissions shall be obtained from the Department's Bureau of Air Quality before the incinerator can be built or the following criteria shall be met in order to qualify for an exemption from an air permit:

The emission of particulate matter shall be less than one pound per hour at the maximum rated capacity;

The incinerator shall be a package incinerator and have a rated capacity of 500 pounds per hour or smaller which burns virgin fuel only; and

The incinerator shall not exceed an opacity limit of 10%.

Incinerators used for dead animal disposal shall be properly operated and maintained. Operation shall be as specified in the owner's manual provided with the incinerator. The owner's manual shall be kept on site and made available to Department personnel upon request.

The use of the incinerator to dispose of waste oil, hazardous, or any other waste chemical is prohibited.

The use of the incinerator shall be limited to dead animal disposal only unless otherwise approved by the Departments Bureau of Air Quality.

Incinerators shall be operated in such a manner as is necessary to prevent the emission of objectionable odors.

The incinerator shall have yearly maintenance performed, as necessary. Replace firebricks and scrape and repaint metal components, particularly the fluestock, with heat resistant outdoor paint.

Composting – Poultry

For proper composting, correct proportions of carbon, nitrogen, moisture, and oxygen need to be present in the mix. Common carbon sources are sawdust or wheat straw. It is desirable because of its bulking ability, which allows entry of oxygen. Other carbon sources that could be used are peanut hulls, cottonseed hulls, sawdust, leaves, etc. If lab testing of the litter or experience indicates that the carbon/nitrogen ratio is adequate (20 - 35:1 ratio), then litter alone should be sufficient for composting mortality as long as desirable bulking ability is achieved and moisture is properly managed. Moisture management is critical and must be maintained between 40 and 55 percent (40% -does not leave your hand moist when squeezed, 55% - if more than two drops drip from your hand the material is too moist).

Recipe for composting broiler mortality

INGREDIENT	VOLUME	WEIGHTS
Straw	1.0	0.10
Carcasses	1.0	1.0
Litter	1.5	1.2
Water	0.5	0.75

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Compost layering procedure

a. The first layer is one foot of litter.

b. A 4-6 inch layer of carbon amendment (sawdust is preferred) is added according to the recipe

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Compost layering procedure

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b. A 4-6 inch layer of carbon amendment (sawdust is preferred) is added according to the recipe

The pit should be graded so that it does not impound water. Runoff from the pit should flow into a grass filter. Note: When adequate drainage is not provided, these pits or trenches fill with water and carcasses may actually float to the surface. The water in the pit is very bacteria-laden and may be a hazard to both animal and human health. There is also high potential for ground water contamination from both bacteria and nutrients.

Burial trenches and pits must have at least a 2.0 foot separation between the bottom of the trench and groundwater.

The pits should also have a berm to divert rainfall and runoff from the site. The soil should be able to infiltrate any rainfall that falls directly into the pit.

Vectors (dogs, rats, snakes, flies, etc.) are potential problems in a burial situation. If a producer chooses this method for disposal of dead animals, the carcasses must be covered daily as to reduce vectors in and around the trench or pit.

When a burial pit is full, the site should be capped with mound of soil so that precipitation is not allowed to collect in the closed pit. Also, the area should be grassed as to prevent erosion. The burial area should be monitored so that these conditions remain after settling of decomposing carcasses and capping material.

Incinerator

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The incinerator shall have yearly maintenance performed, as necessary. Replace firebricks and scrape and repaint metal components, particularly the fluestock, with heat resistant outdoor paint.

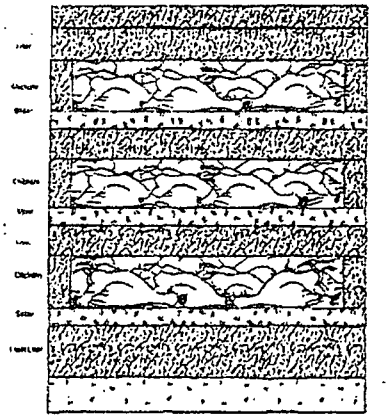
c. A layer of carcesses is added. Carcasses shall be laid side-by-side and shall not be stacked on top of one another. Carcasses placed directly on dirt or concrete floors, or against bin walls will not compost properly.

d. Water is added (uniform spray).

e. Carcasses are covered with a 6-inch layer of litter.

f. Next layer of carcasses begun with carbon amendment and above steps repeated.

g. When composter is full, cap the 6-inch layer with four additional inches.



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Maintain the moisture content at 40 to 55 percent during the composting process (40% - does not leave your hand moist when squeezed, 55% will allow about one drop of water to be released when squeezed, > 55% - if more than two drops drip from your hand the material is too moist, therefore add sawdust or dry carbon source).

Temperature is the primary indicator to determine if the composting process is working properly. A minimum temperature of 130 ° F shall be reached during the composting process. A temperature of 140 ° F is optimum; however, temperatures may range up to 160 ° F. If the minimum temperature is not reached, the resulting compost shall be incorporated immediately after land application or recomposted by turning and adding moisture as needed. Compost managed at the required temperatures will favor destruction of any pathogens and weed seeds.

Good carcass compost should heat up to the 140° range within a few days. Failure of the compost material to heat up properly normally results from two causes. First, the nitrogen source is inadequate (example wet or leached litter). A pound of commercial fertilizer spread over a carcass layer will usually solve this problem. Secondly, the compost fails when too much water has been added and the compost pile becomes anaerobic. An anaerobic compost bin is characterized by temperatures less than 120°, offensive odors, and black oozing compound flowing from the bottom of the compost bin. In this case a drier bulking / carbon amendment should be added to dry the mix. Then, the material should be remixed and composted.

It is possible, though unlikely, for the temperature to rise above the normal range and create conditions suitable for spontaneous combustion. If temperature rises above 170° F, the material should be removed from the bin and cooled, spread on the ground to a depth not to exceed six inches in an area away from buildings. Water should be added only if flames occur. If

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f. Next layer of carcasses begun with carbon amendment and above steps repeated.

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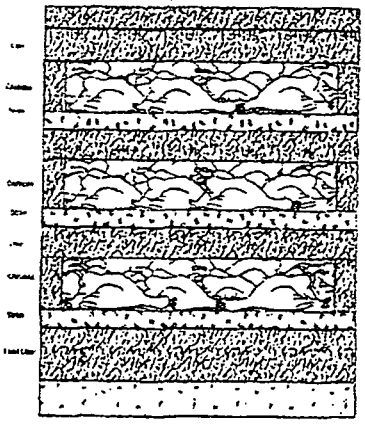

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7.6. Site Specific Vector and Odor Abatement Plan

Odor & Vector Abatement Plan
Columbia Farms

Columbia Farms has approved the following treatments in the event that an odor problem is identified at the farm:

PL-1 Poultry Litter Treatment
Disinfectants

Columbia Farms has approved the following pesticide treatments in the event that a vector problem is identified on the farm:

Beneficial Insect Treatment for flies (wasps)
Larvidex
Phenols
Ratsm 50 Wettable Powder Insecticide
Rat Baits (Brands rotated for resistance prevention)

temperature falls significantly during the composting period and odors develop, or if material does not reach operating temperature, investigate piles for moisture content, porosity, and thoroughness of mixing.

After this first stage process, the material should be turned into a second bin and allowed to go through a second heat process. For larger birds, especially turkeys, a third turning may be necessary for complete degradation of the birds. Typically, the process can be considered "done" within 21-28 days from the time the compost is filled for broilers. For turkeys, the process usually requires about 60 days. After the heat process, curing period of one to three months is usually required before the material is stable.
Compost may be land applied after the secondary or tertiary composting. If any animal parts are still in the mix, the material must be incorporated. If immediate application is not possible the material should be stored using the same requirements as that of stored litter in the Stacking Shed O&M statement.

Inspect compost structure at least twice annually when the structure is empty. Replace any broken or badly worn parts or hardware. Patch concrete floors and curbs as necessary to assure water tightness. Examine roof structures for structural integrity and leaks. Inspections shall be documented on the attached worksheet.

The primary and secondary composters and the litter storage area should be protected from outside sources of water such as rain or surface runoff.

In order to assure desired operation of the composting facility, daily records should be kept during the first several compost batches. This can be helpful in identifying certain problems that may occur.

Contract Disposal

The owner plans to utilize contract disposal for the dead birds in the event of a catastrophic mortality event. The owner will obtain a letter or verification from the local landfill or rendering company to keep on file with SCDHEC that verifies the plan for contract disposal.

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8. Record Keeping

It is important that records are kept to effectively document and demonstrate implementation activities associated with CNMPs. Documentation of management and implementation activities associated with a CNMP provides valuable benchmark information for the producer that can be used to adjust his/her CNMP to better meet production objectives. It is the responsibility of AFO owners/operators to maintain records that document the implementation of CNMPs.

CNMP requires that the producer maintain these records for no less than 5 years. SCDHEC requires that the records be maintained for a minimum of 8 years. It is the producer's responsibility to ascertain the minimum time required for archiving the records listed below. In some cases, if certain USDA programs are in effect, the records may need to be kept as long as fifteen years.

Records may be kept in a number of ways:

Forms are available from the NRCS.
Record forms may be obtained from South Carolina Department of Health and Environmental Controls or from the Clemson Extension Office.
You may develop your own records system provided that all necessary information is included.

8.1. Documentation

The Table below shows which of the CNMP reports are required by SCDHEC. Maintaining records to document plan implementation. As applicable, records include:

Table 10: Records to be maintained by Producer Farms

Item	Report Details	Frequency	Documentation	South Carolina Records Kept For:	Required by SCDHEC?
Monthly Animal and Mortality Count		Monthly	Suggested format available upon request		Y
Manure Nutrient Analysis	A manure analysis must be completed annually, for each manure storage containment and prior to application. It is essential that the rate of manure allocated be revisited each year using the current analysis data to make those decisions. The Manure analysis should be used to assess the content proportions of each micro and macronutrient. One example of the effective use of the analysis would be to check the level of Magnesium against the level of Potassium. Should Magnesium be higher and the manure is applied to pasture land, the result could be detrimental to foraging livestock	Annual	Suggested format available upon request or Keep Test Reports	8 Years	Y
Events associated with manure storage and containment structures (e.g. manure transfer overflow events)	Dates of emptying, level before emptying, and level after emptying Discharge or overflow events, level before and after event	Event Driven	Suggested format available upon request		Y
Spill Response	Activities associated with emergency spill response plan.	Event Driven	Suggested format available upon request		Y
Transfer of manure offsite to third parties	a. Manure nutrient content b. Amount of manure transferred c. Date of transfer d. Recipient of manure	Event Driven	Suggested format available upon request	8 Years	Y
Reviews by third parties	Records associated with any reviews by NRCS, third-party consultants, or representatives of regulatory agencies: a. Dates of review b. Name of reviewer and purpose of the review c. Recommendations or follow-up requirements resulting from the review d. Actions taken as a result of the review	Scheduled	Suggested format available upon request		
Maintenance Records	Records of maintenance performed associated with operation and maintenance plans.	Scheduled Maintenance and Event Driven	Suggested format available upon request		

Internal Inspections		Annual or more	Suggested format available upon request		
Changes Made in CNMP	Some changes to the CNMP will not require a new plan to be created, other decisions will. Ask your local NRCS Field Office Personnal for information regarding changes to this CNMP.	Any actual operational or management variation from the original CNMP must be documented	Suggested format available upon request		
Animal Facility Management Plan		Duration of Plan Developed or When Changes are made to CNMP (See NRCS Field Office)	CNMP	As long as facility is in operation	Y

8.2. Sample Recordkeeping Forms

Monthly Animal and Mortality Count

Animal/Type: **Year:**

Production Phase:

Month	Animal Count and Weight	Mortality	Mortality %	Comments
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				

Changes to CNMP

Date of Activity	Planned Action or Decision	Description of the change from the Planned Action or Decision	Rationale for Change Including Supporting Document Reference

32

250

DHEC 000055

Reviews by NRCS, Third parties (e.g. consultants) or Regulatory Agencies

Date	Reviewer Name, Tel.	Reviewer Organization	Recommendations	Action Taken as a Result, and Date

33

251

DHEC 000056

252

DHEC 000057

Internal Inspections of Manure System Components

Date	Equipment/ Facility Inspected	Comments	Action Required	Action Completed (and Date)

34

Transfer of Manure off-site to Third Parties

Date	Manure Source	Quant.	Units of Quant.[1]	Units of Conc.[2]	NH4-N	Total N	P2O5	K2O	Recipient Name Contact Details

[1] Units in ton, 1000 gal or ac-in. Note that 1 ac-in = 27,154 gal
[2] Units in lb/ton, lb/1000 gal or lb/ac-in. Note that 1 lb/ac-in = 27.154 lb/1000gal

35

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DHEC 000058

Spill Response Record

Date	Event Description: Actions Taken: follow-up etc.

Annual Manure Analysis

Year	Manure Source/ Structure	Units	(NH4+)	Organic Nitrogen	(NO3-)	PAN	P2O5	K2O	(Ca)	(Mg)	(S)	(Zn)	(Cu)	(Mn)	(Na)	Soluble P	Moisture %

255

DHEC 000060

Emergency Event Record

Farm: _____ **Reported by:** _____

Date: _____ **Title:** _____

Time: _____ **Qualifications:** _____

Date of Event:	
Time of Event:	
Duration of Event:	
Location of Event:	
Any Discharges?	YES NO
Description of Event:	
Material Discharged:	
Amount Discharged:	

Were there any hazardous wastes discharged?	YES	NO
Were there any oils or gasolines discharged?	YES	NO
Did the Discharge reach Waters of the State?	YES	NO
Did the any Discharge reach a Drainage Route?	YES	NO
Were any areas affected by the discharge?	YES	NO

Location of Damage:	
Amount of Damage:	
Cause of the Event:	
Corrective Actions:	

Note if changes will be implemented to prevent a recurrence of the event:

_____

_____

Implementation Dates for any further Corrective Actions or Changes planned:

_____

_____

LIST OF PERSONS OR AGENCIES NOTIFIED OF THE EMERGENCY EVENT:

Name	Agency	Recommendations	Response Time
	911 - Fire Dept, Sheriff		
	Farm Owner		
	Farm Operator		
	Integrator		
	SC DHEC		
Julie Helm	State Veterinarian's Office		

DHEC 000061

8.3. Soil Test Reports

Not applicable for this plan – all litter is removed by a permitted manure broker.

8.4. Manure Analysis Reports

New Farm – Textbook averages provided in the CAMM Manual were utilized for planning.

9. Feed Management

Feed management activities may be used to reduce the nutrient content of manure, which may result in less land being required to effectively utilize the manure. Feed management activities may be dealt with as a planning consideration and not as a requirement that addresses specific criteria; however, AFO owners/operators are encouraged to incorporate feed management as part of their nutrient management strategy. Specific information and recommendations should be obtained from Land Grant Universities, industry, the Agricultural Research Service, or professional societies such as the Federation of Animal Science Societies (FASS) or American Registry of Professional Animal Scientists (ARPAS), or other technically qualified entities. Specific feed management activities to address nutrient reduction in manure may include phase feeding, amino acid supplemented low crude protein diets, and the use of low phytin phosphorus grain and enzymes, such as phytase or other additives. Feed management can be an effective approach to addressing excess nutrient production and should be encouraged; however, it is also recognized that feed management may not be a viable or acceptable alternative for all AFOs. A professional animal nutritionist should be consulted before making any recommendations associated with feed ration adjustment.

Any significant changes that would result in nutrient changes in the manure will require a re-evaluation of this plan (CNMP).

10. Other Utilization Activities

This plan does utilize an environmentally safe alternative, contract disposal with a permitted manure broker, to land application for manure utilization. The manure broker is permitted individually to transport manure or litter from poultry farms into areas where farmers are in need of this material as an alternative fertilizer source.

11. Appendix A: Manure Sampling Instructions and Forms

Agricultural Service Laboratory
Clemson University

Supply Order Form

Copy this form by selecting all and paste it into your word to use.
Fill in your department/agency and other gray areas as needed.
Email orders to agsrvlb@clemson.edu

Department/Agency	
Item	**# Requested**
Soil	
Soil sample bags	
4-count shipping boxes (order in multiples of 20)	
20-count shipping boxes (order in multiples of 20)	
Witchweed bags – Horry and Marion counties only	
Animal Waste	
Solid sample bags (order in multiples of 10)	
Liquid sample bottles	
Compost	
Sample bags (order in multiples of 5)	
Feed and Forage	
Mailing packs (order in multiples of 20) - packs include sample bags, forms, and mailer	
Sample bags only (order in multiples of 20)	
Plant Tissue	
Sample bags (order in multiples of 20)	
Nematode Assay	
Sample bags (order in multiples of 20)	
Plant Problem Clinic	
Small sample bags	
Large sample bags	
Insect vials	

All sample analysis forms and crop code sheets are available on the lab web site http://www.clemson.edu/agsrvlb

DHEC 000067

How to fill out the Animal Waste Form

The form can be found on the lab web page by going back to the animal waste section.

1. 1. Insert a disk into the A: drive.
2. 2. Click SAVE to save the executable manure form onto your A: drive – or you can change the target drive if desired. You now have the form saved where you can reuse it when needed.
3. 3. To open the form, go to the drive where you saved it. Double click on the executable animal waste form. Enter in the information and print the sheet, but don't save it. The blank form will remain on your drive for reuse.

The form can be filled out with the computer or you can print off as many blank copies as you need to fill out by hand.

If using the computer – use the TAB key to move through the fields.

1. Completely fill in all requested information at the top of the page.

2. **Account:** This seven block space is for your account code. The county Extension office collecting the fees for samples must enter the account code for that county office. Researchers should enter their personal computer userid. Other accounts should enter their seven-digit account number. **This is a mandatory fill field if you have an account.** If you're including payment with the sample sent directly to the lab leave this space blank.

3. **Email to account:** If you have a personal account, an email address, and would like to view your reports on the web click or check the little box in the text.

4. **Copy to Email:** If you would like someone else to be able to access the report on the web, enter his or her email address in the 30-block field. If you submit your sample through the county office and include your personal email address here, the county will have web access to your report.

5. **Sample Number:** Enter your sample identification number/label in this 8-block space. Make sure that the sample number on the sample bag or bottle matches the sample number on the form for every sample submitted.

6. Click with the mouse type of manure and storage.

7. **Analyses:** Check the appropriate box(es) for the analyses desired (point with the mouse and click to select box). Write in the fee for that sample. (The fees will be carried out automatically if using the computer.)

8. **Total Amount Due:** Add up the total amount due at the bottom of the sheet. (The fees will be added automatically if using the computer.) If paying by check enter your check number. Make checks payable to Clemson University.

9. Deliver samples, completed record sheets, and payment to the lab or your county Extension Agent's office for shipment to the lab. **Completed forms must accompany samples to the lab.**

10. **Hard Copies of Reports:** If you do not have a personal account or have not included an email address in the copy to email space you will receive a hard copy from the County Extension Office located in the county in which you reside. The county office is also responsible for sending all copy to hard copies if requested.

DHEC 000068

CLEMSON EXTENSION

Animal Waste Analysis

Agricultural Service Laboratory
171 Old Cherry Road / Clemson, SC / 29634
Phone: 864-656-2068 Fax: 864-656-2069
http://www.clemson.edu/agsrvlb

Lab No.

Name (LAST FIRST)

Date Sampled / /

Address

City

State Zip Code Phone Number: ( ) -

Account

If you have a personal account, an email address, and would like to view your reports on the web, check here ☐. If you would like another person to have access to the report through the web, enter the copy to email address below.

Copy to Email

Sample No.

Type of Manure (check one)

- ☐ Broiler
- ☐ Layer
- ☐ Turkey
- ☐ Dairy, solid
- ☐ Dairy, liquid
- ☐ Swine
- ☐ Other

Storage (check one)

Solids

- ☐ Covered
- ☐ Uncovered

Liquids

- ☐ Lagoon
- ☐ Holding Pit

Check Analyses Desired:	Cost/ Sample	Enter Cost
☐ Special	$30.00	
☐ Arsenic	$20.00	
☐ Calcium Carbonate Equivalency	$10.00	
☐ Nitrate Nitrogen	$10.00	
☐ Soluble Phosphorus	$5.00	
☐ pH	$3.00	
☐ Fax Report	$1.00	
Total Amount Due		

See below for **out-of-state fees**

Special analysis includes organic nitrogen, ammonium nitrogen, digestible phosphorus, potassium, calcium, magnesium, sulfur, zinc, copper, manganese, sodium and moisture.

OUT-OF-STATE FEES
Special - $36.00
Arsenic - $20.00
CCE - $20.00
Nitrate Nitrogen - $20.00
pH - $6.00
Soluble Phosphorus - $10.00

Comments

Date sample received at lab:

Approval

Enter your check number covering payment for the above charges:
Make checks payable to "Clemson University"

DHEC 000069

12. Appendix B: Manure Broker Contract

Insert Broker Contract Here

CONTRACT FOR PURCHASE OF WASTE

I, Don Bowman, BROKER NUMBER 18704-A6 WILL PURCHASE FROM Summerl Farms, PRODUCER, AGRICULTURAL WASTE (MANURE, COMPOST, LITTER), FROM HIS/HER Boiler FACILITY, LOCATED IN Laurens COUNTY AND IDENTIFIED BY SC DHEC OPERATING PERMIT NUMBER_____.

PURCHASE PRICE WILL BE BASED UPON SERVICES RENDERED AND/OR AN AGREED TO PRICE PER TON AT DATE OF CLEAN OUT.

I, Don Bowman, FOR ALL WASTE PURCHASED, WILL PROVIDE NECESSARY EQUIPMENT AND SERVICES TO REMOVE WASTE FROM THE FACILITY. UPON REMOVING THE WASTE, I ACCEPT ALL WASTE UTILIZATION RESPONSIBILITIES ENSURING THE WASTE IS HANDLED, TRANSPORTED, STORED, AND/OR APPLIED IN A MANNER CONSISTENT WITH SC DHEC REGULATION 61-43, THUS, RELIEVING THE PRODUCER OF THIS RESPONSIBILITY

THE PRODUCER WILL FURNISH, TO THE BROKER, WASTE ANALYSIS INFORMATION OBTAINED NOT EARLIER THAN TWO (2) MONTHS BEFORE THE DATE OF CLEAN OUT. WASTE WILL BE ANALYZED FOR:

A. NUTRIENTS (ON A DRY WEIGHT BASIS)
   1. TOTAL KJELDAHL NITROGEN
   2. TOTAL INORGANIC NITROGEN
   3. TOTAL AMMONIA NITROGEN AND TOTAL NITRATE NITROGEN
   4. PHOSPHORUS AS P2O5
   5. POTASSIUM AS K2O
6. CALCIUM CARBONATE EQUIVALENCY (IF ANIMAL WASTE IS ALKALINE STABILIZED)

B. CONSTITUENTS (ON A DRY WEIGHT BASIS)
   1. ARSENIC
   2. COPPER
   3. ZINC

CALCIUM CARBONATE EQUIVALENCY AND ARSENIC ANALYSIS ARE NOT REQUIRED IF PRODUCER GIVES DOCUMENTATION THAT THESE ADDITIVES ARE NOT PRESENT IN THE WASTE.

OTHER PROVISIONS:

AGREED TO BY:

Don Bowman
BROKER

DATE: 10-9-12

Lisa H Summerl
Mike Summerl
PRODUCER

DATE: 10-10-12

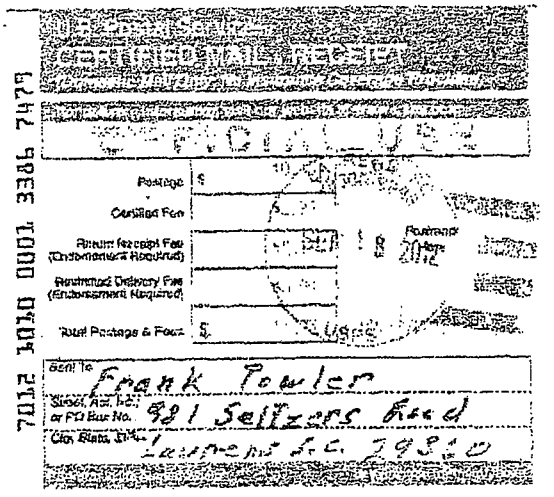
DHEC 000072

13. Appendix C: Land Base Needs

Not applicable for this plan – all litter removed by a permitted manure broker.

14. Appendix D: Notice of Intent Forms

Map#
498-00-00-038

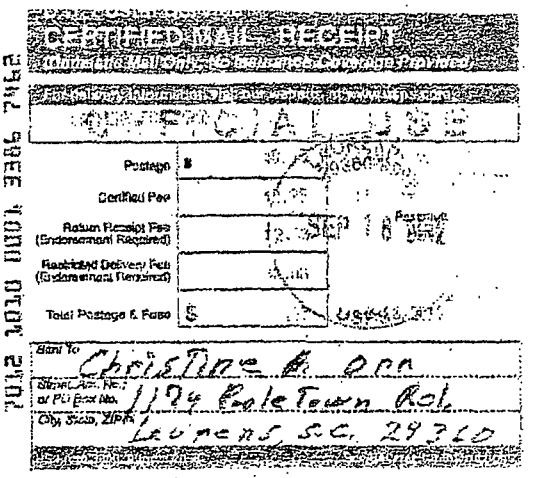


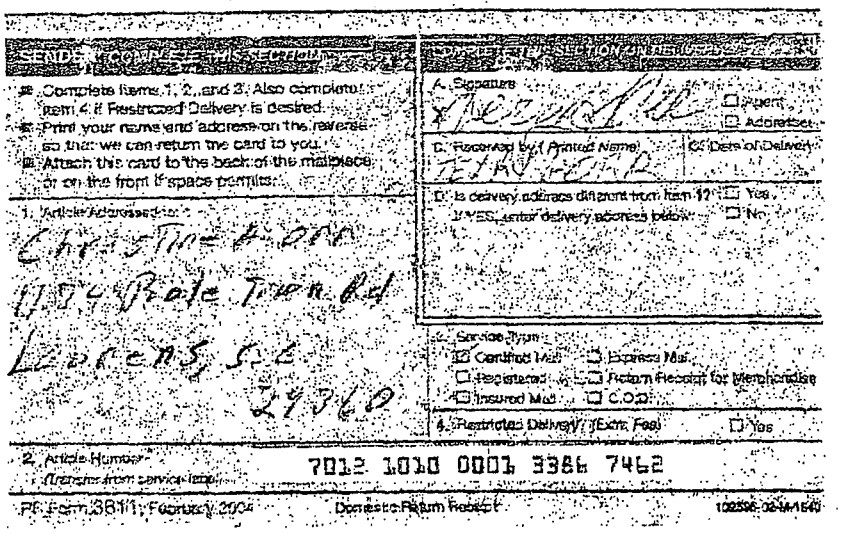
DHEC 000075

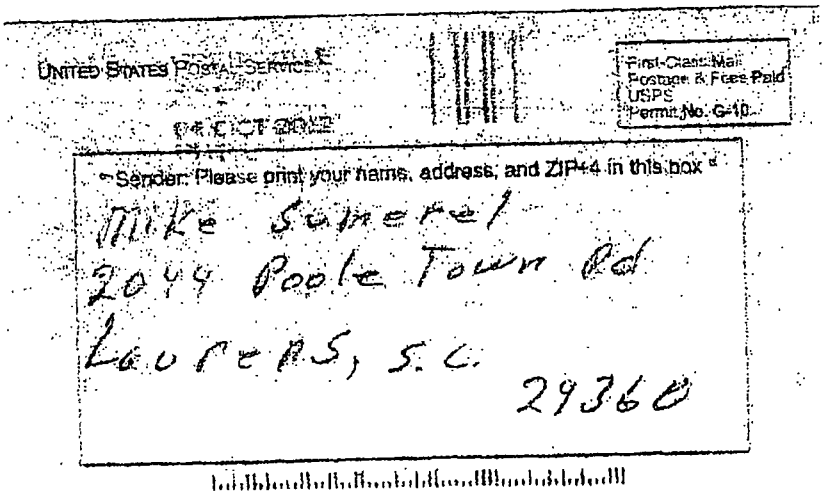
271

DHEC 000076

Map #
497-00-00-006







DHEC 000077

Laurens County GIS

Parcel:497-00-00-005

OWNER
ORR CHRISTINE A
5174 ROCKTOWN ROAD
LAURENS S C, 29360

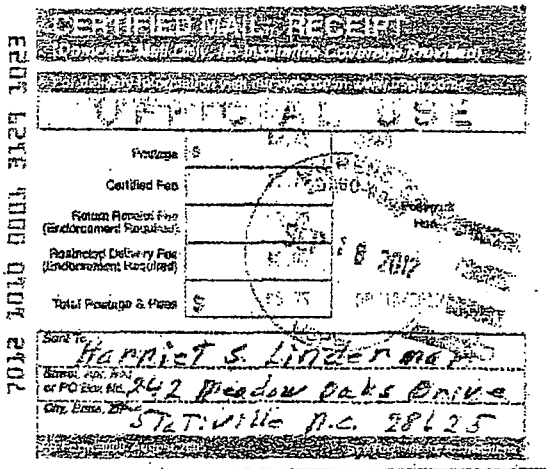
LEGAL
Grantors Name:ORR CHRISTINE A
Sale Price:341,000.00
Sale Date:10/26/1993
Deed Book:787
Deed Page:304
Plat Book:A42
Plat Page:6

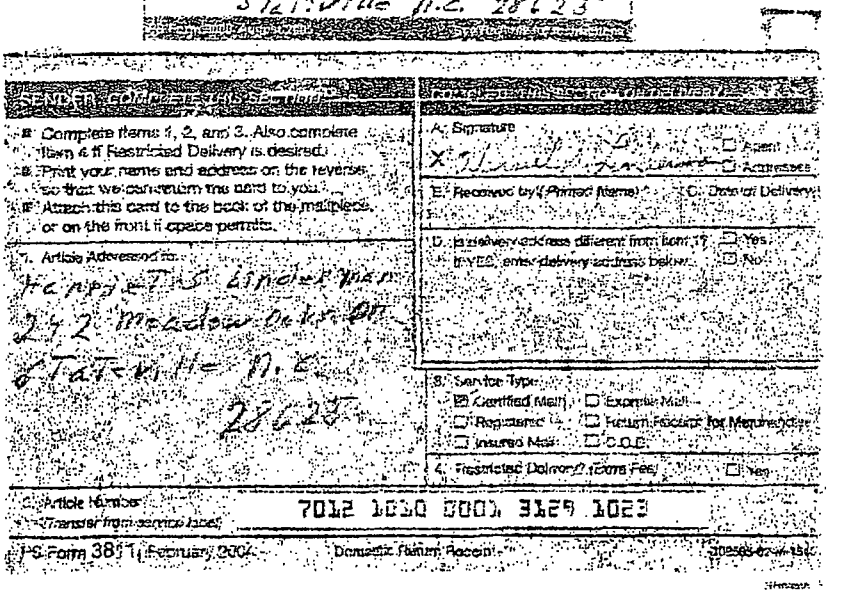
PROPERTY INFO
Parcel ID:497-00-00-005
Location:
School District:55
Town Code:
Fire Code:6201
Acres/Lots:11.010

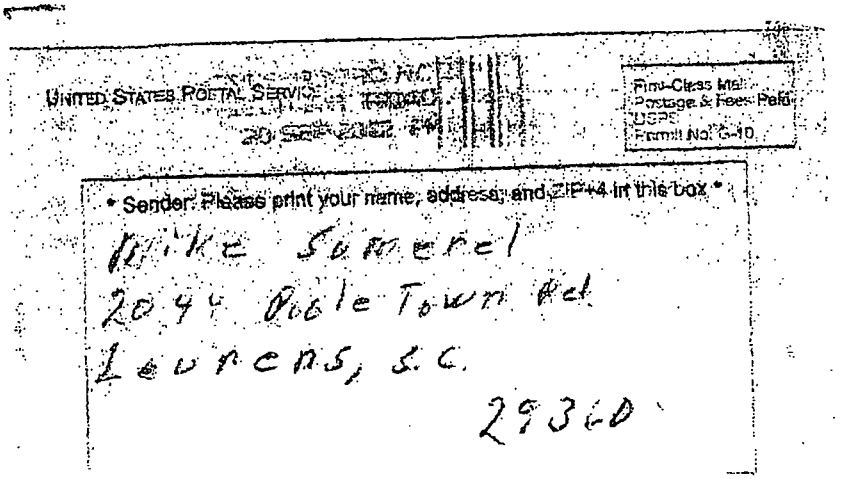
"THIS MAP IS NOT TO BE USED AS A PLAT."

DHEC 000078

Map #
497-00-00-008







DHEC 000079

275

DHEC 000080

Map # 498-00-00-004

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Roger Blackely
628 Branch Rd.
Gray Court, S.C.
29645

COMPLETE THIS SECTION ON DELIVERY

A. Signature: X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 7-9-12

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type: ☑ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7012 1010 0001 3129 1054

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

7012 1010 0001 3129 1054

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

Postmark Here

Sent To: Roger Blackely
Street, Apt. No.; or PO Box No. 628 Branch Rd.
City, State, ZIP+4 Gray Court, S.C. 29645

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Mike Somerel
2044 Rock Town Rd.
Laurens, S.C.
29360

DHEC 000081

277

DHEC 000082

D H E C

PROMOTE PROTECT PEOPLE

AGRICULTURE FACILITY
PUBLIC NOTICE OF INTENT TO APPLY FOR AN AGRICULTURAL PERMIT

An agricultural animal growing operation is proposed by the following:

Permit Applicant: Lisa + Mike Sumerel

County: Laurens

Location: 2644 Poole Town Road, Laurens, SC

Number of Animal Barns Proposed: 4 Animal type: chicken - broilers

Type of manure treatment/storage proposed: land applied / broke

This Public Notice of Intent to Construct is to inform you, as an adjoining property owner or a property owner within 1,320 feet of the proposed facility, that an agricultural facility is proposed to be built near your property. The signing of this form only indicates that you are aware of the proposed farm construction. The signing of this form DOES NOT waive any legal rights that a property owner has concerning the Department's permitting process in this matter. Nor does signing of this form constitute making a comment to the Department. Also, if the Department's permit decision is appealed, the signing of this form does not mean that the property owner cannot participate in the appeal process. Participation in the appeal process will depend upon your legal standing in the matter.

Please Print (except for signature)

Name: Michael D. Freeman

Address: 1452 Poole town Road

Laurens SC 29360

Phone #: 864 - 684 - 2762

Signature: Michael D. Freeman

Date: 9-30-2012

Refusal to sign this form will not prohibit the Department from making a permit decision on the proposed facility. If you refuse to sign this form, the permit applicant will complete this form and write "refused to sign" in the signature block. If you have objections to the construction of this facility, you may address specific objections/issues, in writing to: SCDHEC, Stormwater, Construction, & Agricultural Permitting, 2600 Bull Street, Columbia, SC 29201. The Department will consider all written comments in making the permit decision. All persons submitting comments will be notified of the permit decision made by the Department. Please note that the Department is not involved in property values, zoning or land use issues as these are local issues, which must be addressed by local governments. Please contact your local county or municipal officials for any concerns on these issues.

White and Yellow Copies: Submitted to DHEC; Pink Copy: Farmer; Orange Copy: Adjoining Property Owner

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

DHEC 000083

279

DHEC 000084

D H E C

PROTECT PROTECT PROSPER

AGRICULTURE FACILITY
PUBLIC NOTICE OF INTENT TO APPLY FOR AN AGRICULTURAL PERMIT

An agricultural animal growing operation is proposed by the following:

Permit Applicant: Lisa + Mike Sameral

County: Laurens

Location: 2044 Poole Town Road, Laurens, SC

Number of Animal Barns Proposed: 4 Animal type: chicken-broilers

Type of manure treatment/storage proposed: land applied/broker

This Public Notice of Intent to Construct is to inform you, as an adjoining property owner or a property owner within 1,320 feet of the proposed facility, that an agricultural facility is proposed to be built near your property. The signing of this form only indicates that you are aware of the proposed farm construction. The signing of this form DOES NOT waive any legal rights that a property owner has concerning the Department's permitting process in this matter. Nor does signing of this form constitute making a comment to the Department. Also, if the Department's permit decision is appealed, the signing of this form does not mean that the property owner cannot participate in the appeal process. Participation in the appeal process will depend upon your legal standing in the matter.

Please Print (except for signature)

Name: Richard S. Murphy

Address: 1793 Poole Town Rd

Laurens SC 29360

Phone #: 864-293-1203

Signature:

Date: 1 SEP 12

Refusal to sign this form will not prohibit the Department from making a permit decision on the proposed facility. If you refuse to sign this form, the permit applicant will complete this form and write "refused to sign" in the signature block. If you have objections to the construction of this facility, you may address specific objections/issues, in writing to: SCDHEC, Stormwater, Construction, & Agricultural Permitting, 2600 Bull Street, Columbia, SC 29201. The Department will consider all written comments in making the permit decision. All persons submitting comments will be notified of the permit decision made by the Department. Please note that the Department is not involved in property values, zoning or land use issues as these are local issues, which must be addressed by local governments. Please contact your local county or municipal officials for any concerns on these issues.

White and Yellow Copies: Submitted to DHEC; Pink Copy: Farmer; Orange Copy: Adjoining Property Owner

DHEC 000085

Laurens County GIS
Parcel:2436-00-00-006
OWNER
MURPHY RICHARD S & DIANA L
1793 POOLE TOWN ROAD
LAURENS SC, 29360
LEGAL
Primary Name:MURPHY RICHARD S & DIANA L
Sale Price:$270,000.00
Sale Date:08/16/2011
Deed Book:1038
Deed Page:259
Plat Book:60
Plat Page:241
PROPERTY INFO
Parcel Number:56-00-005
Location:1793 POOLE TOWN ROAD
School District:55
Town Code:
Fire Code:0751
Acres/Units:1.97
56-00-005
* THIS MAP IS NOT TO BE USED AS A PLAT *

D H E C

PROTECT · PROTECT · PROSPER

AGRICULTURE FACILITY
PUBLIC NOTICE OF INTENT TO APPLY FOR AN AGRICULTURAL PERMIT

An agricultural animal growing operation is proposed by the following:

Permit Applicant: Lisa + Mike Sumerel

County: Laurens

Location: 2044 Poole Town Road, Laurens, SC

Number of Animal Barns Proposed: 4 Animal type: Chicken-broilers

Type of manure treatment/storage proposed: land applied / broker

This Public Notice of Intent to Construct is to inform you, as an adjoining property owner or a property owner within 1,320 feet of the proposed facility, that an agricultural facility is proposed to be built near your property. The signing of this form only indicates that you are aware of the proposed farm construction. The signing of this form **DOES NOT** waive any legal rights that a property owner has concerning the Department's permitting process in this matter. Nor does signing of this form constitute making a comment to the Department. Also, if the Department's permit decision is appealed, the signing of this form does not mean that the property owner cannot participate in the appeal process. Participation in the appeal process will depend upon your legal standing in the matter.

Please Print (except for signature)

Name: J.L. Abercrombie

Address: 2201 Poole Town Rd.

Phone #: 864-682-3996

Signature: James L Abercrombie

Date: 5/31/13

Refusal to sign this form will not prohibit the Department from making a permit decision on the proposed facility. If you refuse to sign this form, the permit applicant will complete this form and write "refused to sign" in the signature block. If you have objections to the construction of this facility, you may address specific objections/issues, in writing to: SCDHEC, Stormwater, Construction, & Agricultural Permitting, 2600 Bull Street, Columbia, SC 29201. The Department will consider all written comments in making the permit decision. All persons submitting comments will be notified of the permit decision made by the Department. Please note that the Department is not involved in property values, zoning or land use issues as these are local issues, which must be addressed by local governments. Please contact your local county or municipal officials for any concerns on these issues.

White and Yellow Copies: Submitted to DHEC; Pink Copy: Farmer; Orange Copy: Adjoining Property Owner

DHEC 000087

283

DHEC 000088

DHEC

AGRICULTURE FACILITY
PUBLIC NOTICE OF INTENT TO APPLY FOR AN AGRICULTURAL PERMIT

An agricultural animal growing operation is proposed by the following:

Permit Applicant: Lisa + Mike Sumerel

County: Laurens

Location: 2044 Poole Town Road, Laurens, SC

Number of Animal Barns Proposed: 4 Animal type: Chicken - broilers

Type of manure treatment/storage proposed: land applied / broker

This Public Notice of Intent to Construct is to inform you, as an adjoining property owner or a property owner within 1,320 feet of the proposed facility, that an agricultural facility is proposed to be built near your property. The signing of this form only indicates that you are aware of the proposed farm construction. The signing of this form DOES NOT waive any legal rights that a property owner has concerning the Department's permitting process in this matter. Nor does signing of this form constitute making a comment to the Department. Also, if the Department's permit decision is appealed, the signing of this form does not mean that the property owner cannot participate in the appeal process. Participation in the appeal process will depend upon your legal standing in the matter.

Please Print (except for signature)

Name: Lisa H. Sumerel

Address: 2044 Poole Town Road
Laurens, S.C. 29360

Phone #: 864-682-5487

Signature: Lisa H Sumerel

Date: 10-10-12

Refusal to sign this form will not prohibit the Department from making a permit decision on the proposed facility. If you refuse to sign this form, the permit applicant will complete this form and write "refused to sign" in the signature block. If you have objections to the construction of this facility, you may address specific objections/issues, in writing to: SCDNEC, Stormwater, Construction, & Agricultural Permitting, 2600 Bull Street, Columbia, SC 29201. The Department will consider all written comments in making the permit decision. All persons submitting comments will be notified of the permit decision made by the Department. Please note that the Department is not involved in property values, zoning or land use issues as these are local issues, which must be addressed by local governments. Please contact your local county or municipal officials for any concerns on these issues.

White and Yellow Copies: Submitted to DHEC; Pink Copy: Farmer; Orange Copy: Adjoining Property Owner

DHEC 000089

285

DHEC 000090

Laurens County GIS

Parcel #156-00-00-065

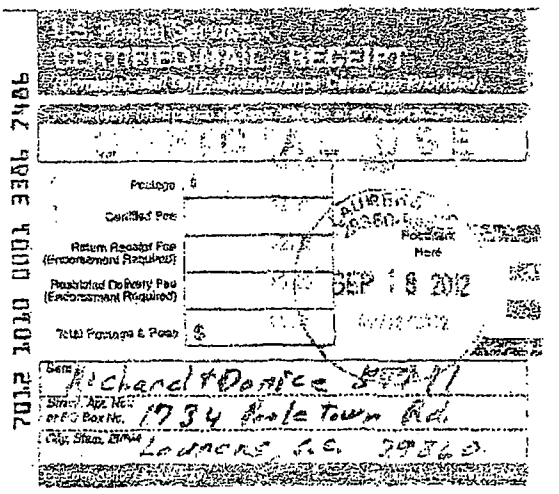
OWNER
SUMEREL LISA H
2044 POOLE TOWN ROAD
LAURENS S.C. 29360

LEGAL
Grantors Name:SUMEREL LISA H
Sale Price:$1.00
Sale Date:04/18/1995
Deed Book:369
Deed Page:150
Plat Book:37
Plat Page:218

PROPERTY INFO
Parcel ID:156-00-00-065
Location:2044 POOLE TOWN ROAD
School District:55
Town Code:
Fire Code:0201
Acres/Lots:5.000

* THIS MAP IS NOT TO BE USED AS A PLAT *

Map #
498-00-00-042



DHEC 000091

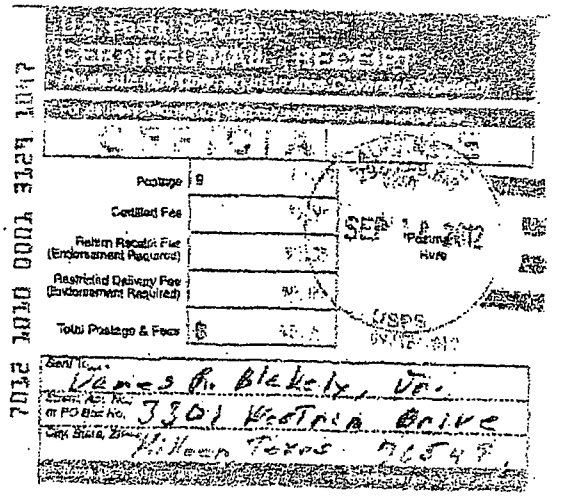
287

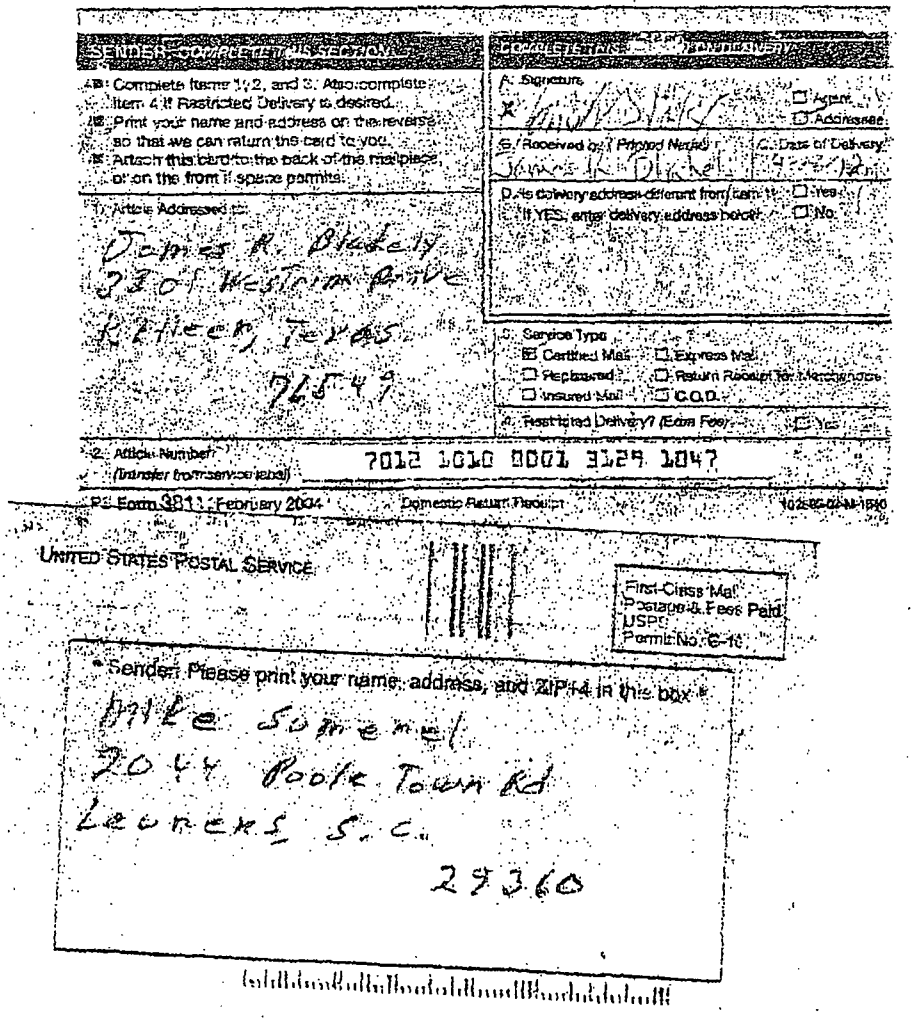
DHEC 000092

Laurens County GIS

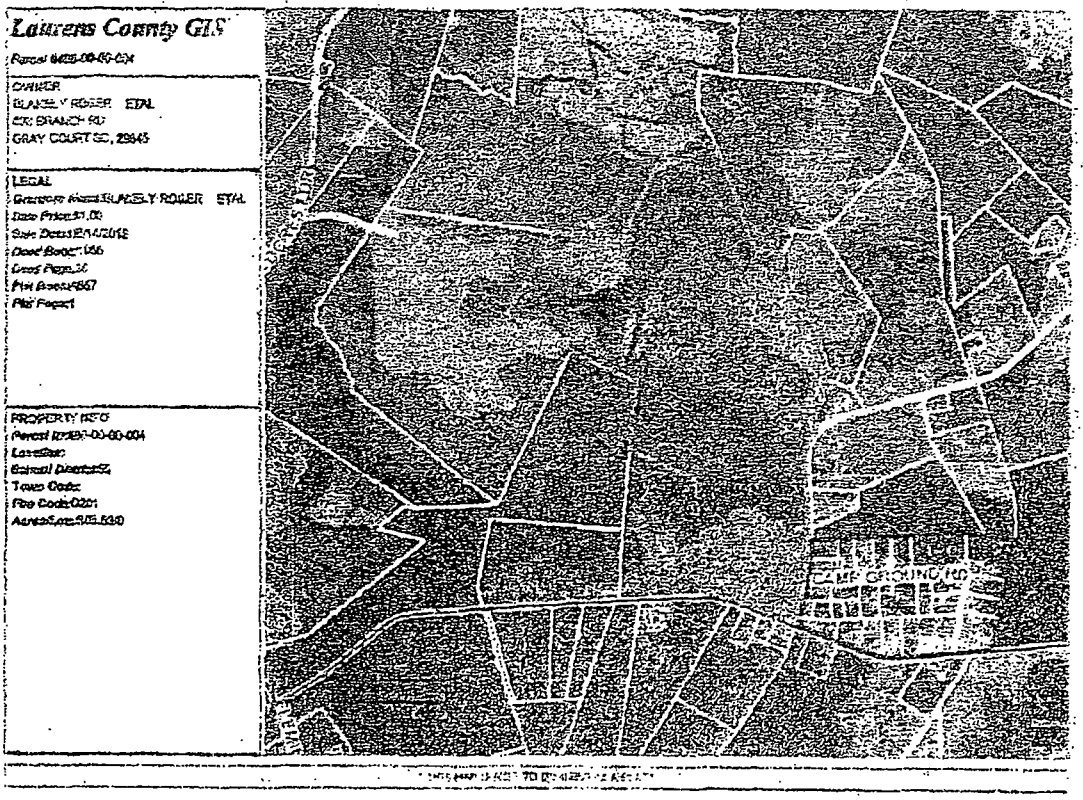
291

Map #
498-00-00-004



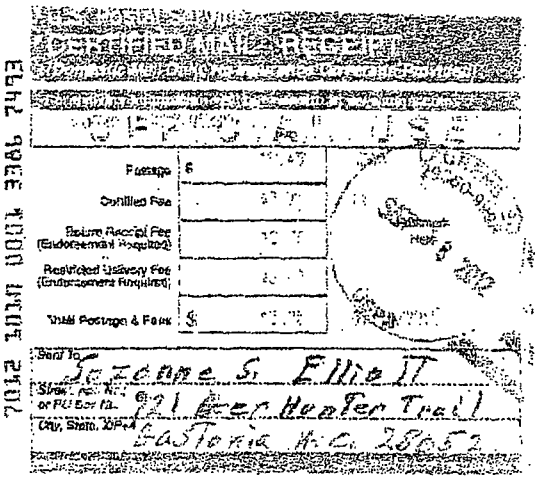


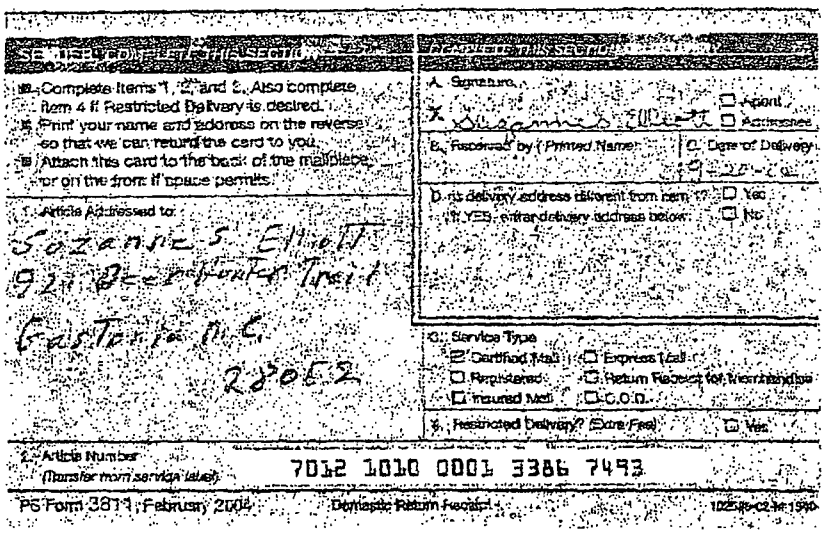
DHEC 000093

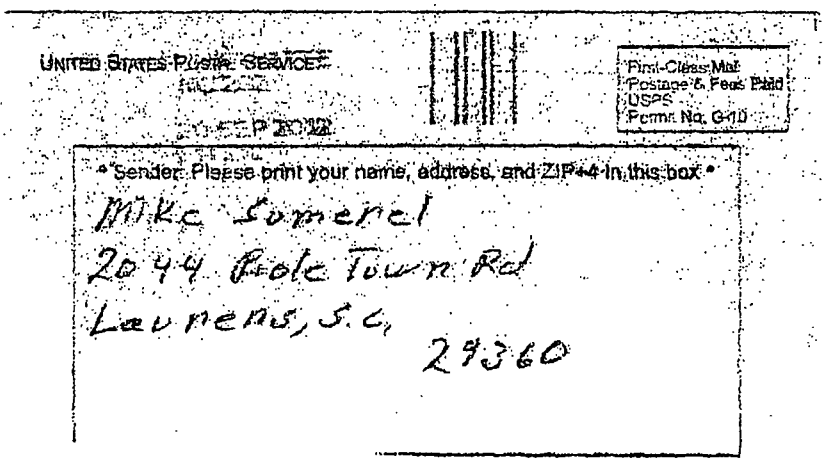

Laurens County GIS
Parcel
OWNER
LEGAL
PROPERTY INFO
CAMP GROUND RD

DHEC 000094

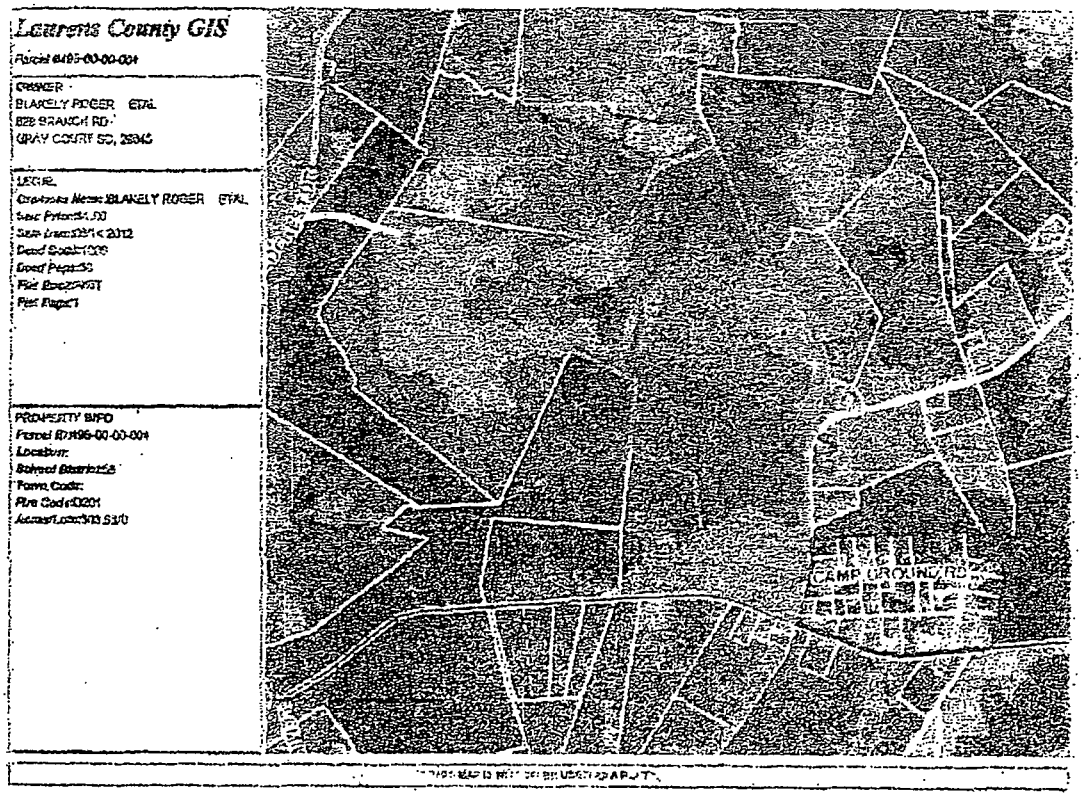
498-00-00-004





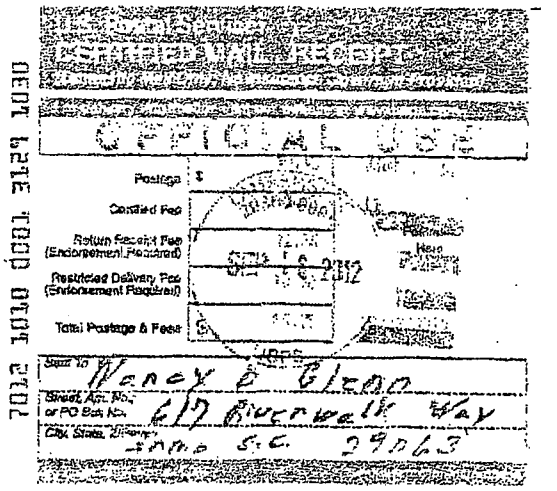


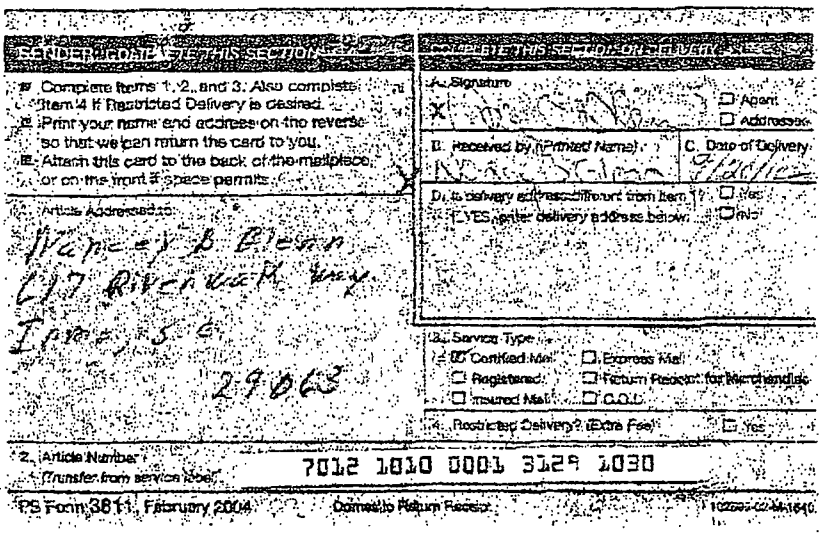
DHEC 000095

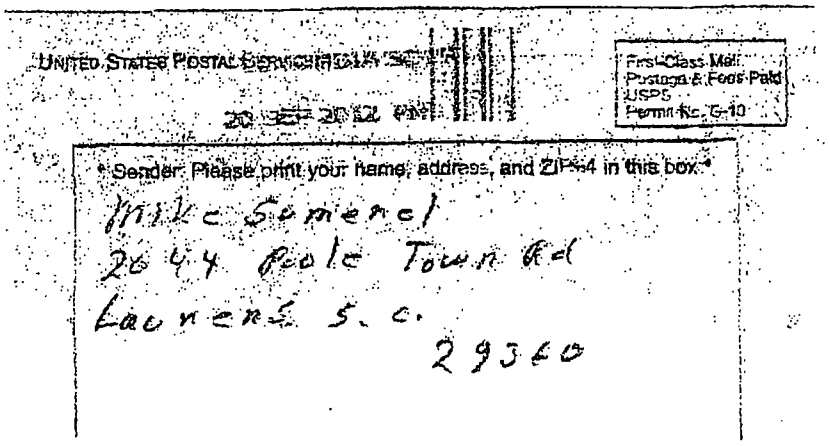

Laurens County GIS
OWNER
BLAKELY ROGER ETAL
828 BRANCH RD
GRAY COURT SC, 29645
LEGAL
PROPERTY INFO
CAMP GROUND RD

DHEC 000096

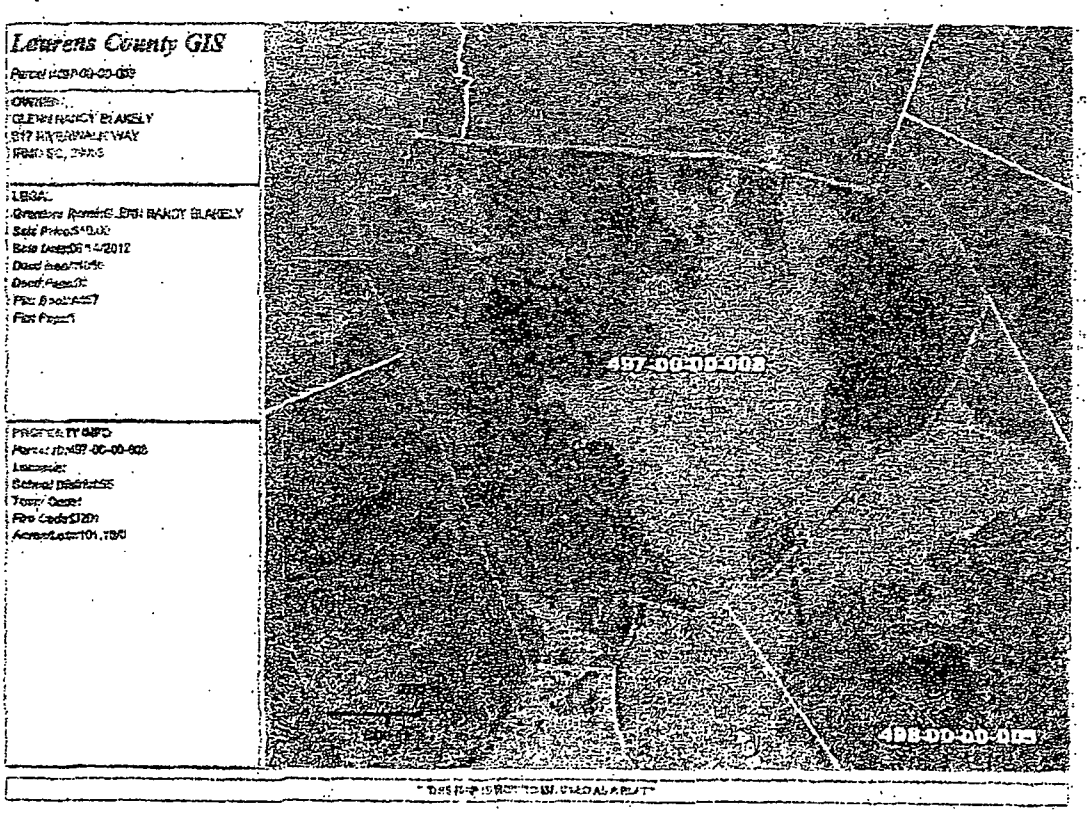
Map #
497-00-00-008







DHEC 000097

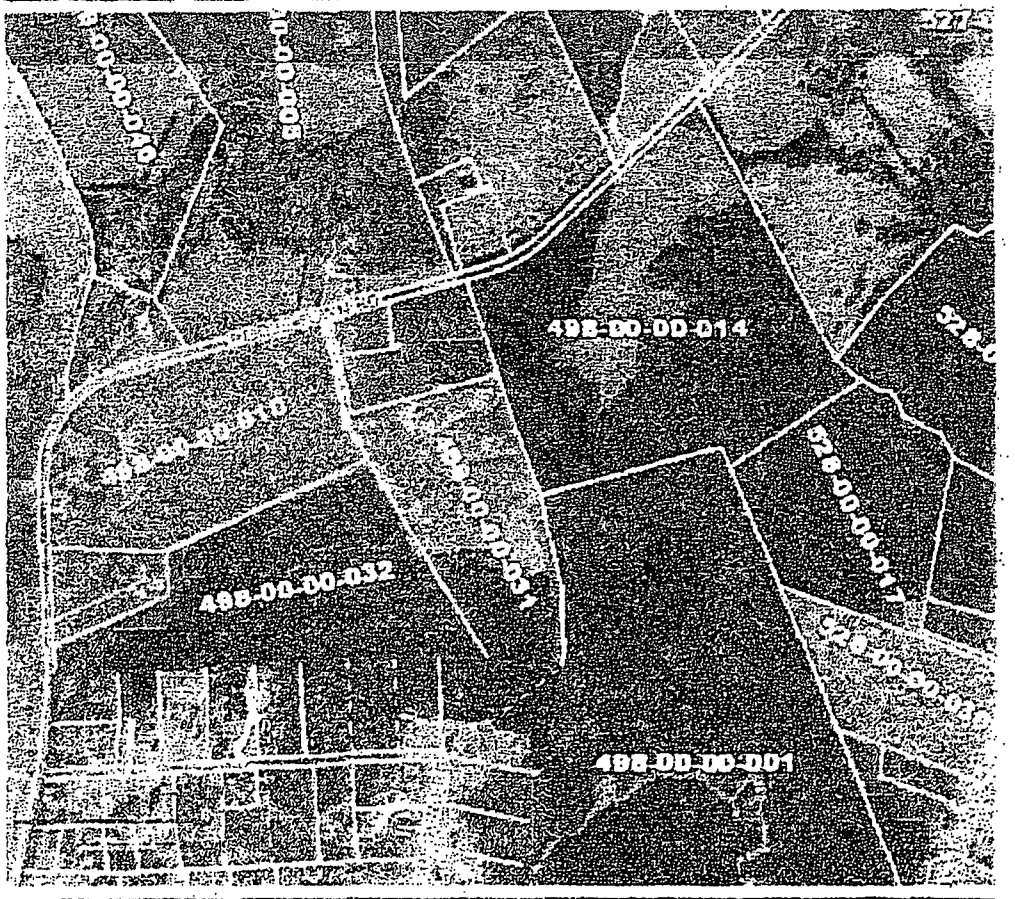


DHEC 000098

Laurens County GIS

Notes (up to 200 characters)

COUNTY OF LAURENS
SINCE 1785
STATE OF SOUTH CAROLINA



THIS MAP IS PREPARED FOR THE INVENTORY OF REAL PROPERTY FOUND WITHIN THIS JURISDICTION, AND IS COMPILED FROM RECORDED DEEDS, PLATS, AND OTHER PUBLIC RECORDS AND DATA. USERS OF THIS MAP ARE HEREBY NOTIFIED THAT THE ABOVE REFERENCED PUBLIC PRIMARY INFORMATION SOURCES SHOULD BE CONSULTED FOR VERIFICATION OF THE INFORMATION CONTAINED ON THIS MAP. THE COUNTY AND MAPPING COMPANY ASSUME NO RESPONSIBILITY FOR THE INFORMATION CONTAINED ON THIS MAP.

*** THIS MAP IS NOT TO BE USED AS A PLAT ***

DHEC 000099

D H E C
PROMOTE PROTECT PROSPER

AGRICULTURE FACILITY
PUBLIC NOTICE OF INTENT TO APPLY FOR AN AGRICULTURAL PERMIT

An agricultural animal growing operation is proposed by the following:

Permit Applicant: Lisa + Mike Sumerel

County: Laurens

Location: 2044 Poole Town Road, Laurens, SC

Number of Animal Barns Proposed: 4 Animal type: chicken-broilers

Type of manure treatment/storage proposed: land applied / broker

This Public Notice of Intent to Construct is to inform you, as an adjoining property owner or a property owner within 1,320 feet of the proposed facility, that an agricultural facility is proposed to be built near your property. The signing of this form only indicates that you are aware of the proposed farm construction. The signing of this form DOES NOT waive any legal rights that a property owner has concerning the Department's permitting process in this matter. Nor does signing of this form constitute making a comment to the Department. Also, if the Department's permit decision is appealed, the signing of this form does not mean that the property owner cannot participate in the appeal process. Participation in the appeal process will depend upon your legal standing in the matter.

Please Print (except for signature)

Name: W. D. ABERCROMBIE

Address: 1835 POOLE TOWN RD

RECEIVED
MAR 12 2013
Stormwater, Construction & Agricultural Permitting Division

Phone #: 864-682-2827

Signature: W. D. Abercrombie

Date: 3-9-13

Refusal to sign this form will not prohibit the Department from making a permit decision on the proposed facility. If you refuse to sign this form, the permit applicant will complete this form and write "refused to sign" in the signature block. If you have objections to the construction of this facility, you may address specific objections/issues, in writing to: SCDHEC, Stormwater, Construction, & Agricultural Permitting, 2600 Bull Street, Columbia, SC 29201. The Department will consider all written comments in making the permit decision. All persons submitting comments will be notified of the permit decision made by the Department. Please note that the Department is not involved in property values, zoning or land use issues as these are local issues, which must be addressed by local governments. Please contact your local county or municipal officials for any concerns on these issues.

White and Yellow Copies: Submitted to DHEC; Pink Copy: Farmer; Orange Copy: Adjoining Property Owner

DHEC 000100

D H E C

PROMOTE PROTECT PROSPER

AGRICULTURE FACILITY
PUBLIC NOTICE OF INTENT TO APPLY FOR AN AGRICULTURAL PERMIT

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Please Print (except for signature)

Name: Richard S Murphy

Address: 1793 Poole Town Rd

Laurens SC 29360

Phone #: 864-293-1203

Signature:

Date: 1 SEP 12

Refusal to sign this form will not prohibit the Department from making a permit decision on the proposed facility. If you refuse to sign this form, the permit applicant will complete this form and write "refused to sign" in the signature block. If you have objections to the construction of this facility, you may address specific objections/issues, in writing to: SCDHEC, Stormwater, Construction, & Agricultural Permitting, 2600 Bull Street, Columbia, SC 29201. The Department will consider all written comments in making the permit decision. All persons submitting comments will be notified of the permit decision made by the Department. Please note that the Department is not involved in property values, zoning or land use issues as these are local issues, which must be addressed by local governments. Please contact your local county or municipal officials for any concerns on these issues.

White and Yellow Copies: Submitted to DHEC; Pink Copy: Farmer; Orange Copy: Adjoining Property Owner

DHEC 000101

297

DHEC 000102

Laurens County GIS

Parcel ID: [illegible]

OWNER
MURPHY RICHARD S R
1793 POOR FARM ROAD
LAURENS SC, 29360

LEGAL
Grantor Name:MURPHY RICHARD S R
Sale Price:$200,000.00
Sale Date:05/15/2011
Deed Book:1033
Deed Page:259
Plat Book:28
Plat Page:260

PROPERTY INFO
Parcel ID:493-00-00-032
Location:
School District:55
Town Code:
Fire Code:0201
Acres/Lots:9.50

THIS MAP IS NOT TO BE USED AS A "PLAT"

I own property tract number 495-00-00-005 I consent to the reduction of the required 1000 foot setback from the poultry houses to my residence. I understand that the poultry houses will be located approximately 700 feet from my residence.

Margaret Abercrombie Sumrell
Printed Name

Margaret Abercrombie Sumrell
Signature

October 10, 2012
Date Signed

DHEC 000103

D H E C

PROMOTE PROTECT PROSPER

AGRICULTURE FACILITY
PUBLIC NOTICE OF INTENT TO APPLY FOR AN AGRICULTURAL PERMIT

An agricultural animal growing operation is proposed by the following:

Permit Applicant: Lisa + Mike Sumerel

County: Laurens

Location: 2044 Poole Town Road, Laurens, SC

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Type of manure treatment/storage proposed: land applied / broker

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Please Print (except for signature)

Name: Margaret Abercrombie Sumerel

Address: 1888 Poole Town Road

Laurens, S.C. 29360

Phone #: (864) 682-3924

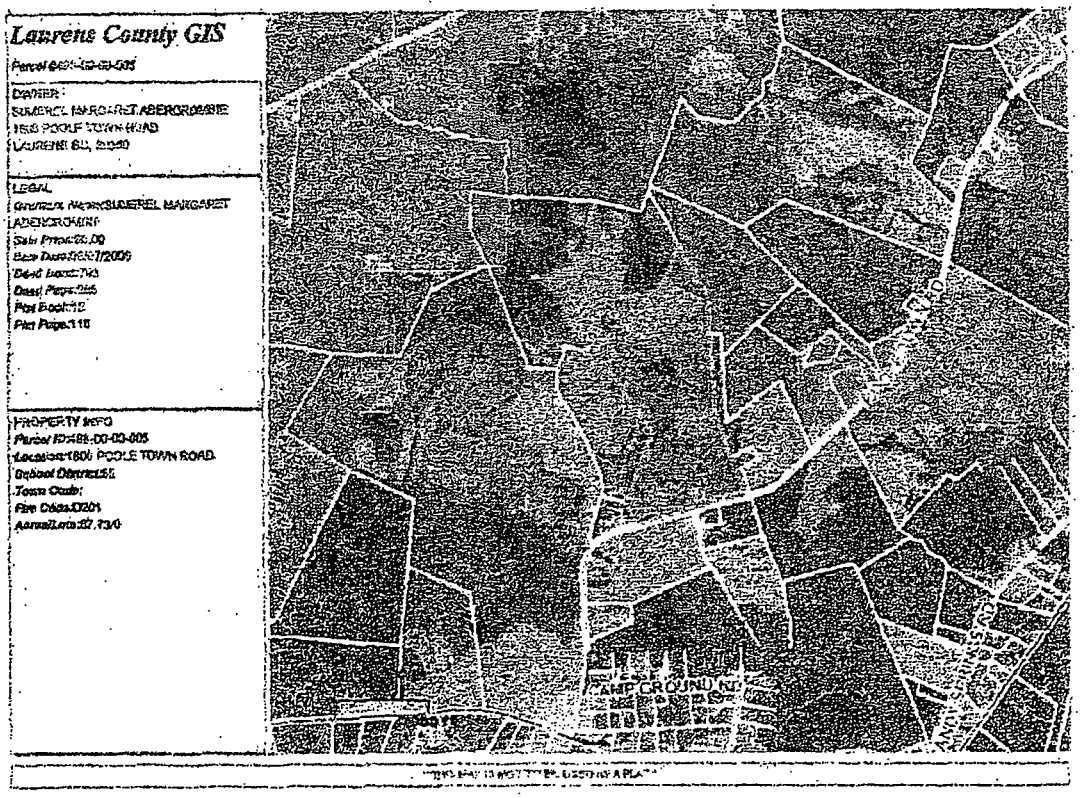
Signature: Margaret Abercrombie Sumerel

Date: October 10, 2012

Refusal to sign this form will not prohibit the Department from making a permit decision on the proposed facility. If you refuse to sign this form, the permit applicant will complete this form and write "refused to sign" in the signature block. If you have objections to the construction of this facility, you may address specific objections/issues, in writing to: SCDHEC, Stormwater, Construction, & Agricultural Permitting, 2600 Bull Street, Columbia, SC 29201. The Department will consider all written comments in making the permit decision. All persons submitting comments will be notified of the permit decision made by the Department. Please note that the Department is not involved in property values, zoning or land use issues as these are local issues, which must be addressed by local governments. Please contact your local county or municipal officials for any concerns on these issues.

White and Yellow Copies: Submitted to DHEC; Pink Copy: Farmer; Orange Copy: Adjoining Property Owner

DHEC 000104


Laurens County GIS
OWNER:
LEGAL
PROPERTY INFO
CAMP GROUND RD

DHEC 000105

15. Appendix F: Maps and Site Characteristics

15.1. Facility Location Highway Map

15.2. Site Plan

15.3. Mortality Disposal Site

15.4. Topographic Map

15.5. Flood Plain Map

15.6. Tax Map

15.7. Soil Maps and Description

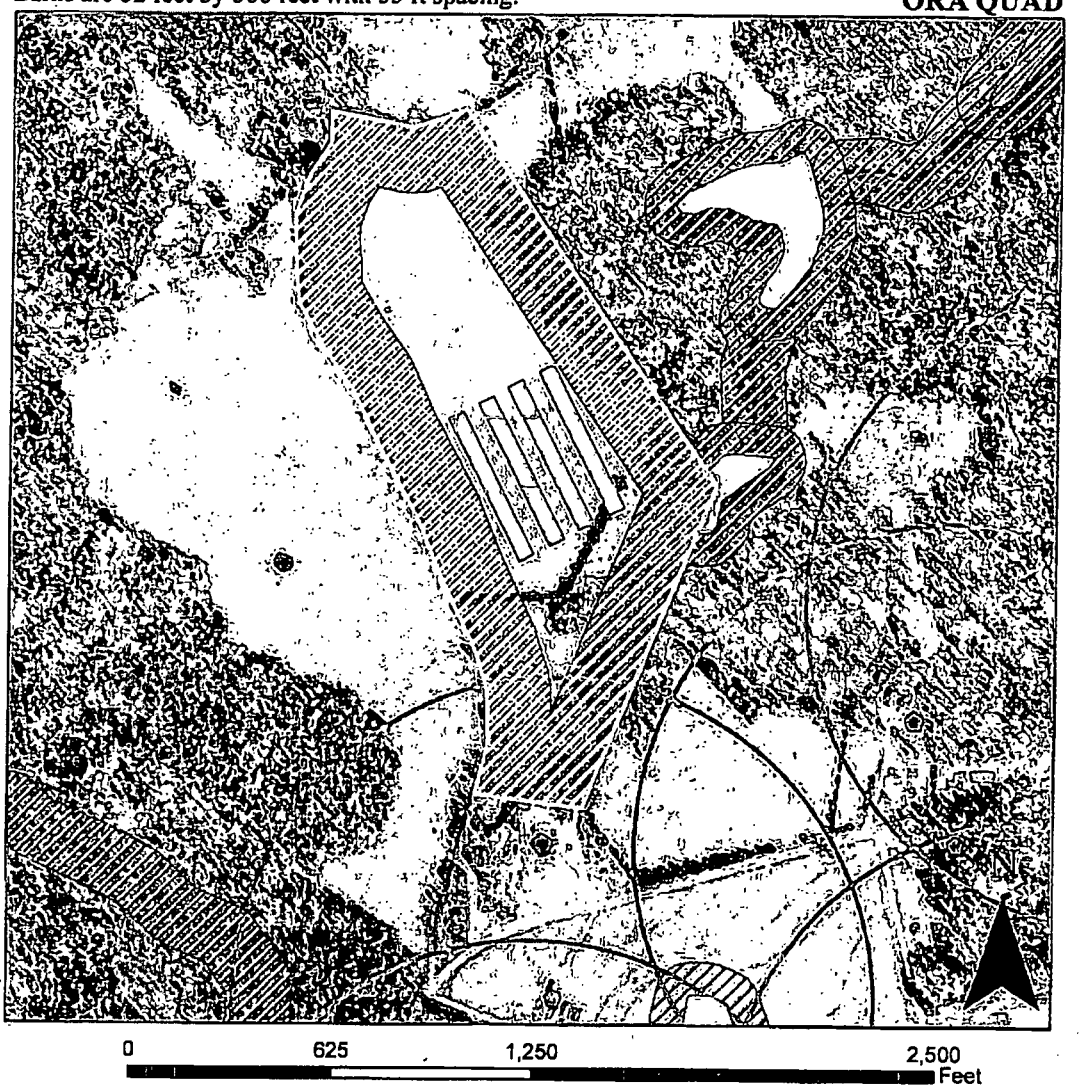
15.8. Soil Water Features – Seasonal High Water Table

This is soil water features data including the seasonal high water table information from the National Soils Information System (NASIS).

Sumerel Poultry Farm
Aerial Map

Barns are 52 feet by 500 feet with 55 ft spacing.

ORA QUAD



Shealy Engineering, LLC

DHEC 000107

Sumerel Poultry Farm
Aerial Map

Barns are 52 feet by 500 feet with 55 ft spacing.

ORA QUAD

- Property Lines
- Poultry Barns
- Residences
- 1000 ft Residence Setback
- Residences owned by applicant
- Streams
- 100 ft Waters of the State Setback
- Wetlands
- 200 ft Property Line Setbacks

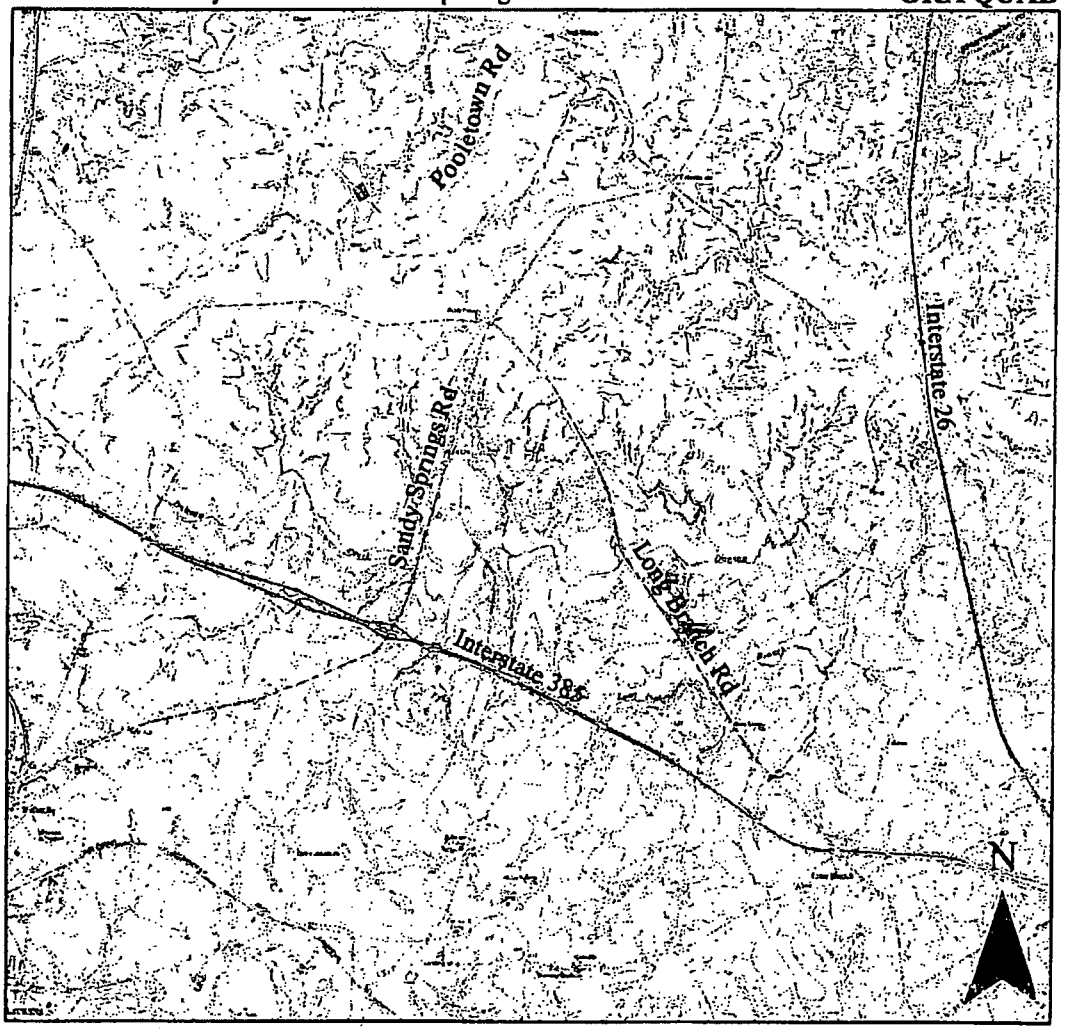
Shealy Engineering, LLC

DHEC 000108

Sumerel Poultry Farm
Location Map

Barns are 52 feet by 500 feet with 55 ft spacing.

ORA QUAD



Shealy Engineering, LLC

DHEC 000109

RECEIVED
MAY 2 8 2013
Stormwater, Construction & Agricultural Permitting Division

Sumerel Poultry Farm
Composter Location Map

Barns are 52 feet by 500 feet with 55 ft spacing.

ORA QUAD

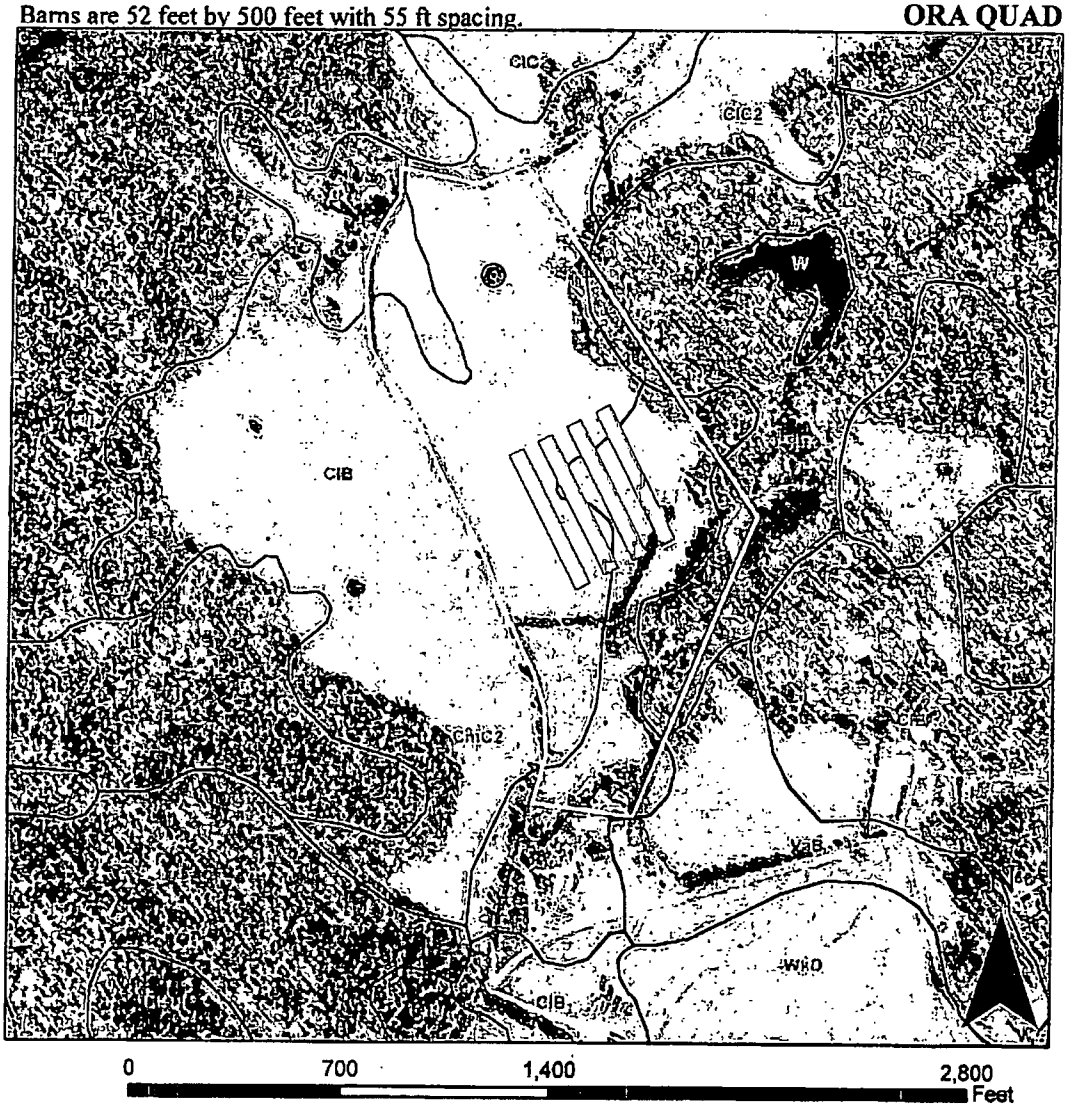
- Property Lines
- Poultry Barns
- $ Residences
- 1000 ft Residence Setback
- $ Residences owned by applicant
- Streams
- 100 ft Waters of the State Setback
- Wetlands
- 200 ft Property Line Setbacks
- Hay Bale Composter (80' x 30')

Shealy Engineering, LLC

DHEC 000110

Sumerel Poultry Farm
Burial Map

Barns are 52 feet by 500 feet with 55 ft spacing. **ORA QUAD**



Property Lines
Poultry Barns
Mass\Daily Burial Sites

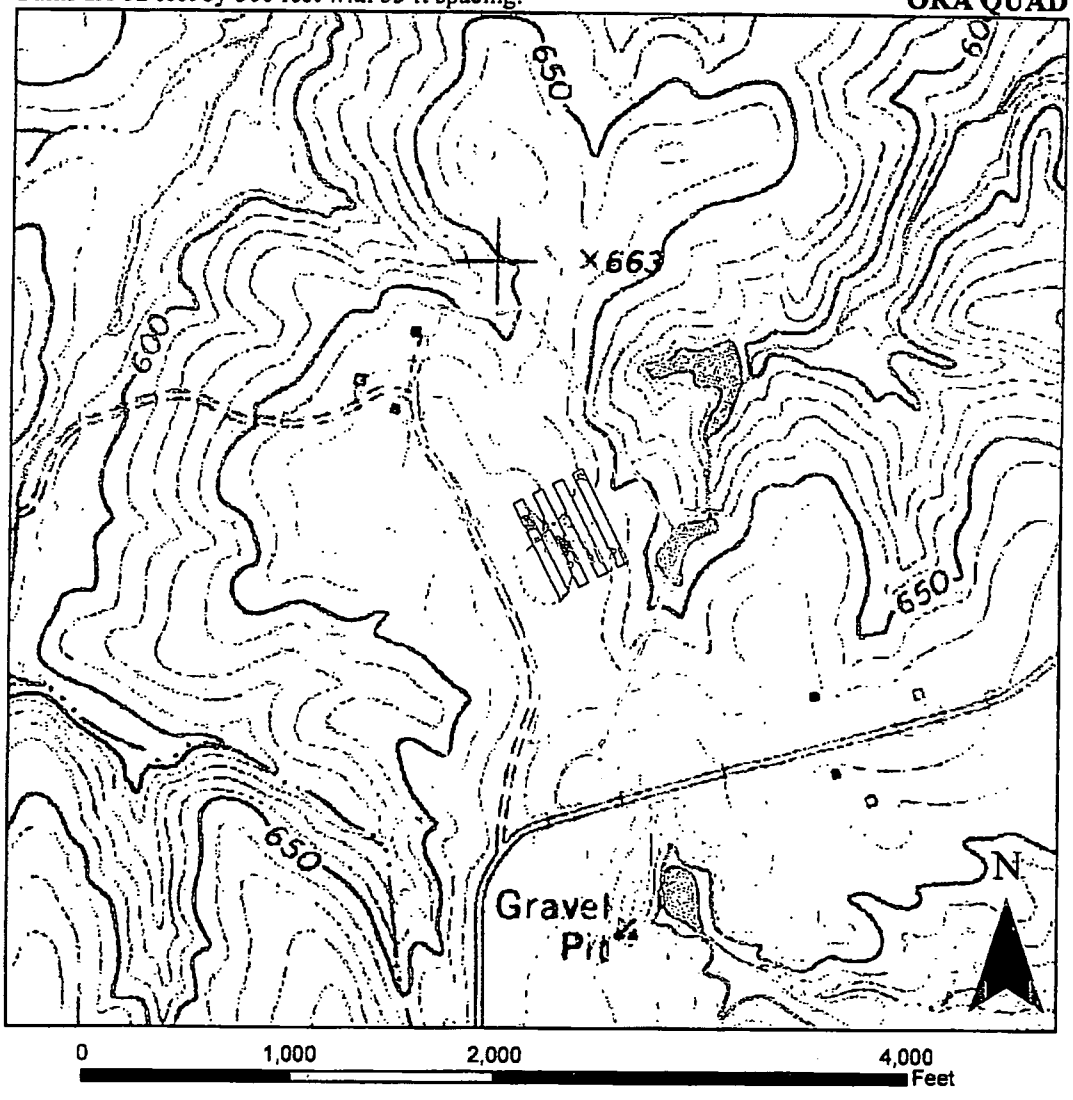
Shealy Engineering, LLC

DHEC 000111

Sumerel Poultry Farm
USGS Map

Barns are 52 feet by 500 feet with 55 ft spacing.

ORA QUAD



Property Lines

Poultry Barns

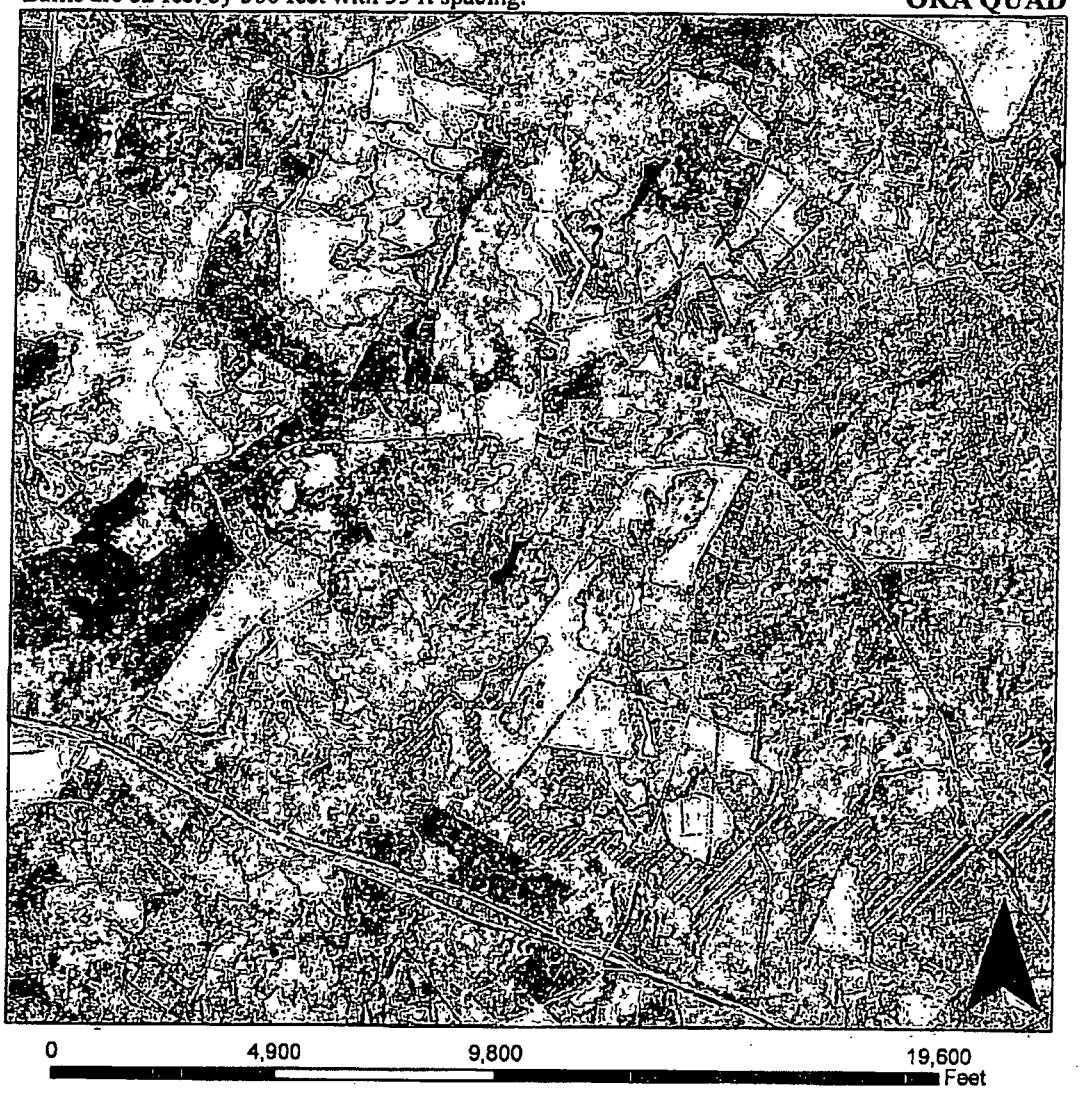
Shealy Engineering, LLC

DHEC 000112

Sumerel Poultry Farm
Floodplain Map

Barns are 52 feet by 500 feet with 55 ft spacing.

ORA QUAD



Property Lines

Poultry Barns

100 Year FEMA Designated Floodplain

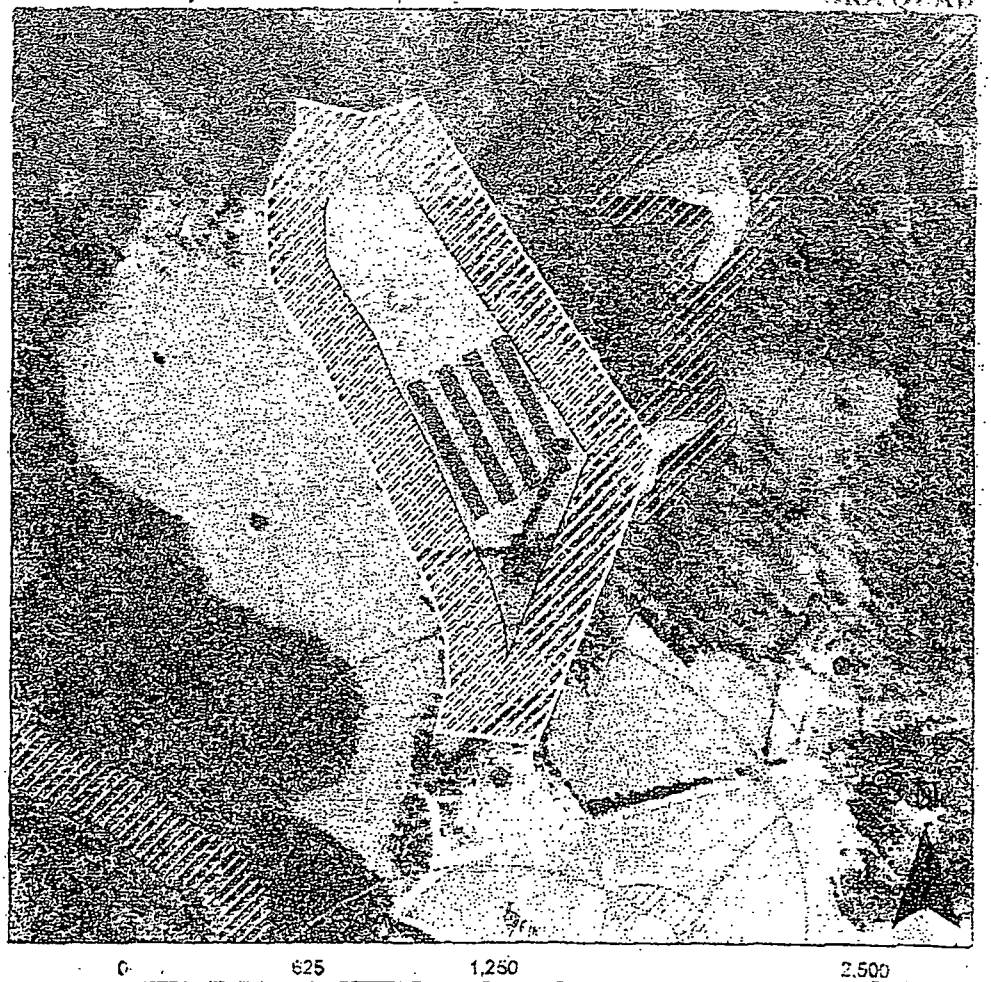
Shealy Engineering, LLC

DHEC 000113

Sumerel Poultry Farm
Aerial Map

Barns are 52 feet by 500 feet with 55 footprints

ORA QUAD



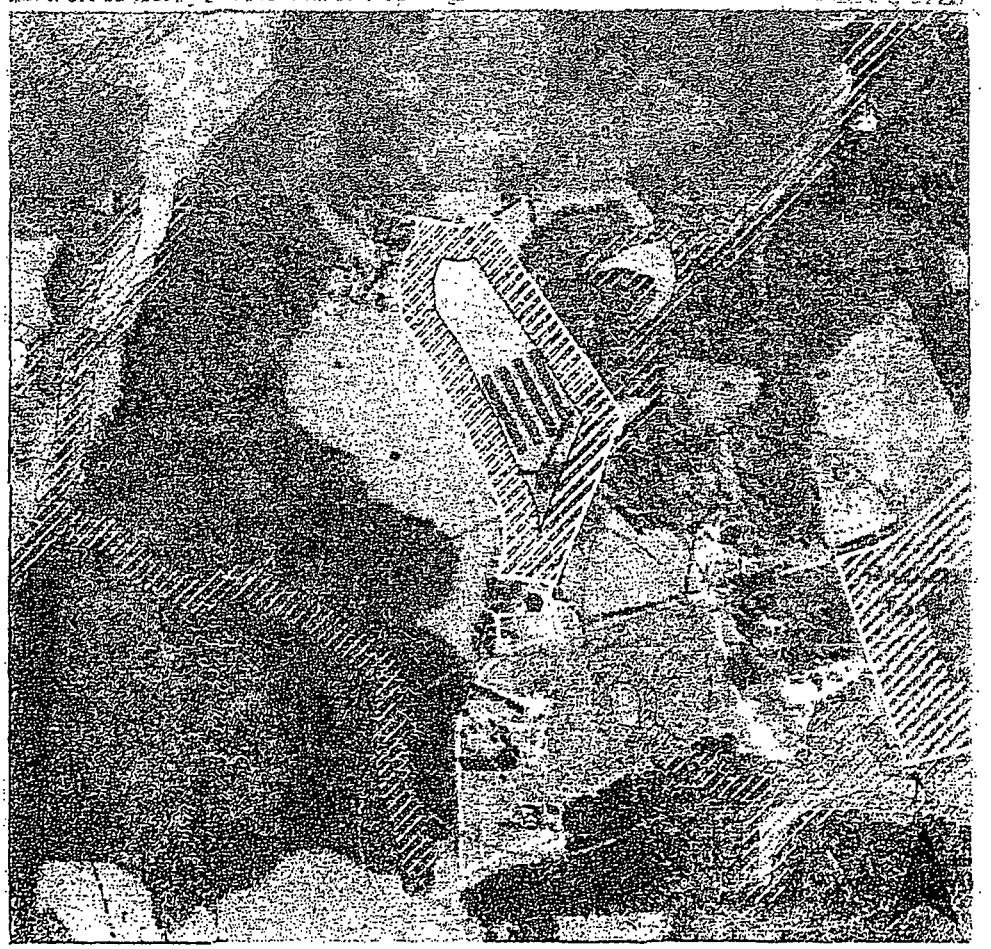
- Property Lines
- Poultry Barns
- Residences
- 1000 ft Residence Setback
- Residences owned by applicant
- Streams
- 100 ft Waters of the State Setback
- Wetlands
- 200 ft Property Line Setbacks

Shealy Engineering, LLC

DHEC 000107

Sumerel Poultry Farm
Aerial Map

Barns are 52 feet by 500 feet with 55 ft spacing



- Property Lines
- Poultry Barns
- Residences
- 1000 ft Residence Setback
- Residences owned by applicant
- Streams
- 100 ft Waters of the State Setback
- Wetlands
- 200 ft Property Line Setbacks

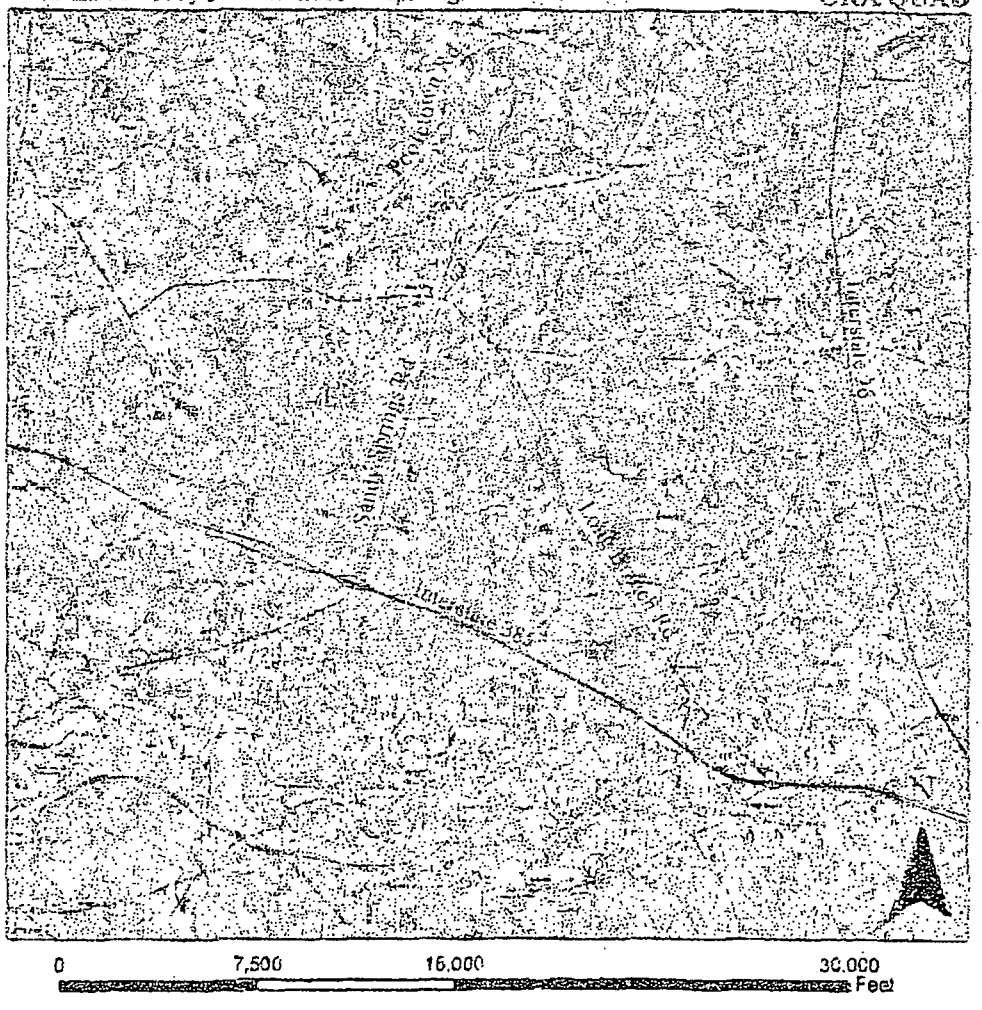
Shealy Engineering, LLC

DHEC 000108

Sumerel Poultry Farm
Location Map

Barns are 52 feet by 500 feet with 55 ft spacing.

ORA QUAD



Property Lines

Poultry Barns

Shealy Engineering, LLC

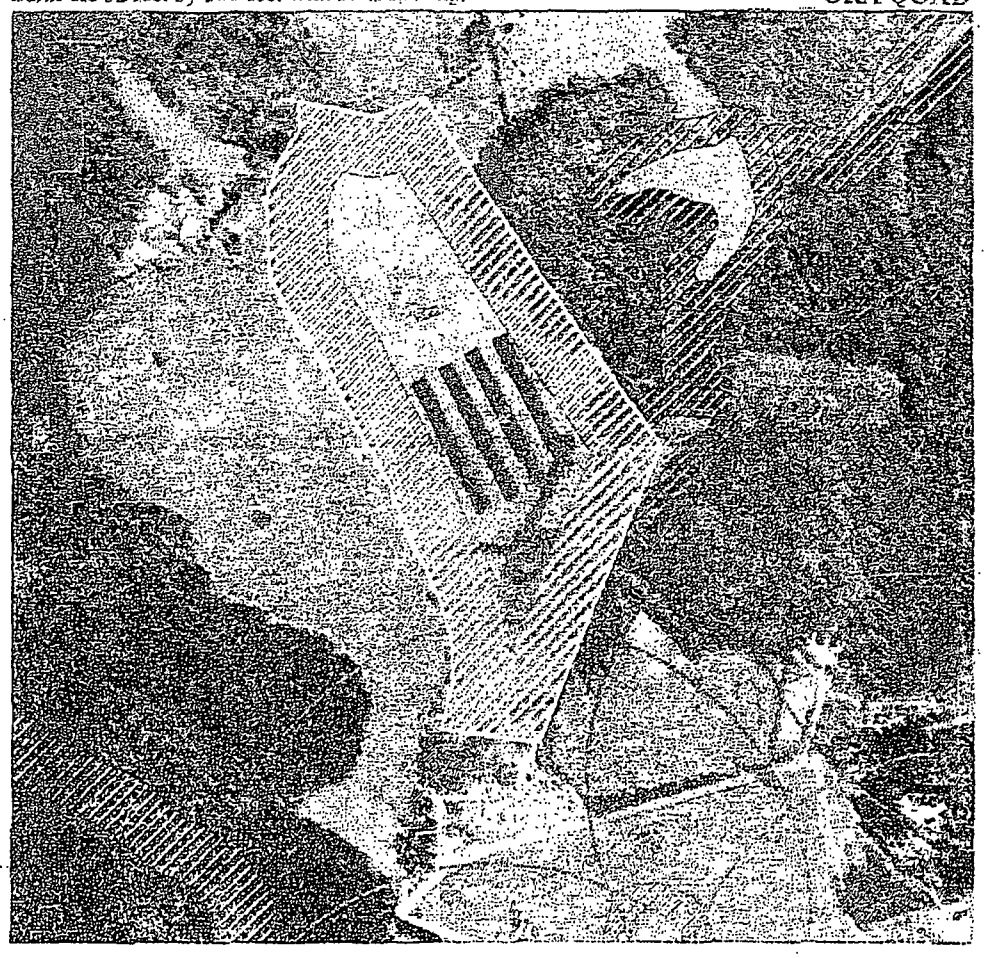
DHEC 000109

RECEIVED
MAY 2 8 2013
Stormwater, Construction & Agricultural Permitting Division

Sumerel Poultry Farm
Composter Location Map

Barns are 52 feet by 500 feet with 55 ft spacing.

ORA QUAD



0 625 1,250 2,500 Feet

	Property Lines		Streams
	Poultry Barns		100 ft Waters of the State Setback
$	Residences		Wetlands
	1000 ft Residence Setback		200 ft Property Line Setbacks
$	Residences owned by applicant		Hay Bale Composter (80' x 30')

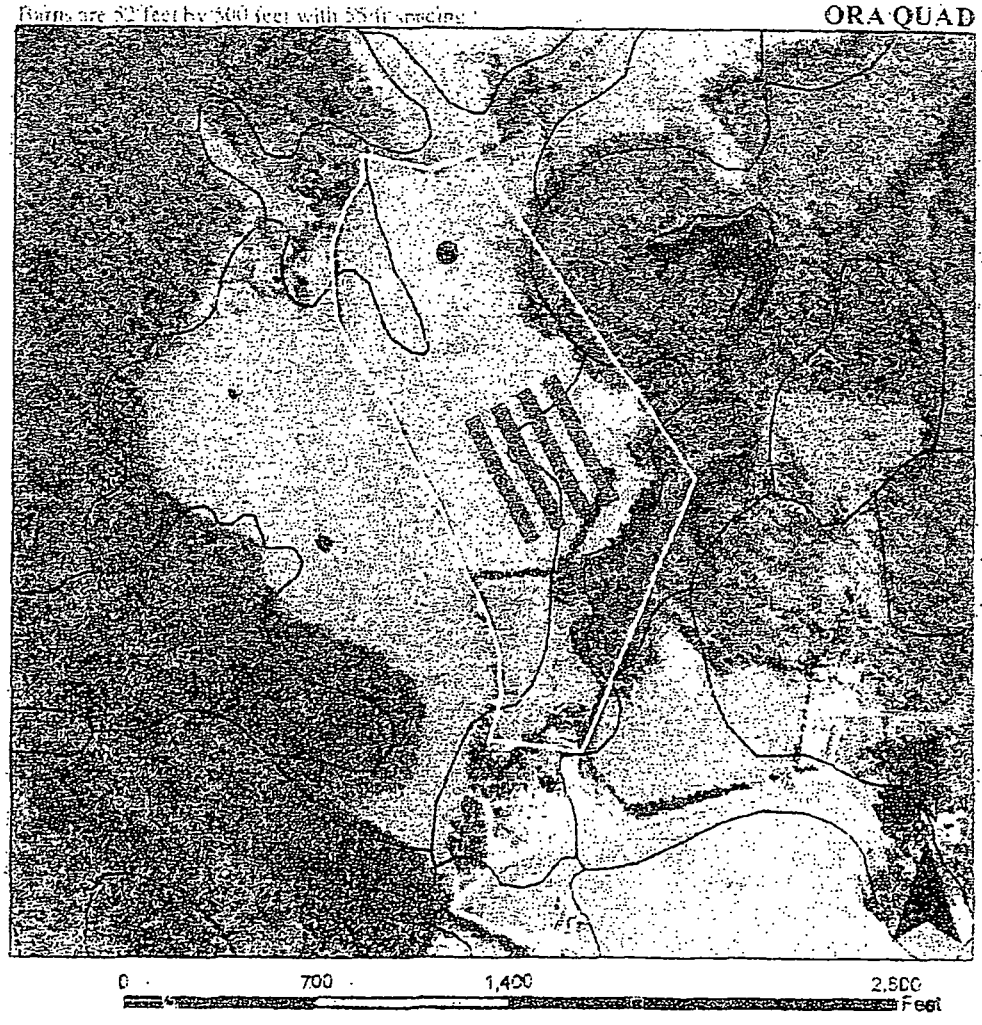
Shealy Engineering, LLC

DHEC 000110

Sumerel Poultry Farm
Burial Map

Farms are 52 feet by 500 feet with 55 ft spacing

ORA QUAD



Property Lines

Poultry Barns

Mass\Daily Burial Sites

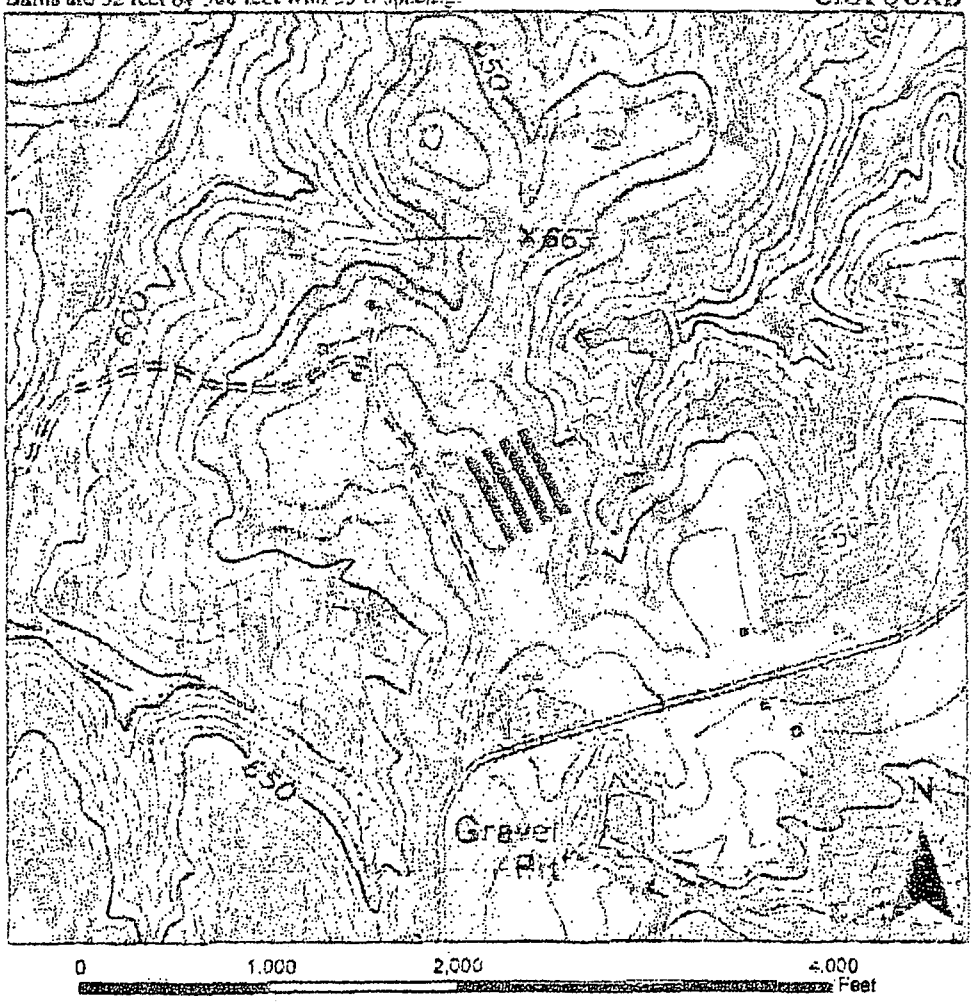
Shealy Engineering, LLC

DHEC 000111

Sumerel Poultry Farm
USGS Map

Barns are 52 feet by 500 feet with 55 ft spacing.

ORA QUAD



Property Lines

Poultry Barns

Shealy Engineering, LLC

DHEC 000112

Sumerel Poultry Farm
Floodplain Map

Barns are 52 feet by 500 feet with 55 ft spacing.

ORA QUAD

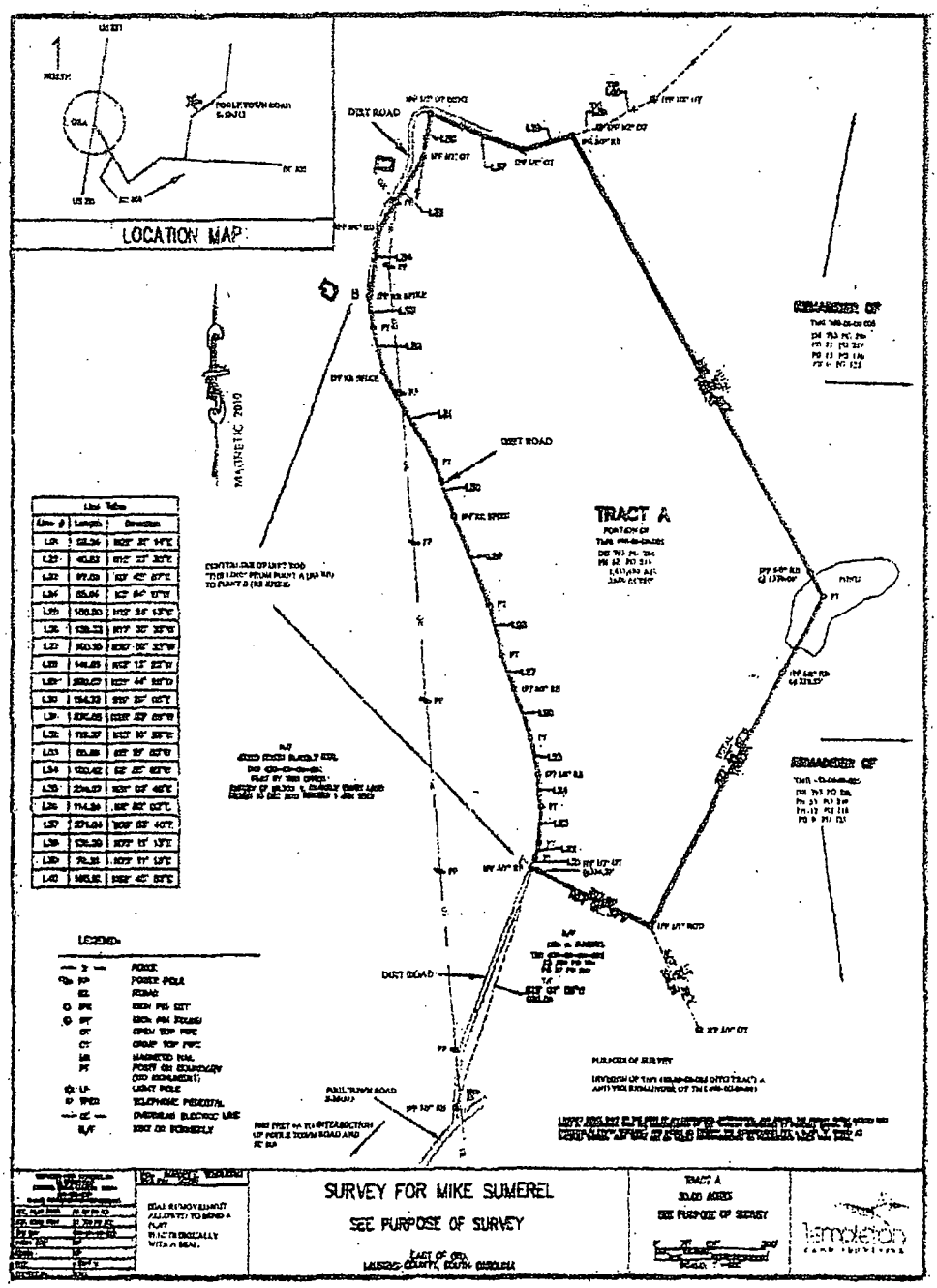
Property Lines

Poultry Barns

100 Year FEMA Designated Floodplain

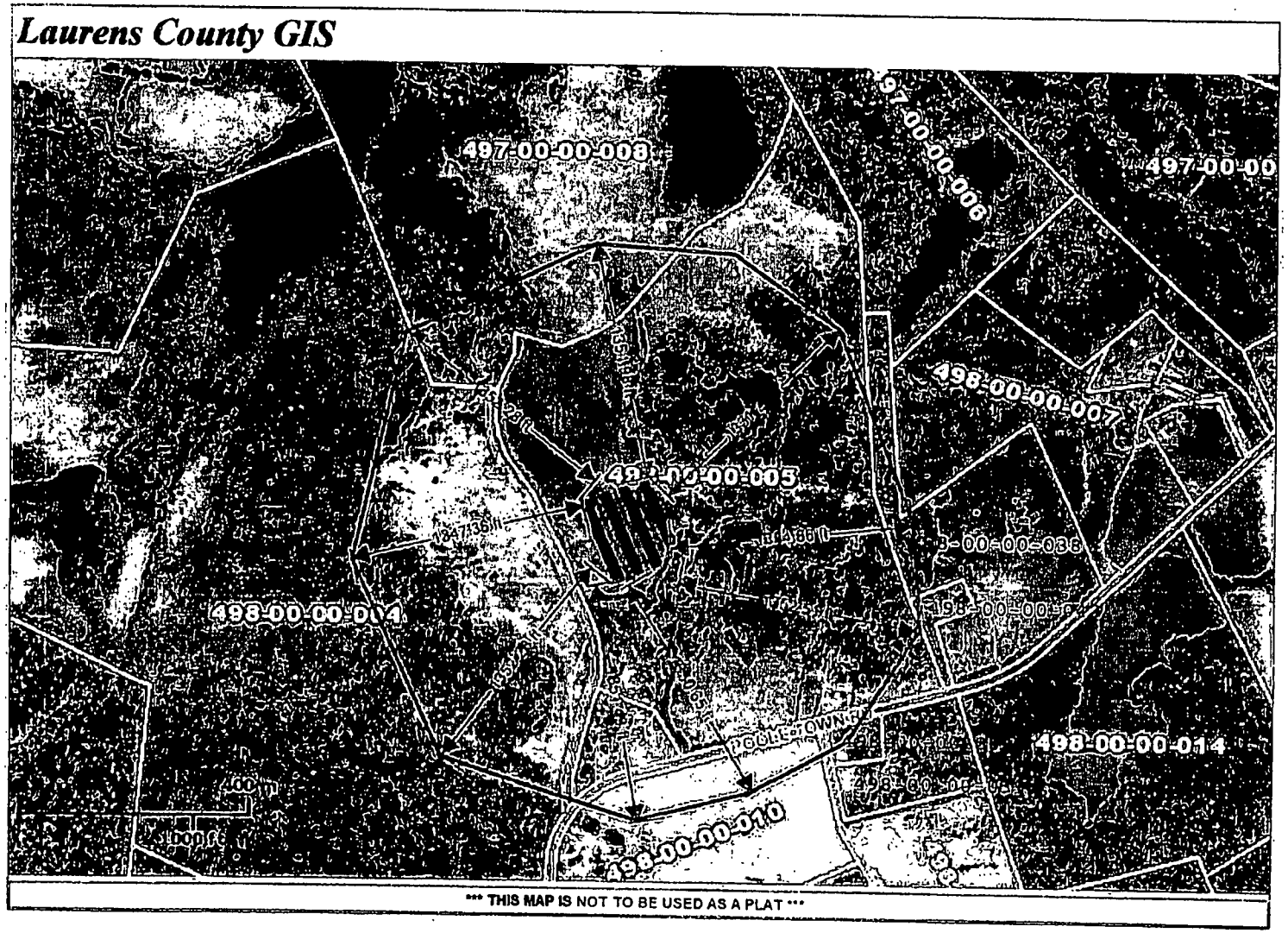
Shealy Engineering, LLC

DHEC 000113


LOCATION MAP
DIRT ROAD
TRACT A
REMAINDER OF
MAGNETIC 2010
LEGEND
SURVEY FOR MIKE SUMEREL
SEE PURPOSE OF SURVEY
TRACT A
30.00 ACRES
SEE PURPOSE OF SURVEY
LAUREL COUNTY, SOUTH CAROLINA

DHEC 000114

Scale: 1 inch = 741 feet



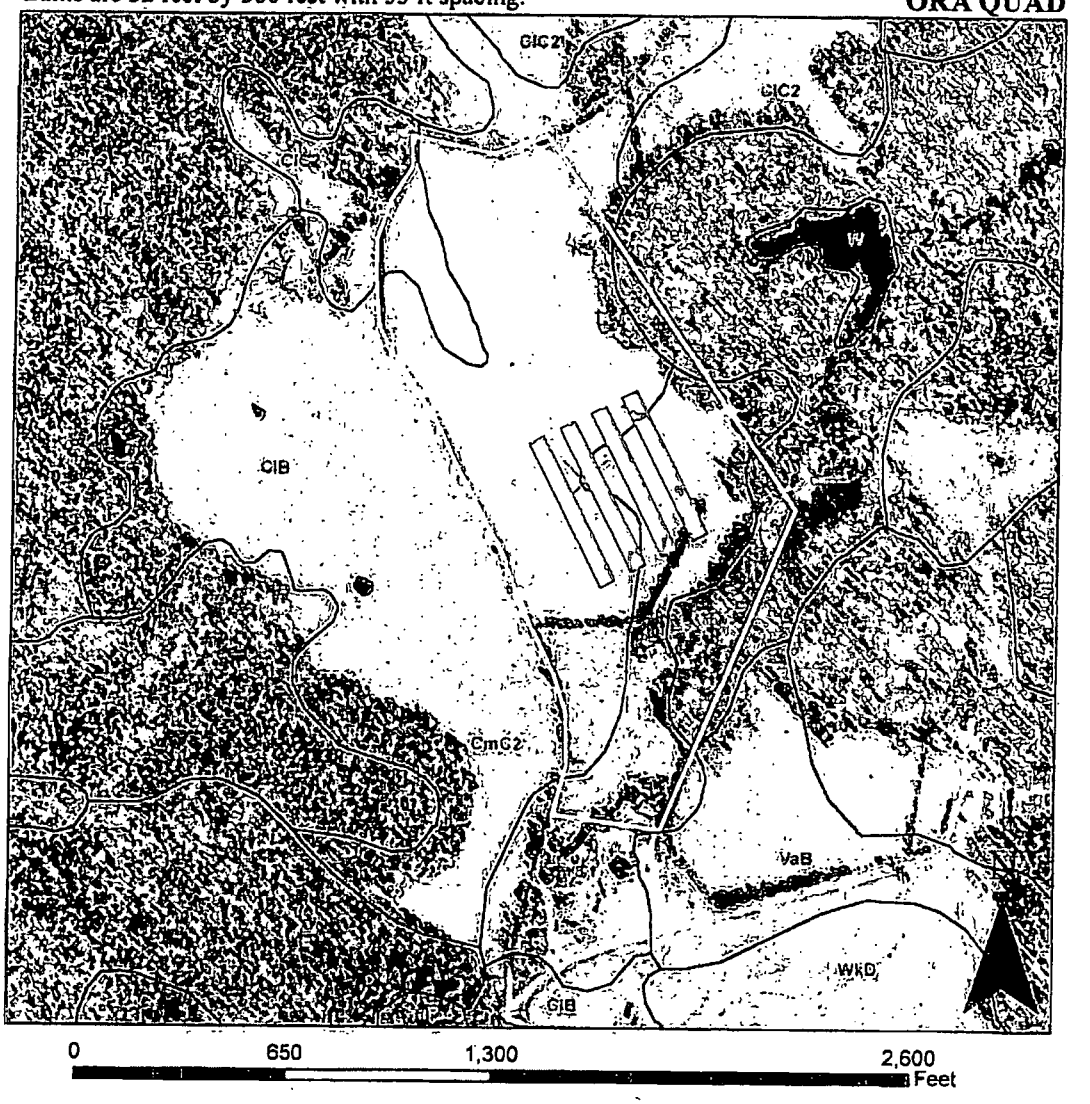
317

DHEC 000115

Sumerel Poultry Farm
Soils Map

Barns are 52 feet by 500 feet with 55 ft spacing.

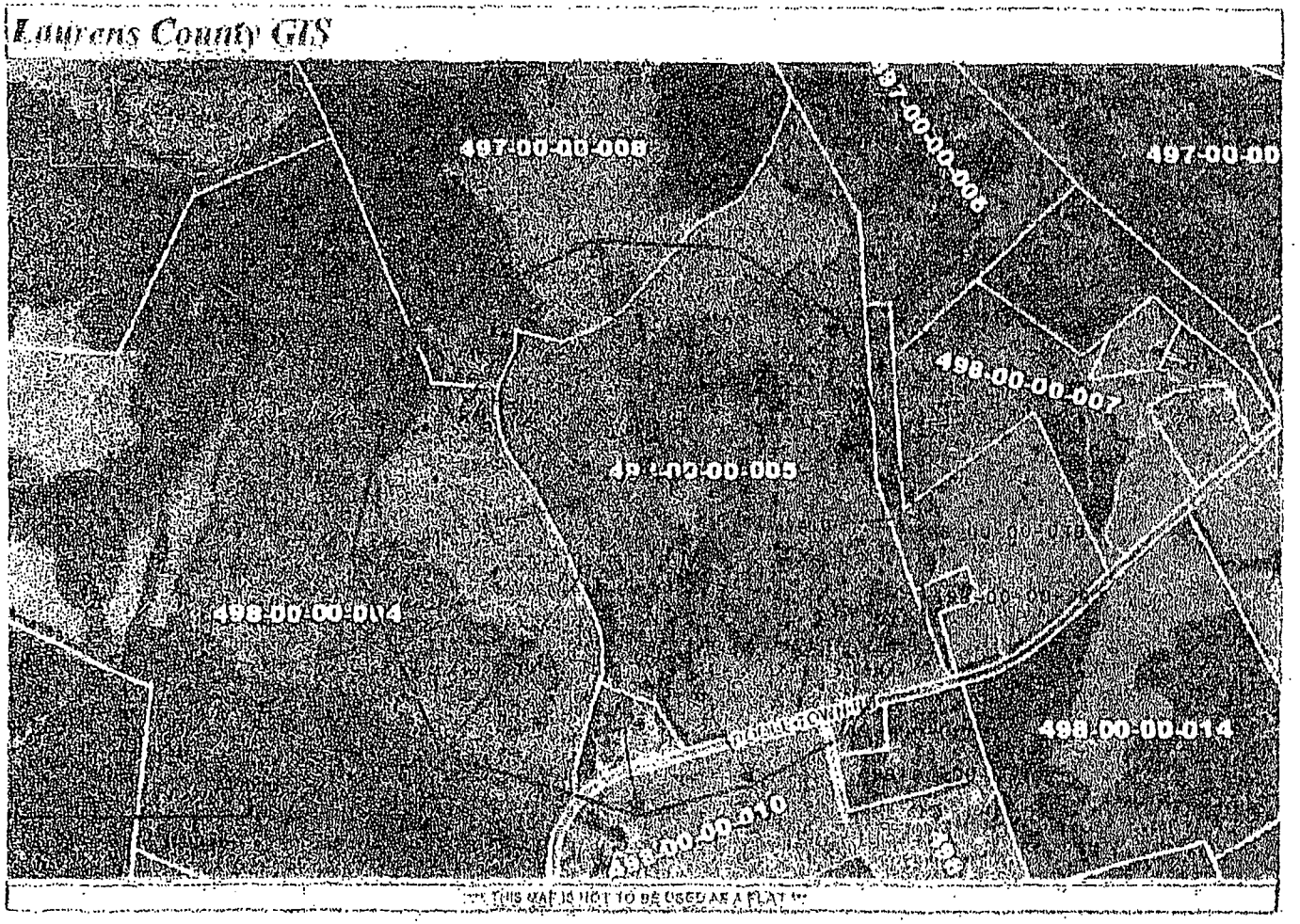
ORA QUAD



Shealy Engineering, LLC

DHEC 000116

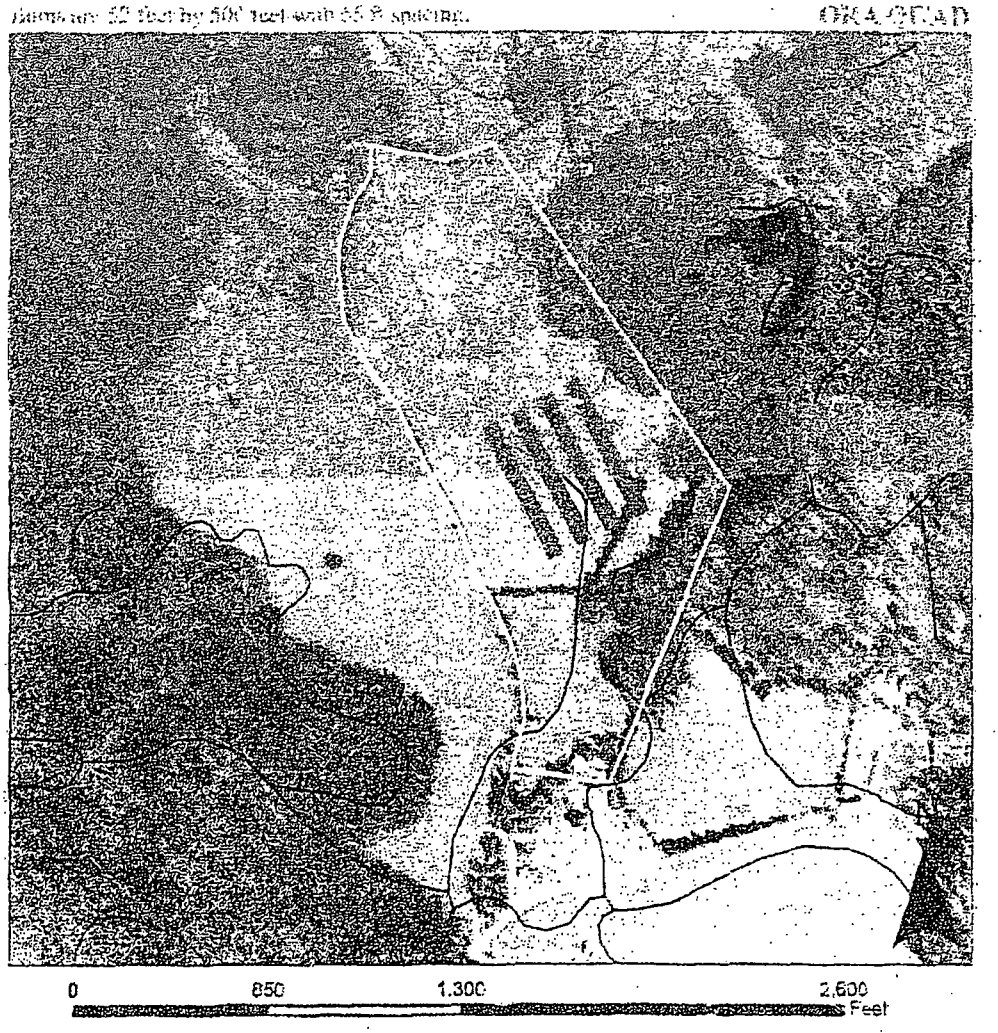
Scale: 1 inch = 741 feet



319

DHEC 000115

Sumerel Poultry Farm
Soils Map



Shealy Engineering, LLC

DHEC 000116

Map Unit Description

Laurens County, South Carolina

CIB Cecil sandy loam, 2 to 6 percent slopes

Setting

Landscape: Piedmonts
Elevation: 200 to 1400 feet
Mean annual precipitation: 41 to 54 inches
Mean annual air temperature: 47 to 73 degrees F
Frost-free period: 173 to 218 days

Composition

Cecil and similar soils: 100 percent

Description of Cecil

Setting

Landform: Interfluves
Landform position (two-dimensional): Summit
Down-slope shape: Convex
Across-slope shape: Convex
Parent material: Clayey residuum weathered from granite, gneiss, and schist

Properties and Qualities

Slope: 2 to 6 percent
Drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately high or high (0.57 to 1.98 in/hr)
Frequency of flooding: None
Frequency of ponding: None
Calcium carbonate maximum: 0 percent
Gypsum maximum: 0 percent
Available water capacity: Moderate (about 8.3 inches)

Interpretive Groups

Land capability (non irrigated): 2e

Typical Profile

0 to 5 inches: sandy loam
5 to 58 inches: clay
58 to 79 inches: clay loam

Map Unit Description

Laurens County, South Carolina

CIC2 Cecil sandy loam, 6 to 10 percent slopes, eroded

Setting

Landscape: Piedmonts
Elevation: 200 to 1400 feet
Mean annual precipitation: 41 to 54 inches
Mean annual air temperature: 47 to 73 degrees F
Frost-free period: 173 to 216 days

Composition

Cecil and similar soils: 100 percent

Description of Cecil

Setting
Landform: Interfluves
Landform position (two-dimensional): Shoulder
Down-slope shape: Convex
Across-slope shape: Convex
Parent material: Clayey residuum weathered from granite, gneiss, and schist

Properties and Qualities
Slope: 6 to 10 percent
Drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately high or high (0.57 to 1.98 in/hr)
Frequency of flooding: None
Frequency of ponding: None
Calcium carbonate maximum: 0 percent
Gypsum maximum: 0 percent
Available water capacity: Moderate (about 8.3 inches)

Interpretive Groups
Land capability (non irrigated): 3e

Typical Profile
0 to 5 inches: sandy loam
5 to 58 inches: clay
58 to 79 inches: clay loam

Map Unit Description

Laurens County, South Carolina

CmC2 Cecil sandy clay loam, 6 to 10 percent slopes, eroded

Setting

Landscape: Piedmonts
Elevation: 200 to 1400 feet
Mean annual precipitation: 41 to 54 inches
Mean annual air temperature: 47 to 73 degrees F
Frost-free period: 173 to 216 days

Composition

Cecil and similar soils: 100 percent

Description of Cecil

Setting

Landform: Interfluves
Landform position (two-dimensional): Shoulder
Down-slope shape: Convex
Across-slope shape: Convex
Parent material: Clayey residuum weathered from granite, gneiss, and schist

Properties and Qualities

Slope: 6 to 10 percent
Drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately high or high (0.57 to 1.98 in/hr)
Frequency of flooding: None
Frequency of ponding: None
Calcium carbonate maximum: 0 percent
Gypsum maximum: 0 percent
Available water capacity: Moderate (about 8.4 inches)

Interpretive Groups

Land capability (non irrigated): 4e

Typical Profile

0 to 4 inches: sandy clay loam
4 to 58 inches: clay
58 to 79 inches: clay loam

Map Unit Description

Laurens County, South Carolina

Gp Gullied land-Pacolet soils complex

Setting

Landscape: Piedmont
Elevation: 200 to 1400 feet
Mean annual precipitation: 41 to 54 inches
Mean annual air temperature: 47 to 73 degrees F
Frost-free period: 173 to 216 days

Composition

Arents and similar soils: 50 percent
Pacolet and similar soils: 35 percent

Description of Arents

Setting

Landform: Interfluves
Landform position (two-dimensional): Backslope
Down-slope shape: Convex
Across-slope shape: Convex
Parent material: Clayey residuum weathered from granite, gneiss, and schist

Properties and Qualities

Slope: 10 to 15 percent
Drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately high or high (0.57 to 1.98 in/hr)
Frequency of flooding: None
Frequency of ponding: None
Calcium carbonate maximum: 0 percent
Gypsum maximum: 0 percent
Available water capacity: Moderate (about 7.2 inches)

Interpretive Groups

Land capability (non irrigated): 7e

Typical Profile

0 to 79 inches: sandy clay loam

Description of Pacolet

Setting

Landform: Interfluves
Landform position (two-dimensional): Backslope
Down-slope shape: Convex
Across-slope shape: Convex
Parent material: Clayey residuum weathered from granite, gneiss, and schist

Properties and Qualities

Slope: 10 to 15 percent
Drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately high or high (0.57 to 1.98 in/hr)
Frequency of flooding: None
Frequency of ponding: None
Calcium carbonate maximum: 0 percent
Gypsum maximum: 0 percent
Available water capacity: Moderate (about 7.6 inches)

Interpretive Groups

Land capability (non irrigated): 6e

Typical Profile

0 to 5 inches: sandy clay loam
5 to 27 inches: clay loam
27 to 79 inches: sandy clay loam

Map Unit Description

Laurens County, South Carolina

MhF Madison and Pacolet soils, 15 to 40 percent slopes

Setting

Landscape: Piedmonts
Elevation: 200 to 1400 feet
Mean annual precipitation: 41 to 64 inches
Mean annual air temperature: 47 to 73 degrees F
Frost-free period: 173 to 216 days

Composition

Madison and similar soils: 55 percent
Pacolet and similar soils: 40 percent

Description of Madison

Setting

Landform: Interfluves
Landform position (two-dimensional): Backslope
Down-slope shape: Convex
Across-slope shape: Convex
Parent material: Clayey residuum weathered from granite, gneiss, and schist

Properties and Qualities

Slope: 15 to 40 percent
Drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately high or high (0.57 to 1.98 in/hr)
Frequency of flooding: None
Frequency of ponding: None
Calcium carbonate maximum: 0 percent
Gypsum maximum: 0 percent
Available water capacity: Moderate (about 9.0 inches)

Interpretive Groups

Land capability (non irrigated): 7e

Typical Profile

0 to 6 inches: sandy loam
6 to 39 inches: clay
39 to 79 inches: sandy clay loam

Description of Pacolet

Setting

Landform: Interfluves
Landform position (two-dimensional): Backslope
Down-slope shape: Convex
Across-slope shape: Convex
Parent material: Clayey residuum weathered from granite, gneiss, and schist

Properties and Qualities

Slope: 15 to 40 percent
Drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately high or high (0.57 to 1.98 in/hr)
Frequency of flooding: None
Frequency of ponding: None
Calcium carbonate maximum: 0 percent
Gypsum maximum: 0 percent
Available water capacity: Moderate (about 7.5 inches)

Interpretive Groups

Land capability (non irrigated): 7e

Typical Profile

0 to 5 inches: sandy loam
5 to 27 inches: clay loam
27 to 79 inches: sandy clay loam

Map Unit Description

Laurens County, South Carolina

VaB Vance sandy loam, 2 to 6 percent slopes

Setting

Landscape: Piedmonts
Mean annual precipitation: 41 to 54 inches
Mean annual air temperature: 47 to 73 degrees F
Frost-free period: 173 to 216 days

Composition

Vance and similar soils: 100 percent

Description of Vance

Setting

Landform: Interfluves
Landform position (two-dimensional): Summit
Down-slope shape: Convex
Across-slope shape: Convex
Parent material: Clayey residuum weathered from granite and gneiss

Properties and Qualities

Slope: 2 to 6 percent
Drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately low or moderately high (0.06 to 0.20 in/hr)
Frequency of flooding: None
Frequency of ponding: None
Calcium carbonate maximum: 0 percent
Gypsum maximum: 0 percent
Available water capacity: Moderate (about 7.3 inches)

Interpretive Groups

Land capability (non irrigated): 3e

Typical Profile

0 to 6 inches: sandy loam
6 to 40 inches: clay
40 to 55 inches: sandy clay loam

Map Unit Description

Laurens County, South Carolina

WlF Wilkes soils, 15 to 40 percent slopes

Setting

Landscape: Piedmonts
Mean annual precipitation: 41 to 54 inches
Mean annual air temperature: 47 to 73 degrees F
Frost-free period: 173 to 216 days

Composition

Wilkes and similar soils: 100 percent

Description of Wilkes

Setting

Landform: Interfluves
Landform position (two-dimensional): Backslope
Down-slope shape: Convex
Across-slope shape: Convex
Parent material: Loamy residuum weathered from hornblende, diorite, or gabbro

Properties and Qualities

Slope: 15 to 40 percent
Depth to restrictive feature: 10 to 20 inches to Paralithic bedrock; 20 to 40 inches to Lithic bedrock
Drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Very low or moderately low (0.00 to 0.01 in/hr)
Frequency of flooding: None
Frequency of ponding: None
Calcium carbonate maximum: 0 percent
Gypsum maximum: 0 percent
Available water capacity: Very low (about 1.4 inches)

Interpretive Groups

Land capability (non irrigated): 7e

Typical Profile

0 to 7 inches: sandy loam
7 to 10 inches: sandy clay loam
10 to 20 inches: weathered bedrock
20 to 79 inches: unweathered bedrock

Water Features

Laurens County, South Carolina

Map symbol and soil name	Hydrologic group	Surface runoff	Month	Water table		Ponding			Flooding	
				Upper limit	Lower limit	Surface depth	Duration	Frequency	Duration	Frequency
				Ft	*Ft*	*Ft*				
CtB:										
Cecil	B	Low	Jan-Dec			—	—	None	—	None
CtC2:										
Cecil	B	Medium	Jan-Dec			—	—	None	—	None
CmC2:										
Cecil	B	Medium	Jan-Dec			—	—	None	—	None
Gp:										
Arents	B	Medium	Jan-Dec			—	—	None	—	None
Pacolet	B	Medium	Jan-Dec			—	—	None	—	None
MhF:										
Madison	B	High	Jan-Dec			—	—	None	—	None
Pacolet	B	High	Jan-Dec			—	—	None	—	None
VaB:										
Vance	C	Low	Jan-Dec			—	—	None	—	None
WlF:										
Wilkes	D	Very high	Jan-Dec			—	—	None	—	None

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16. Appendix H: SC Regulation 61-43: Animal Facility Management Plan Cross-Reference

Animal Facility Management Plan Submission Requirements	Location in CNMP
A. Preliminary Site Approval	
B. Include following information for Permitting	
1. A completed application form.	7
2. An Animal Facility Management Plan	
a. Facility name,	Cover Page
address,	Cover Page
telephone number,	Cover Page
county, and	Cover Page
National Pollutant Discharge Elimination System Permit or other permit number (if applicable);	
b. Facility location description and the zoning restrictions in this area;	Cover Page
c. Applicant's name,	Cover Page
address, and	Cover Page
telephone number (if different from above);	Cover Page
d. Operator's name;	Cover Page
e. Facility capacity;	
i. Number and type of animals;	17
ii. Pounds of normal production animal live weight at any one time;	17
iii. Amount of animal manure and other animal by-products generated per year (gallons for liquid animal manure and pounds for dry animal manure);	17
iv. Amount in tons of any scraped or separated solid animal manure and other animal by-products generated per year (if applicable);	18
v. Description of animal manure and other animal by-products storage and storage capacity of lagoon, treatment system or manure storage pond (if applicable); and	18
vi. Description of animal manure and other animal by-products treatment (if any).	18

f. Concentration of constituents in liquid animal manure including but not limited to the constituents given below:	
i. Nutrients.	18
(a) Nitrate (only needed for aerobic systems).	
(b) Ammonium-Nitrogen	
(c) Total Kjeldahl Nitrogen (TKN)	
(d) Organic-Nitrogen (TKN - Ammonium-Nitrogen)	
(e) P 2 O 5	
(f) K 2 O (potash)	
ii. Constituents.	
(a) Arsenic	
(b) Copper	
(c) Zinc	
iii. Name, address, SC lab certification number, and telephone number of the laboratory conducting the analyses	
For new animal facilities, manure analysis information does not have to be submitted in review of the application. Analysis of the actual animal manure generated shall be submitted to the Department twelve months after a new animal facility starts operation or prior to the first application of animal manure to a manure utilization area, whichever occurs first.	
g. Concentration of constituents in solid animal manure including but not limited to the following:	
i. Nutrients (on a dry weight basis).	18
(a) Total Kjeldahl Nitrogen (mg/kg).	
(b) Total inorganic nitrogen (mg/kg).	
(c) Total ammonia nitrogen (mg/kg) and Total nitrate , nitrogen (mg/kg).	
(d) P 2 O 5 (mg/kg).	
(e) K 2 O (mg/kg).	
(f) Calcium Carbonate equivalency (if animal manure is alkaline stabilized).	
ii. Constituents (on a dry weight basis).	
(a) Arsenic (mg/kg).	
(b) Copper (mg/kg).	
(c) Zinc (mg/kg).	
iii. Name, address, SC lab certification number, and telephone number of the laboratory conducting the analyses.	
For new animal facilities, manure analysis information does not have to be submitted in review of the application. Analysis of the actual animal manure generated shall be submitted to the	

Department twelve months after a new animal facility starts operation or prior to the first application of animal manure to a manure utilization area, whichever occurs first.	
h. Animal manure and other animal by-products handling and application information shall be included as follows:	
I. A crop management plan which includes the time of year of the animal manure application and how it relates to crop type, crop planting, and harvesting schedule (if applicable) for all manure utilization areas;	
ii. Name, address, and telephone number of the producer(s) that will land apply the animal manure and other animal by-products if different from the permittee;	N/A
iii. Type of equipment used to transport and/or spread the animal manure and other animal by-products (if applicable); and	18
iv. For spray application systems, plans and specifications with supporting details and design calculations for the spray application system.	
i. Facility and manure utilization area information shall be included (as appropriate):	
I. Name and address of landowner and location of manure utilization area(s):	N/A
ii. List previous calendar years that animal manure was applied and application amounts, where available;	
iii. Facility and manure utilization area location(s) on maps drawn to approximate scale including:	
(a) Topography (7.5' or equivalent) and drainage characteristics (including ditches);	61
(b) Adjacent land usage (within 1/4 mile of property line minimum) and location of inhabited dwellings and public places showing property lines and tax map number;	61
(c) All known water supply wells on applicant's property and within 200 feet of the facility's property line or within 200 feet of any manure utilization areas;	
(d) Adjacent surface water bodies (including ephemeral and intermittent streams);	
(e) Animal manure utilization area boundaries and buffer zones;	
(f) Right-of-Ways (Utilities, roads, etc.);	
(g) Soil types as given by soil tests or soils maps, a description of	61

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soil types, and boring locations (if applicable);	
(h) Recorded Plats, Surveys, or other acceptable maps that include property boundaries; and	N/A
(i) Information showing the 100-year floodplain (as determined by FEMA).	61
iv. For manure utilization areas not owned by the permit applicant, a signed agreement between the permit applicant and the landowner acceptable to the Department detailing the liability for the land application. The agreement shall include, at a minimum, the following:	
(a) Producer's name, farm name and county in which the farm is located;	N/A
(b) Landowner's name, address, phone number;	N/A
(c) Location (map with road names and county identified) of the land to receive manure application;	
(d) Field acreage, acreage less setbacks, and crops grown;	
(e) Name of manure hauler;	18
(f) Name of manure applier;	
(g) A statement that land is not included in any other management plans and manure or compost from another farm is not being applied on this land; and	20
(h) A signed statement, which informs the landowner that he is responsible for spreading and utilizing this manure in accordance with the requirements of the Department and Regulation 61-43.	N/A
v. For other manure utilization areas that are included in multiple Animal Facility Management Plans, identify the names of all facilities that include this manure utilization area in their plan.	
3. Groundwater monitoring well details and proposed groundwater monitoring program (if applicable).	
4. The Animal Facility Management Plan shall contain an odor abatement plan for the animal facility, lagoon, treatment system, manure storage pond, and manure utilization areas. For more specific details, see Section 200.150 (Odor Control Requirements).	23
5. A Vector Abatement Plan shall be included for the animal facility, lagoon, treatment system or manure storage pond, and manure utilization areas. For more specific details see Section 200.160 (Vector Control Requirements).	22

6. Dead Animal Disposal Plan. The plan shall include written details for handling and disposal of dead animals. Plans should detail method of disposal, any construction specifications necessary, and management practices. See Section 200.130 (Dead Animal Disposal Requirements) for specific requirements on dead animal disposal.	19
7. Soil Monitoring Plan. A soil-monitoring plan shall be developed for all manure utilization areas. See Section 200.100 (Manure Utilization Area Requirements) for more detailed information.	24
8. Plans and specifications for all other manure treatment or storage structures, such as holding tanks or manure storage sheds.	44
9. All "A Notice of Intent to Build or Expand an Animal Facility" forms as provided by the Department and a tax map (or equivalent) to scale showing all neighboring property owners and identifying which property has inhabited dwellings. See Section 200.60 (Public Notice Requirements) for more detailed information.	50
10. An Emergency Plan. The emergency plan should at a minimum contain a list of entities or agencies the producer should contact in the event of lagoon, treatment system, or manure storage pond breach, major animal mortality, fire, flood, or other similar type problem. For facilities in the coastal areas of the state, the emergency plan should address actions to be taken by a producer when advance warning is given on any extreme weather condition.	13
11. Adjoining property owners written agreement for reduction of setbacks (if applicable).	89

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REPUBLIC SERVICES

SPECIAL WASTE SERVICE AGREEMENT
NON-HAZARDOUS WASTES

Special Waste Profile Number: 8115197809

Generator Billing Information		Republic Waste Location (Company)
Name:	Mike Summerel	Republic Services of South Carolina, LLC
Address:	2044 Pool Town Road	DBA Upstate County Regional MSW Landfill
		858 Wildcat Road
City:	Laurens	Easley, SC 29835
State:	SC Zip: 29360	864-969-4460
Phone:	864-923-9137 Fax	
Contact:	Mike Summerel	

Project: Animal carcass disposal — County and State of Origin: Laurens, SC

Additional Information:

1. Special Waste Service. Subject to the terms and conditions contained herein, Company agrees to transport for disposal, and/or accept, at the Facility (as defined in Section 6), Acceptable Waste (as defined below and hereinafter referred to as "Special Waste" or "Waste").

2. Acceptable Waste. Only those Special Wastes described in Section 3 herein and in any Special Waste Profile(s) (as defined in Section 8) which number is identical to the contract number referenced above, and which Waste is subsequently approved by Company and is otherwise in accordance with all laws, regulations and permits, shall be acceptable for transportation to, and/or disposal at, the Facility ("Acceptable Waste"). All Wastes described below shall be managed exclusively by Company during the term of this Agreement.

3. (A) Rates for Disposal:

Waste	Disposal Method	Disposal Rate	Fees / Taxes / Misc.	Transportation Rate (only if Republic is to provide transportation services)
Animal carcass	Landfill	$40/ton	Incomplete	No

Additional Information:

Generator shall also be liable for all taxes, fees, or other charges imposed by federal, state, local or provincial laws, regulations, orders and rules.

Cannot Exceed Daily Volume of _____ Without Prior Approval of Company.

(B) Incorporation by Reference. In addition to Special Waste Profile(s), the following documents are incorporated by reference into this Agreement as if fully set forth herein.

1) _____

2) _____

4. Term of Agreement. This Agreement is effective for 12 months, commencing 5/16/13 and shall automatically be renewed for a similar term thereafter unless either party shall give written notice (via certified mail) of termination to the other party at least thirty (30) days written notice prior to the expiration of the current term. Generator grants to Company a right of first refusal to match any offer which Generator receives or intends to make after completion of any term of this Agreement relating to any services provided hereunder and further agrees to provide Company prompt written notice of any such offer and a reasonable opportunity to respond to it.

COMPANY AND GENERATOR, IN CONSIDERATION OF THE MUTUAL OBLIGATIONS CONTAINED HEREIN, AGREE THAT THIS IS A LEGALLY BINDING AGREEMENT WHICH IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH ON THIS PAGE AND THE ATTACHED TERMS AND CONDITIONS. IN ADDITION, GENERATOR IS CERTIFYING THE ATTACHED TERMS AND CONDITIONS HAVE BEEN REVIEWED AND INITIALED AT THE BOTTOM OF THE PAGE.

GENERATOR

Mike Summerel
SIGNATURE (AUTHORIZED REPRESENTATIVE)

Mike Summerel Co-Owner
NAME AND TITLE (PLEASE PRINT)

5/20/13
DATE

REPUBLIC SERVICES/COMPANY

SIGNATURE (AUTHORIZED REPRESENTATIVE)

Ron Hall Specialist Rep
NAME AND TITLE (PLEASE PRINT)

5/15/13
DATE

April 2010

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Stormwater, Construction & Agricultural Permitting Division

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Terms and Conditions of Special Waste Service Agreement

4. **The Agreement.** This agreement of the parties ("Agreement") for the disposal of Special Waste consists solely of the Agreement, Exhibit to the Agreement (if any) and any Application, permit and approval that may be applicable to such Waste.

5. **Waste Accepted or Rejected.** Generator represents, warrants and covenants that the Waste delivered to Company at its Facility by Generator will be Acceptable Waste and will not contain any unacceptable quantity of hazardous materials or substances, radioactive materials or substances, or both waste or substances, as defined by applicable federal, state, local or provincial laws or regulations. Any Waste which does not meet these requirements shall hereinafter be referred to as "Unacceptable Waste". The Generator shall be responsible relating to the collection, transportation and disposal of the Waste hereunder, comply with all applicable federal, state and local laws, regulations, rules and orders regarding the same. The word "Facility" shall mean any loading, permanent station or other location used to transfer, process or otherwise dispose of such Waste.

6. **Special Waste.** Generator represents and warrants that the Waste delivered to Company hereunder (a) will not contain any Special Waste that is not specifically described on any Application which is attached hereto or which is subsequently agreed to by the Company, (b) will meet the material specifications as set forth in any Application and otherwise be of consistent purpose, and (c) will not contain Unacceptable Waste. The parties may supplement described Special Waste as part of this Agreement if prior to delivery of such Waste to Company, Generator has provided an Application for such Waste and Company has approved dispose of such Waste within the limitations and conditions contained in Company's written waste acceptance of Special Waste Disposal. This is acceptance will be shall transfer to Company upon first acceptance of subsequent. At no time shall Company take title to unacceptable waste.

7. **Breach of Warranty/Indemnification.** The Generator shall transport all Waste at the property of collection and shall remove any and all Unacceptable Waste. Company has the right to reject, or to reject after acceptance, any load(s) of Waste(s) delivered to the Facility including to the Company believes the Generator has breached or breaching its representation, warranties, covenants or agreements hereunder, or any applicable federal, state or local laws, regulations, rules or orders, even if only a portion of such Waste load is unacceptable. The Company shall have the right to inspect all vehicles and containers of Waste loaded, including the Generator's vehicles, in order to determine whether the Waste is Acceptable Waste or Unacceptable Waste pursuant to this Agreement and all applicable federal, state and local laws, rules and regulations. The Company's exercise, or failure to exercise, its rights hereunder shall not operate to relieve the Generator of its responsibilities or liability under this Agreement. The Generator shall be responsible for, and hold all reasonable expenses and damages incurred by the Company, as a result of the Unacceptable Waste and in the handling and removal of Unacceptable Waste disposed in the Facility. The Company, any time, in its sole discretion, require the Generator to promptly remove the Unacceptable Waste.

8. **Limited License to Entry.** This Agreement provides Company with a license to enter the Facility for the limited purpose of, and only to the extent necessary for, delivering Acceptable Waste at the Facility in the manner directed by Company. Except in an emergency, Generator's personnel shall not leave the immediate vicinity of said vehicle. After effecting the above, Generator's personnel shall promptly leave the vicinity. Under no circumstances shall Generator or its personnel engage in any excavation of Waste or other materials at the Facility. The Company reserves the right to cause and enforce reasonable rules and regulations concerning the operation of the Facility, the conduct of the drivers and others on the Facility premises, operating days and hours of Facility, and they Generator's responsibility or cleanable for the safe, legal and efficient operation of the Facility hereunder, but not limited to, speed limits on haul roads imposed by the Company, and the wearing of hard hats and other personal protection equipment by all individuals allowed on the Facility premises. Generator agrees to conform to such rules and regulations as they may be established and amended from time to time. Company may refuse to accept Waste from and shall deny an entrance license to, any of Generator's personnel whom Company believes is under the influence of alcohol or other controlled substances. Generator shall be solely responsible for its employees and subcontractors performing their obligations in a safe manner while at the Facility or Company site.

10. **Charges and Payment.** Payment shall be made by Generator within thirty (30) days after receipt of invoice from Company, at the rates in its rate schedule, the Company may terminate this Agreement. Generator agrees to pay a finance charge equal to the maximum amount rate permitted by law. Generator shall be liable for all taxes, fees, or other charges imposed upon the disposal of the Waste by federal, state, local or provincial laws and regulations. Company, from time to time, may modify its rates upon thirty (30) days written notice to Generator.

11. **Termination.** Generator's obligations, representations, warranties and covenants regarding the Waste delivered and all indemnities shall survive termination of this Agreement. Should Generator materially default in any of its obligations hereunder, then Company may immediately terminate this Agreement and Generator shall be liable for all costs and damages incurred by the Company.

12. **Owner's Knowledge and Authority.** Generator represents, warrants and covenants that the person who delivers Waste to Company's Facility have been advised by Generator of the Company's prohibition on deliveries of hazardous materials or substances, radioactive materials or substances, or both waste or substances or any other Unacceptable Waste to the Facility, of Company's restrictions on deliveries of Special Waste to the Facility, of the definitions of Hazardous Waste and Hazardous Substances as provided by applicable federal, state and local law, rules and regulations and "Special Waste" as provided herein. It is of the basis of this license to enter Company's Facility.

13. **Indemnification.** Generator shall indemnify, defend and hold harmless the Company and its subsidiaries, affiliates and parent companies, as applicable and their respective officers, directors, trustees, employees, subcontractors and agents from and against any and all claims, suits, losses, liabilities, actions, demands, damages, fines, costs and expenses, including reasonable attorneys fees arising under federal, state or local laws, regulations or ordinances, or relating to the contract of the Waste, or arising out of or in connection with any breach of this Agreement or arising out of the negligent collection, transportation and disposal of Waste by Generator or Generator's employees, agents, subcontractors or representatives thereof. Generator shall also be responsible for increased loss ratios, testing, study and analysis costs made necessary as a result of Generator's acts or the acts of the Waste including discovery of previously Unacceptable Waste. This indemnification and other obligations stated in this paragraph shall survive the termination of this Agreement.

14. **Insurance.** Generator shall maintain in full force and effect throughout the term of this Agreement the following types of insurance in at least the amounts specified below:

Coverages	Minimum Acceptable Limits
Worker's Compensation	Statutory
General Liability	$500,000 combined single limit
Automobile Liability	$500,000 combined single limit

All insurance will be by insurers authorized to do business in the state in which the Facility is located. Prior to Generator being allowed on Facility premises, Generator shall provide the Company with certificates of insurance or other satisfactory evidence that which insurance have been procured and is in force. Said policies shall not thereafter be canceled, be permitted to expire or be changed without thirty (30) days advance written notice to the Company. Generator warrants that it will secure the above minimum amounts of insurance from any interpretation of the Waste at the Facility.

15. **Failure to Perform.** Neither party hereto shall be liable for its failure to perform hereunder due to circumstances beyond its fault and beyond its reasonable control, including, but not limited to, strikes or other labor disputes, acts, omissions, civil disturbances or sabotage, changes in law, laws, regulations with governmental requests, civil riots, accidents, weather, lack of request caused resources, or acts of God affecting either party hereto. In the event of any of the circumstances provided for in the preceding sentence, including, but not limited to whether any federal, state or local court or governmental authority takes any action which would (a) close or restrict operations at the Facility, (b) limit the quantity or prohibit the disposal of Waste at the Facility or (c) limit the ability of or prohibit Generator from delivering Waste at the Facility, the Company shall have the right, at its option, to declare, suspend or terminate Generator's access to the Facility hereunder without prior notice and without any additional liabilities between the parties, other than Generator's payment obligation hereunder. Neither Party is required hereunder to settle any labor dispute against its own best judgment.

16. **Other Warranties.** The occurrence of any of the following events shall also constitute an event of default by the Generator and shall give the Company the right to immediately terminate this Agreement:

(A) A petition for reorganization or bankruptcy filed by or against the Generator;

(B) Failure by Generator to pay any amounts due to Company;

(C) Any breach by Generator of any of its obligations pursuant to the Agreement.

Generator shall be liable for and shall indemnify, defend and hold harmless Company from any losses, claims, expenses or damages incurred by the Company as a result of termination hereunder.

17. **Assignment.** Generator may not assign, transfer or otherwise sell to any other Generator, entity or person, in whole or in part, any of its rights or obligations under this Agreement without the prior written consent of the Company, granted, however, that the Company may without any such prior written consent, assign its rights and/or obligations under the Agreement to a subsidiary or affiliate corporation.

18. **Rights of Disposal.** This Agreement does not grant any rights to dispose of Waste other than in accordance herewith. The Company reserves the right to immediately terminate access to the Facility by Generator and Generator's personnel in the event of breach or violation by Generator of any of the terms of this Agreement, the Company's operating rules or payment policies or any applicable laws or regulations.

19. **Preferential Compliance.** The Generator has a continuing obligation to inform the Company of any new information, or information not previously provided to the Company by Generator which may affect the acceptability of the Waste by the Company. Further, the Generator shall comply with all Company requests for evidence of Generator's continuing compliance with the terms of the Agreement including, but not limited to the following: (i) providing copies of any and all Waste profiles on the Waste(s) covered by this Agreement, (ii) providing appropriate certification that the Waste to be offered for disposal is adequately described by the appropriate Application or, (iii) to sample the Waste at Generator's expense if it is not able to provide copies of the same as to completely under the terms of this Agreement or, (iv) allow the Company to re-sample any Waste at Generator's expense if it is unable or does not wish to completely cover the terms of this Agreement or (v) all of the above.

20. **Miscellaneous.**

(A) This Agreement shall be governed by the laws of the State in which the Facility is located.

(B) No waiver of a breach of any of the obligations contained in the Agreement shall be construed to be a waiver of any prior or succeeding breach of the same obligation or to any other obligation of this Agreement.

(C) No modification, release, discharge or waiver of any provision or obligation hereof shall be of any force, or effect, unless in writing executed by all parties to this Agreement.

(D) Generator shall treat as confidential and not disclose to others during or subsequent to the term of this Agreement, except as is necessary to perform this Agreement, or to comply with any applicable law or regulation any information (including any technical information, experience or plans) regarding the Company's plans, programs, plans, processes, products, costs, equipment or operations which may come within the knowledge of the Generator or its employees in the performance of the Agreement, without in each instance securing the prior written consent of the other Company.

(E) If any term, clause, obligation or provision of this Agreement shall be held to be invalid, void or unenforceable by any arbitrator, this Agreement shall remain in effect and be construed without regard to such term, provision, obligation or provision.

(F) This Agreement constitutes the entire understanding between the parties, and revokes any and all prior agreements between the parties, and shall be binding upon all parties hereto, their successors, heirs, representatives and assigns. Any provisions, term or condition of any correspondence, purchase order or other materials by Generator which is in addition to or altered from the provisions of this Agreement shall be deemed objected to by the Company and shall be of no force.

(G) Generator represents, warrants and covenants that it is and, during the term of this Agreement will remain, in compliance with and will perform its obligations pursuant to all applicable laws and regulations and shall indemnify, defend and hold harmless the Company from any breach thereof.

(H) It is the contractual and agreement of the parties that the Company is an independent contractor and is not, nor as authorized representative of the Generator.

21. **Notices.** All notices herein provided for shall be considered as having been given when same are placed in the mail, certified postage prepaid addressed to the Company or Generator at the address hereto set forth in this Agreement or to such other address as may be given to the other party in writing.

22. **Liquidated Damages.** In the event that this Agreement is terminated by the Generator in a manner not in accordance with paragraph 4 hereof, or terminated due to a breach of this Agreement by the Generator, the Generator shall pay, as liquidated damages, and not as a penalty, the Company an amount equal to six (6) months' invoice charges of the Generator's most recent monthly charge multiplied by six (6). The Generator shall be given credit for any advance payments made hereunder, however, in determining the amount owed as liquidated damages hereunder. The Generator acknowledges that this liquidated damages clause is reasonable and is applicable to recover damages related to its inconvenience in replacement, development of facility and hiring of employees undertaken by the Company to service its customers including the Generator. This liquidated damages clause in no way relieves the Generator from its obligations and liability for additional damages as set forth elsewhere in this Agreement.

GENERATOR: M.S. Republic Services, Inc. COMPANY: _____ May 2009

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REPUBLIC SERVICES

SPECIAL WASTE SERVICE AGREEMENT
NON-HAZARDOUS WASTES

Special Waste Profile Number: 8115187809

Generator Billing Information		Republic Waste Location (Company)
Name:	Mike Summeral	Republic Services of South Carolina, LLC
Address:	2044 Pool Town Road	DBA Upstate County Regional MSW Landfill
		898 Wildcat Road
City:	Laurens	Enoree, SC 29335
State:	SC Zip: 29360	864-968-4460
Phone:	864-923-9197 Fax:	
Contact:	Mike Summeral	

Project: Animal carcass disposal — County and State of Origin: Laurens, SC

Additional Information: _____

1. Special Waste Service. Subject to the terms and conditions contained herein, Company agrees to transport for disposal, and/or accept, at the Facility (as defined in Section 6), Acceptable Waste (as defined below and hereinafter referred to as "Special Waste" or "Waste").

2. Acceptable Waste. Only those Special Wastes described in Section 3 herein and in any Special Waste Profile(s) (as defined in Section 5) which number is identical to the contract number referenced above, and which Waste is subsequently approved by Company and is otherwise in accordance with all laws, regulations and permits, shall be acceptable for transportation to, and/or disposal at, the Facility ("Acceptable Waste"). All Wastes described below shall be managed exclusively by Company during the term of this Agreement.

3. (A) Rates for Disposal:

Waste	Disposal Method	Disposal Rate	Fees / Taxes / Misc.	Transportation Rate (only if Republic is to provide transportation services)
Animal carcass	Landfill	$40/ton	Incomplete	NC

Additional Information: _____

Generator shall also be liable for all taxes, fees, or other charges imposed by federal, state, local or provincial laws, regulations, orders and rules.

Cannot Exceed Daily Volume of _____ Without Prior Approval of Company.

(B) Incorporation by Reference. In addition to Special Waste Profile(s), the following documents are incorporated by reference into this Agreement as if fully set forth herein.

1) _____

2) _____

4. Term of Agreement: This Agreement is effective for 12 months, commencing 5/16/13 and shall automatically be renewed for a similar term thereafter unless either party shall give written notice (via certified mail) of termination to the other party at least thirty (30) days written notice prior to the expiration of the current term. Generator grants to Company a right of first refusal to match any offer which Generator receives or intends to make after completion of any term of this Agreement relating to any services provided hereunder and further agrees to provide Company prompt written notice of any such offer and a reasonable opportunity to respond to it.

COMPANY AND GENERATOR, IN CONSIDERATION OF THE MUTUAL OBLIGATIONS CONTAINED HEREIN, AGREE THAT THIS IS A LEGALLY BINDING AGREEMENT WHICH IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH ON THIS PAGE AND THE ATTACHED TERMS AND CONDITIONS. IN ADDITION, GENERATOR IS CERTIFYING THE ATTACHED TERMS AND CONDITIONS HAVE BEEN REVIEWED AND INITIALED AT THE BOTTOM OF THE PAGE.

GENERATOR	REPUBLIC SERVICES COMPANY
SIGNATURE (AUTHORIZED REPRESENTATIVE)	SIGNATURE (AUTHORIZED REPRESENTATIVE) Lori Hall Specialist Sup Rep
NAME AND TITLE (PLEASE PRINT)	NAME AND TITLE (PLEASE PRINT)
DATE	5/16/13 DATE

April 2010

No Signature WK

DHEC 000132

Terms and Conditions of Special Waste Service Agreement

6. The Agreement. This agreement or the service ("Agreement") for the disposal of Special Waste that consists of this Agreement, Addendum to the Agreement (if any) and any Addendums, permits and approvals that may be applicable to such Waste.

5. Waste Accepted at Facility. Generator represents, warrants and covenants that the Waste delivered to Company at its Facility hereunder will be Acceptable Waste and will not contain any unacceptable quantity of radioactive materials or substances, explosive materials or substances, or toxic waste or substances, as defined or regulated by federal, state, local or provincial laws or regulations. Any Waste which does not meet these requirements shall hereinafter be referred to as "Unaccepted Waste". The characterization of all Waste relating to the collection, transportation and disposal of the Waste hereunder, comply with all applicable federal, state and local laws, regulations, rules and orders regarding the same. The word "Facility" shall mean any transfer, recovery facility or other disposal site or material, process or processing disposition of such Waste.

7. Special Waste. Generator represents, warrants and covenants that the Waste delivered to Company hereunder by all and contains any Special Waste that is not specifically described on any Application which is submitted hereto or which is subsequently approved by the Company. All such the material description as set forth in any Application and otherwise in all significant aspects and that will not contain Unacceptable Waste. Any person may incorporate additional Special Waste as part of this Agreement if prior to delivery of such Waste to Company, Generator has provided an Application for such Waste and Company has approved disposal of such Waste under the limitations and conditions contained in Company's values terms of approval of Special Waste Disposal. That is acceptable waste shall transfer to Company upon any such portion of such waste. At no time shall Company have title to unacceptable waste.

8. Rights of Refusal/Rejection. The Generator shall inspect all Waste at the point of collection and shall reserve any and all Unacceptable Waste. Company reserves right to reject, or to reject any occurrence, any load(s) of Waste(s) delivered to the Facility including if the Company believes the Generator has breached or is breaching its representations, warranties, covenants or any applicable regulation, or any applicable permit, term or local law, regulation, term of consent, even if only a portion of such Waste shall be unacceptable. The Company shall have the right to inspect all vehicles and portion any of Waste hauled, including the Generator's vehicles, in order to determine whether the Waste is Acceptable Waste or Unacceptable Waste pursuant to this Agreement and all applicable federal, state and local laws, rules and regulations. The Company's decision, or failure to exercise, its rights hereunder shall not operate to relieve the Generator of its responsibility or liability under this Agreement. The Generator shall be responsible for, and be at its reasonable expense and damages incurred by the Company, as a result of the Unacceptable Waste and in the removal and disposal of Unacceptable Waste disposed in the Facility. The Company, may also, in its sole discretion, require the Generator to promptly remove the Unacceptable Waste.

9. Limited Use of the Facility. This Agreement provides Generator with a license to enter the Facility for the limited purpose of, and only to the extent necessary for, off-loading Acceptable Waste at the Facility in the manner directed by Company. Except in an emergency, Generator's personnel shall not leave the immediate vicinity of their vehicle. After off-loading the Waste, Generator's personnel shall promptly leave the Facility. Under no circumstances shall Generator or its personnel engage in any excavating of Waste or cover materials at the Facility. The Company reserves the right to assess and enforce reasonable rules and regulations concerning the operation of the Facility, the conduct of the drivers and others on the Facility premises, maximum and minimum of Waste, and any other matters necessary or desirable for Facility's legal and efficient operation of the Facility including, but not limited to, speed limits on haul roads imposed by the Company, and the wearing of hard hats and safety personal protective equipment by all individuals allowed on the Facility premises. Generator agrees to conform to such rules and regulations as they may be established and amended from time to time. Company may refuse to accept Waste from and shall deny all common access to, any of Generator's personnel whom Company believes is under the influence of alcohol or other impairing substances. Generator shall be solely responsible for its employees and subcontractors performing their obligations to or while on the Facility of Company.

10. Charges and Payment. Payment shall be made by Generator within thirty (30) days after receipt of invoice from Company. In the event that any amount is overdue, the Company may suspend this Agreement. Generator agrees to pay a finance charge equal to two percent (2%) per month on past due balances. Generator shall be liable for all taxes, fees, or other charges now or hereafter imposed on the disposal of the Waste by any federal, state, local or provincial laws and regulations. Company, from time to time, may change its rates upon sixty (60) days written notice to Generator.

11. Termination. Generator's obligations, representations, warranties and covenants regarding the Waste delivered and all indemnities shall survive termination of this agreement. Should Generator cause any noncompliance of its obligations hereunder, then Company may immediately terminate this Agreement and Generator shall be liable for all costs and damages incurred by the Company.

12. Workers Responsibility and Indemnity. Generator represents, warrants and covenants that to extent that either Waste or Containers Facility have been serviced by Generator or the Company's collection or deliveries of hazardous materials or substances, radioactive materials or substances, or toxic waste or substances or any other Unacceptable Waste in the Facility of Company's restrictions or delivery of Special Waste to the Facility of the employees of "Hazardous Waste and Hazardous Substances" as provided by applicable federal, state and local law, rules and regulations and "Special Waste" as provided herein, and of the terms of this license to enter Company's Facility.

13. Indemnification. Generator shall indemnify, defend and hold harmless the Company and its subsidiaries, affiliates and parent corporations, as applicable and their respective officers, directors, partners, employees, subcontractors and agents from and against any and all claims, suits, liabilities, actions and causes, damages, fines, costs and expenses, including reasonable attorneys' fees and/or legal costs, costs of court fees, expenditures or settlements, or relating to the delivery of the Waste, or arising out of or in connection with any breach of this Agreement or acts or acts of the negligent collection, transportation and disposal of Waste by Generator or Generator's employees, agents, subcontractors or representatives thereof. Generator shall also be responsible for increased inspection, testing, study and analysis costs which necessary may be necessitated by reason of the Company's or its the receipt of the Waste Stream by reason of potentially Unacceptable Waste. This indemnification and other obligations stated in this paragraph shall survive the termination of this Agreement.

14. Insurance. Generator shall maintain in full force and effect throughout the term of this Agreement the following types of insurance in at least the amounts specified below:

Coverage	Minimum Amount (Acceptable Deductible)
Workers Compensation	Statutory
General Liability	$1,000,000 combined single limit
Automobile Liability	$500,000 minimum single limit

All insurance shall be by insurers authorized to do business in the state in which the Facility is located. Prior to Generator being allowed on Facility premises, Generator shall provide the Company with certificates of insurance or other satisfactory evidence that such insurance has been procured and is in force. Said policies shall not hereafter be cancelled, be permitted to expire or lapse, or be changed without thirty (30) days advance written notice to the Company. Generator warrants that it will secure the above minimum amounts of insurance that any transportation of the Waste to the Facility.

15. Force to Perform. Neither party hereto shall be liable for its failure to perform hereunder due to circumstances not its fault and which its reasonable control, including, but not limited to, strikes or other labor disputes, civil, protests, civil disturbances or embargo, changes in law, fires, floods, compliance with governmental requests, explosion, accidents, weather, acts of regulators natural disasters, or acts of God (though other party hereto. In the event of any of the circumstances provided for in the preceding sentence, including, but not limited to, whether any federal, state or local court or governmental authority issues any determination which in does or restricts operations of the Facility, (A) limit the quantity or prohibit the disposal of Waste at the Facility, or (B) find the ability of persons on health have delivering Waste to the Facility, the Company shall have the right, at its option, to revise, terminate or temporarily suspend the Facility immediately, without prior notice and without any additional liabilities between the parties, other than Generator's payment obligation hereunder. All how Facility is required hereunder in sole the sole dispute resolution own best judgment.

16. Other Termination. The occurrence of any of the following events shall also constitute an event of default by the Generator and shall give the Company the right to immediately terminate this Agreement:

(A) A petition for reorganization or bankruptcy filed by or against the Generator.

(B) Failure by Generator to pay any amounts due to Company.

(C) Any breach by Generator of any of its obligations pursuant to this Agreement.

Generator shall be liable for and shall indemnify, defend and hold harmless Company from any fines, claims expenses or damages incurred by the Company as a result of termination hereunder.

17. Assignment. Generator may not assign, transfer or otherwise sell to any other Generator, entity or person, in whole or in part, any of its rights or obligations under this Agreement without the prior written consent of the Company; provided, however, that the Company may withhold any such prior written consent, assign its rights and/or obligations under this Agreement to a subsidiary or affiliate thereof.

18. Right of Disposal. This Agreement does not grant any rights to dispose of Waste other than in accordance herewith. The Company reserves the right to immediately terminate access to the Facility by Generator and Generator's personnel in the event of breach or violation by Generator of any of the terms of this Agreement, the Company's operating rules or payment policies or any applicable state or regulations.

19. Compliance Compliance. The Generator has a continuing obligation to inform the Company of any new information, or interpretation not previously provided to the Company by Generator which may affect the acceptability of the Waste by the Company. Further, the Generator shall comply with all Company requests for reasonable of Generator's continuing compliance with the terms of this Agreement including but not limited to the following: (i) providing new updated Waste profiles on the Waste(s) delivered or disposed or, (ii) providing appropriate certification that the Waste being offered for disposal is adequately described by the non-hazardous Application or, (iii) right to Waste at Generator's expense if inadequate it cannot either as to its acceptability under the terms of this Agreement or, (iv) allow the Company to non-accept the Waste at Generator's expense if reasonable cause exists as this acceptability under the terms of this Agreement or (v) as of the above.

20. Miscellaneous.

(A) This Agreement shall be governed by the laws of the State in which the Facility is located.

(B) Forbearance of a breach of any of the obligations contained in this Agreement shall be construed to be a waiver of any prior or succeeding breach of the same obligations or of any other obligation of this Agreement.

(C) No modification, waiver, discharge or waiver of any provision or obligations hereof shall be of any force, or effect, unless in writing signed by all parties to this Agreement.

(D) Generator shall keep all confidential and not disclose to others during or subsequent to the term of this Agreement, except as is necessary to perform this Agreement, or in comply with any applicable law or regulation any information including any customer information, specifications or other regarding the Company's plans, programs, plants, processes, products, costs, equipment or operations which may come within the knowledge of the Generator or its employees in the performance of this Agreement, without in each its terms securing the prior written consent of the other Company.

(E) If any term, provision, obligation or provision of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, this remainder shall remain in effect and be construed without regard to such term, provision, obligation or provision.

(F) This Agreement constitutes the entire understanding between the parties, replacing and superseding any prior agreements between the parties, and shall be binding upon all parties hereto, their successors, heirs, representatives and assigns. Any provision, term or condition in any acknowledgement, purchase order or other response by Generator which is in addition to or different from the provisions of this Agreement shall be deemed objected to by the Company and shall be of no effect.

(G) Generator represents, warrants and covenants that it is and during the term of this Agreement will remain, in compliance with and will perform its obligations pursuant to all applicable laws and regulations and shall indemnify, defend and hold harmless the Company from any breach thereof.

(H) It is the understanding and agreement of the parties that the Company is an independent contractor. and is not in control over or authorized representative of the Generator.

21. Notices. All notices herein provided for shall be considered as having been given upon being placed in the mail, certified postage prepaid addressed to the Company at Corporate or the address noted on each its this Agreement or to such other address as may be given by the other party as provided herein.

22. Liquidated Damages. In the event that this Agreement is terminated by the Generator in a manner not in accordance with paragraph 4 hereof, or terminated due to a breach of this Agreement by the Generator, the Generator shall pay, as liquidated damages, and not as a penalty, the greater of an amount equal to: (a) twenty months charges at the Generator's each month average charges established by six (6). The Generator shall be given credit for any scheduled payments made hereunder, however, in computing the actual fixed or liquidated damages hereunder. The Generator acknowledges that this liquidated damages clause is reasonable and is applicable to recover damages similar to the investment in equipment, development of facility and hiring of employees undertaken by the Company to service its customers including the Generator. This liquidated damages clause in no way relieves the Generator from its obligations and liabilities pursuant or damages as set forth elsewhere in this Agreement.

GENERATOR: _____ Republic Services, Inc/COMPANY: _____ May 2008

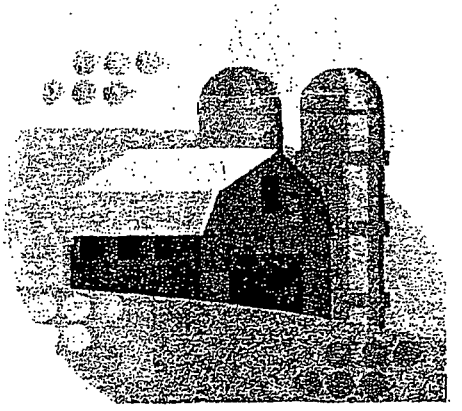
DHEC 000133

Dead Animal Composting Facility Management Plan

for

Sumerel Farms

Laurens County



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MAY 2 3 2013

Stormwater, Construction &
Agricultural Permitting Division

DHEC 000134

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I. Farm Location & Contact Information

Farm Name:	Sumerel Farms
Owner Name:	Lisa & Mike Sumerel
Address:	2044 Pooletown Road Laurens, SC 29360
Telephone #:	(864)923-9137 (home) (864)682-5487 (cell)
Farm Address:	Pooletown Road
Integrator:	Columbia Farms

A. Animal Production Information

Animal Type:	Poultry – Broilers
Animal Count:	109,500
Number of Houses:	4
Number of Birds/House:	27,400/House
Average Entry Weight:	0.25 pound
Average Exit Weight:	8.75 pounds
Average Animal Live Weight:	4.5 pounds
Average Mortality Rate:	5 percent
Confinement Days/Flock:	63 days
Number of Flocks/Year:	4.5 Flocks
Proposed Barn Size:	52 feet x 500 feet (55 foot spacing)
Normal Production Animal Live Weight:	493,200 pounds
Animal Facility Size Classification:	Small (under 500,000 lbs)
NPDES CAFO Size Classification:	Meium (under 125,000 birds)

B. Description of Animal Manure Storage and/or Treatment

The manure produced at this facility will be collected on the earthen floor of the poultry house. The wood shavings absorb the liquid portion of the manure and serve to keep the manure dry. The litter, or mixture of manure and wood shavings, is completely enclosed in the roofed poultry barn and will not be exposed to the natural elements. At least once each year, the litter will be removed from the house.

If the manure is stockpiled more than three (3) days, the manure will be stored on a concrete pad or other approved pad (such as plastic or clay-lined) and

covered with an acceptable cover to prevent odors, vector attraction, and runoff. The concrete pad, if chosen, should be constructed to a thickness of six (6) inches. The compacted clay pad, if chosen, should achieve 90% compaction. The cover should be properly vented with screen wire to let the gases escape. The edges of the cover should be properly anchored.

The manure will be transported in a responsible manner. Manure will not be allowed to spill on roadways or other unauthorized areas. The body of vehicles transporting manure will be fully enclosed. While in transit, they will remain covered with a canvas cover provided with eyelets and rope tie-downs or another approved method which will prevent blowing or spillage of loose material. If the manure is very dry it may be wetted down slightly to prevent dust, and the spreader or truck will not be overloaded.

This addendum is for the addition of a dead bird composting system, incineration and landfill disposal options for the disposal of mortality at this farm.

II. Hay Bale Bin Composting System

The dead animals and portions of the animal manure generated at this farm will be composted in a Hay Bale - Bin system. Appendix A of this plan includes additional information about this composting system. This type of composting consists of mixed feedstocks which are placed in bins and turned periodically. The owner of this farm plans to utilize existing farm equipment (such as front end loaders) to mix and turn the compost within the bins. The litter removed from the barns consists of excreted manure and wood shavings. This manure product will be mixed with a variety of other substrates in order to achieve the correct carbon to nitrogen ratio for optimum microbial growth in the compost. Some of the other substrates used in this composting process will be dead animals, grass clippings, leaves, paper, cardboard, and food waste from the owner's residence. The initial carbon to nitrogen ratio for this composting process should be in the range of 20:1 to 40:1 for rapid composting. In order to reduce odors, the recommended carbon to nitrogen ratio should be 30:1.

Appendix B of this plan includes a list of potential substrates and carbon to nitrogen ratios for these materials. A simple recipe that may be utilized for the composting of dead poultry is as follows:

Litter or Poultry Manure	3 - 4 parts
Carbon Amendment (such as peanut hulls, chopped hay or straw)	0.2 – 0.4 parts
Mortalities	1 part
Water	0.5 – 1 parts

OR without a carbon amendment:

Litter	4 – 6 parts
Mortalities	1 part
Water	0.75 – 1 part

In addition to choosing the right substrates in order to achieve optimal growth, the operator must also closely monitor the temperature and moisture content of the compost. An operable thermometer capable of measuring temperatures within the compost pile will be kept at the composting facility for monitoring the temperature of each compost pile on a daily basis. A written log of the daily temperature reading will also be kept for each batch of compost. Temperatures will not be allowed to rise above 180 F (82 C), which may cause combustion in the compost pile and start a fire.

There will be a short lag in temperatures at the beginning of the composting process while the microbial population is developing. After this initial lag, the temperatures should increase rapidly. The temperatures will rise to a peak of about 130-160 degrees Fahrenheit. The pile should be turned when the temperature exceeds 160 degrees. As the microbial activity decreases after this peak, the temperature will begin to drop. The compost pile may remain in the temperature range of 105-160 degrees Fahrenheit for 10-60 days. Once the temperature drops below 105 degrees Fahrenheit, then the compost has entered the curing stage. The curing stage generally lasts about a month. Curing is complete when the compost continually returns to ambient temperatures even after turning. Note: Cooling of the compost during the process may also indicate inadequate oxygen or moisture content. Be careful to not mistake those drops in temperature for the curing stage.

The moisture content of the compost pile will fluctuate during the composting process. If the compost becomes too dry, then the composting process can be halted. Therefore, additional moisture may need to be added to the pile during the process. The initial moisture content of the compost pile should be in the range of 40 – 65 percent moisture. The moisture content can be determined by the squeeze test. If the compost is damp to the touch, but not so moist that water can be squeezed out of a handful of the compost, the compost has sufficient moisture. If moisture does need to be added during the process, there are several methods to add moisture. Turn the pile after rainfall, or spray water onto the pile during a turning to add moisture. However, special care must be taken to not add too much water and to not create a runoff problem by flooding the pile. The desired moisture content of the finished product is in the range of 30-50 percent.

The pH level desired for optimal microbial activity is in the range of 6.5 and 8.0. AS the composting process comes to an end, the pH generally stabilizes around 7.5 and 8.0. The pH can be adjusted in the composting process with Lime. The pH may also be monitored with a pH meter to get a better understanding of the composting process. However, the monitoring of pH is not required.

Aerating or turning the compost will allow oxygen into the pile and is an important factor in regulating the temperature and moisture in the pile. Turning the pile can provide the oxygen needed for the aerobic decomposition, remove excess moisture, and remove excess heat so that the microbial activity is not destroyed. The frequency of turning the piles can be anywhere from several times a week to monthly dependent upon the temperature trends in the piles. The amount of aeration required for the compost pile is generally determined by trial and error. Typically for a two month composting period, the piles will be turned at least once each week.

The finished compost product should be analyzed by Clemson University or another Department approved laboratory for nutrient content. The composted product content information along with recommended application rates shall be distributed with the product. The consumer shall be advised that the composted product shall be applied at an agronomic rate.

The composting process will eliminate the odor and vector attraction of the manure product and will eliminate the weed seeds, pathogens and fly larvae in the manure.

The finished compost product produced at this facility may qualify as Exceptional Quality Compost. If the owner decides to apply to SC DHEC for this qualification, he will have an analysis performed on a sample of the compost for compost maturity within the first year of operation. The results of this analysis will be submitted to the Department with a request for Exceptional Quality Compost Certification. Appendix C of this plan includes sampling instructions and lab information for this sampling.

Once approved by SC DHEC, Exceptional quality compost may be sold or distributed without regulation by the SC DHEC, if it meets the following compost product quality standards.

- Based on EPA standards for pathogen reduction, the time/temperature conditions required are equivalent to an average of 128 F (53 C) for 5 consecutive days, 131 F (55 C) for 2.6 consecutive days, or 158 F (70 C) for 30 minutes.

- The composted product shall meet or exceed the minimum standard of mature or very mature compost as set forth in the USDA Test Methods for the Examination of Composting and Compost (TMECC) Section 05.02-G CQCC Maturity Index. A maturity rating shall be given based upon the Maturity Assessment Matrix given in this method.

- When land applied, the compost shall adhere to requirements for constituent concentrations and loading rates as follows:

TABLE 1 OF SECTION 200.100 - CUMULATIVE CONSTITUENT LOADING RATES		
Constituent	*Cumulative Constituent Loading Rate (kilograms per hectare)*	*Cumulative Constituent Loading Rate (pounds per acre)*
Arsenic	41	37
Copper	1500	1339
Zinc	2800	2499

TABLE 2 OF SECTION 200.100 - CONSTITUENT CONCENTRATIONS	
Constituent	*Monthly Average Concentrations - Dry weight basis (mg / kg)*
Arsenic	41
Copper	1500
Zinc	2800

TABLE 3 OF SECTION 200.100 - ANNUAL CONSTITUENT LOADING RATES		
Constituent	*Annual Constituent Loading Rate (kilograms/hectare/365-days)*	*Annual Constituent Loading Rate (pounds/acre/365 day period)*
Arsenic	2.0	1.8
Copper	75	67
Zinc	140	125

III. Odor Abatement Plan

Some of the potential sources of odors in and around the poultry farm may include: wet manure and wood shavings from water spills, bedding that is overloaded with manure (too little wood shavings relative to the amount of manure produced by the birds or not cleaning manure out of barns routinely), spoiled or moldy feed, dust from feed, bedding and animals, uncovered manure piles, poorly managed stacking sheds, poorly managed or poorly located covered manure piles, poorly managed compost piles, improper land application of manure, and improper disposal of dead animals. These sources may cause poor air quality in and around the facility and potentially impact the animals, and the surrounding community. Therefore, it is imperative that the farm utilizes the best management practices to control dust and odors before they become a problem. This operation has developed this Odor Abatement Plan in order to minimize the formation of odor and dust, prevent the release of odor and dust into the atmosphere, and avoid the transportation of dust and odor to any nearby receptors in the community.

Many of the potential sources of odor can be minimized by implementing some of the following best management practices for odor control: provide adequate bedding for each barn, remove manure from the building as often as possible, repair all leaky water troughs or pipes, clean feeding equipment regularly, remove spoiled feed regularly, remove dead animals immediately and dispose of them promptly, cover manure stockpiles completely with an appropriate anchored and vented cover immediately after removal, avoid excess moisture in stacking sheds since excess moisture increases the amount of odor generated due to anaerobic decomposition, land-apply manure at the appropriate times, cover manure when transporting it to prevent spillage, incorporate manure into soil as soon as possible, land- apply manure in the morning on sunny days, apply manure when winds are blowing away from neighbors, apply manure on weekdays when neighbors have a higher probability of being away from home, and finally, always contact close neighbors prior to spreading to avoid spoiling their outdoor activities. Some specific actions that may be taken to correct an odor problem include: drying, aerating, or composting the manure; incorporating manure into the soil; or using an odor additive to eliminate the odor.

IV. Vector Abatement Plan

Some of the types of vectors that may present a problem at a poultry farm are flies, rodents, mosquitoes, dogs, and birds. Most vector attraction can be greatly minimized with proper management and sanitation. The following best management practices may be utilized to prevent vector attraction: remove all excess building materials, remove any excess feed from the houses or around feed

bins, keep grass and weeds mowed around the facilities, keep all buildings free of trash and debris, appropriately use and service bait stations, properly dispose of dead animals in a timely manner, and eliminate any standing water in the area surrounding the facility. The best management practices that may be utilized to prevent vector attraction when land-applying manure are to incorporate manure immediately after application and cover any manure that may be temporarily stored prior to land application.

In order to reduce the vector attraction for rodents, it is imperative to eliminate any areas which allow for harboring of rodents and prevent feed spillage. Repair any damaged feeders and keep them properly adjusted so excess feed does not accumulate in feeder bowl, trough, or around the base of the feeder. Waste feed (wet or contaminated feed) should be properly utilized or discarded. Water troughs should be properly maintained and repaired to prevent leaks. Unused stalls should have all feed removed and stall should be cleaned. Good sanitation practices for manure management should be followed and excess manure packs along walls should be removed.

The producer should conduct biweekly rodent monitoring programs. This should include all animal production buildings, feed bins, storage rooms, and office buildings. Inspect the inside and outside of the animal production buildings for signs of rodents (rodent droppings, digging activities, nests, etc.). If a bait system is used, it should be routinely inspected and refilled. If pesticides or other chemical treatments are utilized to control vectors, care should be taken to prevent resistance to the chemical. Rotation of different chemicals may prevent resistance. Care will also be taken to ensure the proper storage and disposal of any unused chemicals on this farm. The local Clemson University Extension Service office can provide additional information on proper disposal of pesticides and chemicals. The local Clemson Extension Agent for this farm is located in Laurens SC, and can be reached at (864)984-2514.

Manure that contains fly larvae and fly pupae will be disked into the ground immediately or be treated with an appropriate fly control method. If the manure application on a land application area creates a fly problem for the community, the producer will be responsible for the control of all flies resulting from the application of the manure.

Using best management practices (BMP), such as those listed above should be utilized to prevent a vector problem. However, if a vector problem occurs, corrective actions should be taken and the BMP should be closely reviewed and updated to prevent these problems in the future.

Specific actions for abatement on this farm are outlined in the Integrator specific Odor & Vector Abatement Plan which is included in Appendix D of this plan.

V. Dead Animal Disposal Plan

The primary method for the handling and disposal of normal mortality at this facility will be incinerations and composting. The location of the proposed composting site is indicated on the maps included with this plan. The composting method selected for this operation is a Hay Bale - Bin system. The bin layout is shown on the diagram included in section IX of this plan. The bins will be constructed in the open and will not have a roofed cover. The location of the proposed hay bale composting system is also indicated on the maps included in section IX of this plan. The bins will be constructed of large round hay bales, 5-6 feet in diameter, which will be placed end-to-end to form walls for a three sided enclosure. The composter will include enough bins for the primary and secondary stages of the composting process for each batch. This primary bin will be used for the initial mix of substrates and the initiation of the composting process. The secondary bin can be used for turning the compost pile. The owner will also take care to monitor the temperature in the windrows as outlined in the previous section, in order to prevent combustion of the piles and possible fire. The dead animals are collected from the barns daily and will be immediately incorporated into the compost pile for composting.

Primary & Secondary Bin Capacity Required:

109,500 x [(0.05/63) x 8.75 lbs] = 760 lbs/day Weight of Dead Birds/Flock

Primary Bin Volume Required = 760 lbs/day X 2.5 = 1900 cubic feet
Secondary Bin Volume Required = 1900 cubic feet

Height of Bins = 4-5 feet
Length of Bins = 8-10 feet (2 bales)
Width of Bins = 8-10 feet (2 bales)
Individual Bin Volume = 256 cubic feet

Number of Primary Bins Required = 1900 cubic feet / 256 cubic feet per bin = 7.5
Number of Secondary Bins Required = 7.5

Area Required for Hay Bale Composting System = 80 feet long by 30 feet wide
= 2400 square feet
= 0.06 acres

The hay bale composting system may also be utilized for any emergency or larger mortality events at this farm. The owner may also utilize land fill disposal for the emergency of massive mortality events. The owner will coordinate with the State Veterinarian's office in the event of a major mortality event as the result of disease to determine if any additional measures such as covering the bins with black plastic are required. Since the composter bins are constructed with round hay bales and they are available in abundance, it is no problem to expand the composter to accommodate a larger amount of birds.

If an alternate method of disposal that is not approved in this plan must be utilized, then SC DHEC must be notified. The SC DHEC contact for this operation is Lewis Rourk, Edisto EQC District Office, 206 Beaufort Street, NE, Aiken, SC, 29801-4476. The phone number is (803)641-7670, and fax number is (803)641-7675.

VI. Record Keeping

The farm must retain a copy of this Animal Facility Management Plan, including any approved updates, and a copy of the approval letter issued to this operation as long as the horse facility is in operation. All records retained by the producer will be kept at the farm, an appropriate business office, or another location approved by SC DHEC. All records retained by the producer will be made available upon request to SC DHEC during normal business hours for review and copying. Some sample recordkeeping forms have been included in Appendix E of this plan. The following records for the farm must be kept for a minimum of eight (8) years (required by SC DHEC):

1. Animal Facility Management Plan, including any addendums, updates or changes to the plan
2. SC DHEC permits and approval letters for the farm
3. Monthly animal count
4. Monthly mortality count and method of disposal
5. Annual Manure Nutrient Analysis.
6. Manure removal information (date of removal and amount of manure removed)
7. Composting System Records: to include a daily temperature log, records of what type of substrates were used and the approximate amounts in each batch, frequency of turning the piles to include the date, compost analysis reports, and records for any land application of compost or transfers of compost to third parties.
8. Emergency event information: [date and time of the emergency; description of the emergency; location of the emergency and affected areas; whether the manure or dead animals entered waters or a drainage route; approximate amount of manure or number of dead animals released; duration of the emergency; amount of damage (personal injury, fish kill, property damage, etc...); cause of the emergency; procedures implemented to handle the emergency; clean up actions after the emergency; list of agencies, companies, and authorities notified of the

emergency; list of authorities that responded to the emergency; approximate time taken for authorities to respond; and recommendations and changes implemented to prevent a recurrence].

VII. Soils Information

This section outlines the soil types on the site of the farm. The technical soils descriptions from the USDA-NRCS soil surveys and the table for soils and water features are also included.

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VIII. Site Maps

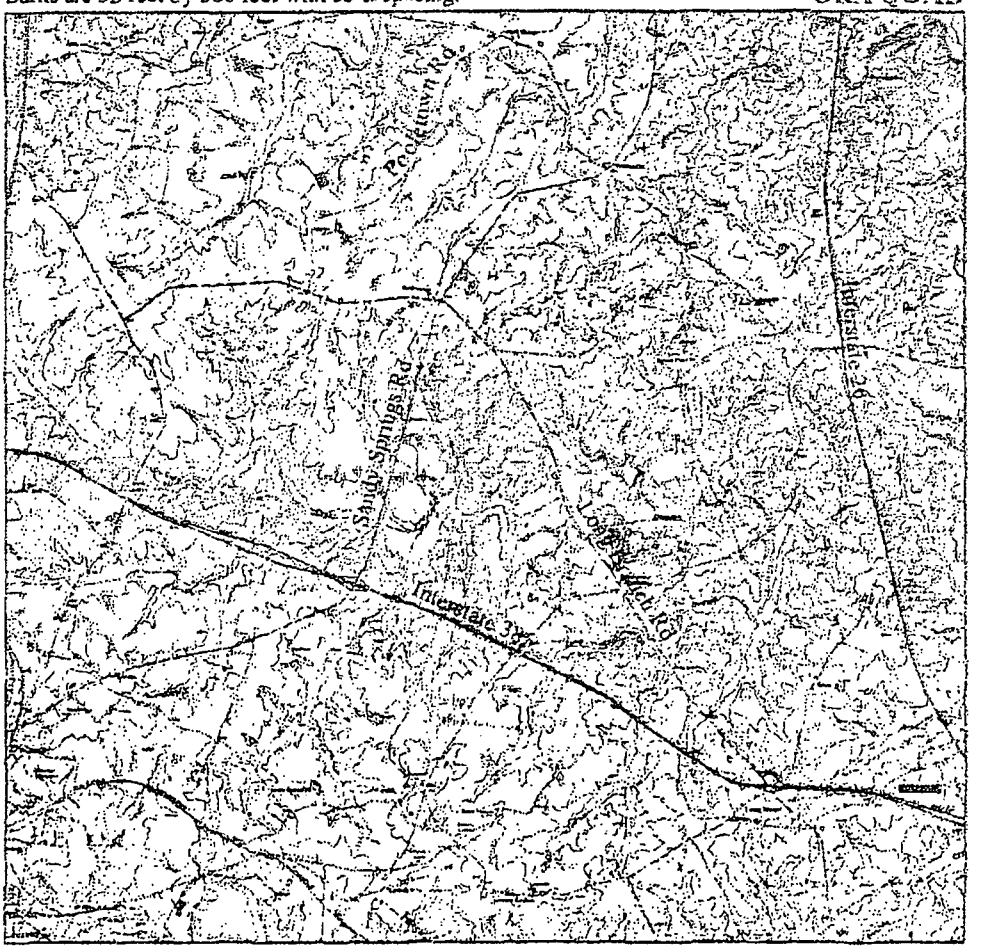
The following maps are included in this section:

A. **Farm Location Map**
B. **Aerial Photo Map** (showing adjacent land use and location of residences)
   Note: All residences in this area are on well water. The wells are located adjacent to the residences unless otherwise noted on the maps.
C. **Location of Composting System on the farm**
D. **Hay Bale Bin Schematic**
E. **Compost Bin Substrate Layering Schematic**
F. **USGS Topographical Map**
G. **100-year Floodplain Map**

Sumerel Poultry Farm
Location Map

Barns are 52 feet by 500 feet with 55 ft spacing.

ORA QUAD



Property Lines

Poultry Barns

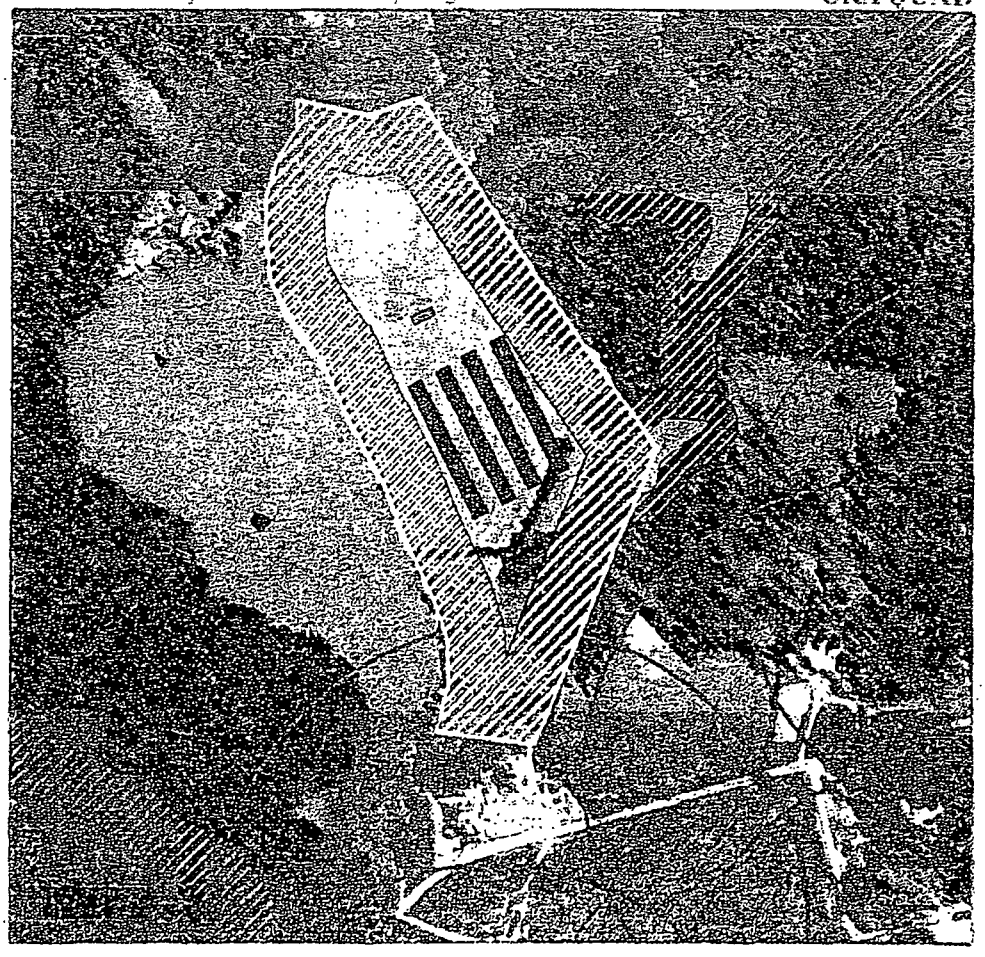
Shealy Engineering, LLC

DHEC 000148

Sumerel Poultry Farm
Composter Location Map

Barns are 52 feet by 300 feet with 55 ft spacing.

ORA QUAD



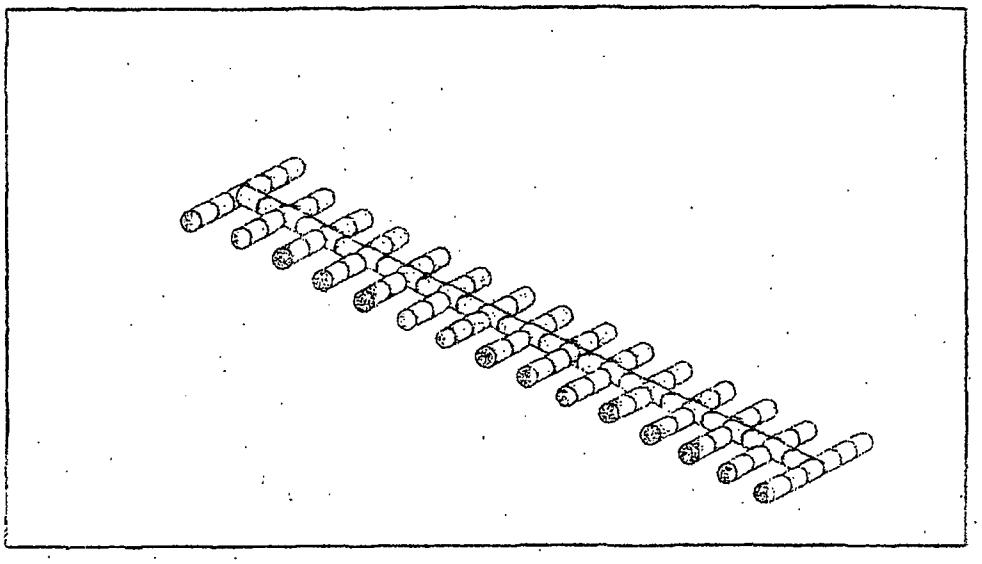
0 625 1,250 2,500 Feet

	Property Lines		Streams
	Poultry Barns		100 ft Waters of the State Setback
$	Residences		Wetlands
	1000 ft Residence Setback		200 ft Property Line Setbacks
$	Residences owned by applicant		Hay Bale Composter (80' x 30')

Shealy Engineering, LLC

DHEC 000149

Composting
Hay Bale Bin Method



Individual Bin size can vary from 4-6 feet in height, 8-12 feet in width and 8-12 feet in length. Bin Size is dependent upon the diameter of the round hay bales that are available and the number of hay bales used.

Bin Size can be adjusted in order to easily accomodate the bucket width of the equipment being utilized to turn the compost piles.

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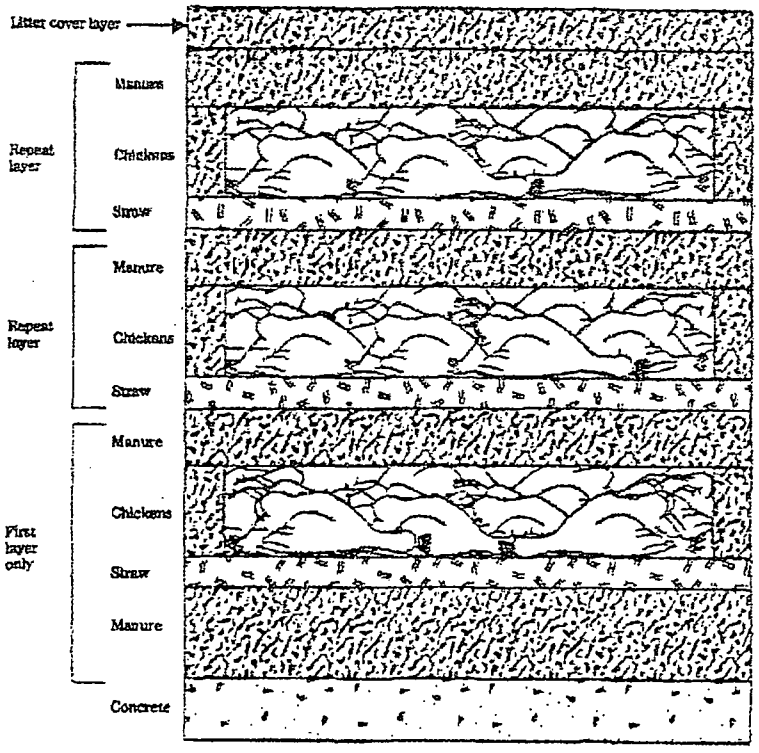
DHEC 000150

Figure 2–15 Dead bird bin composting schematic



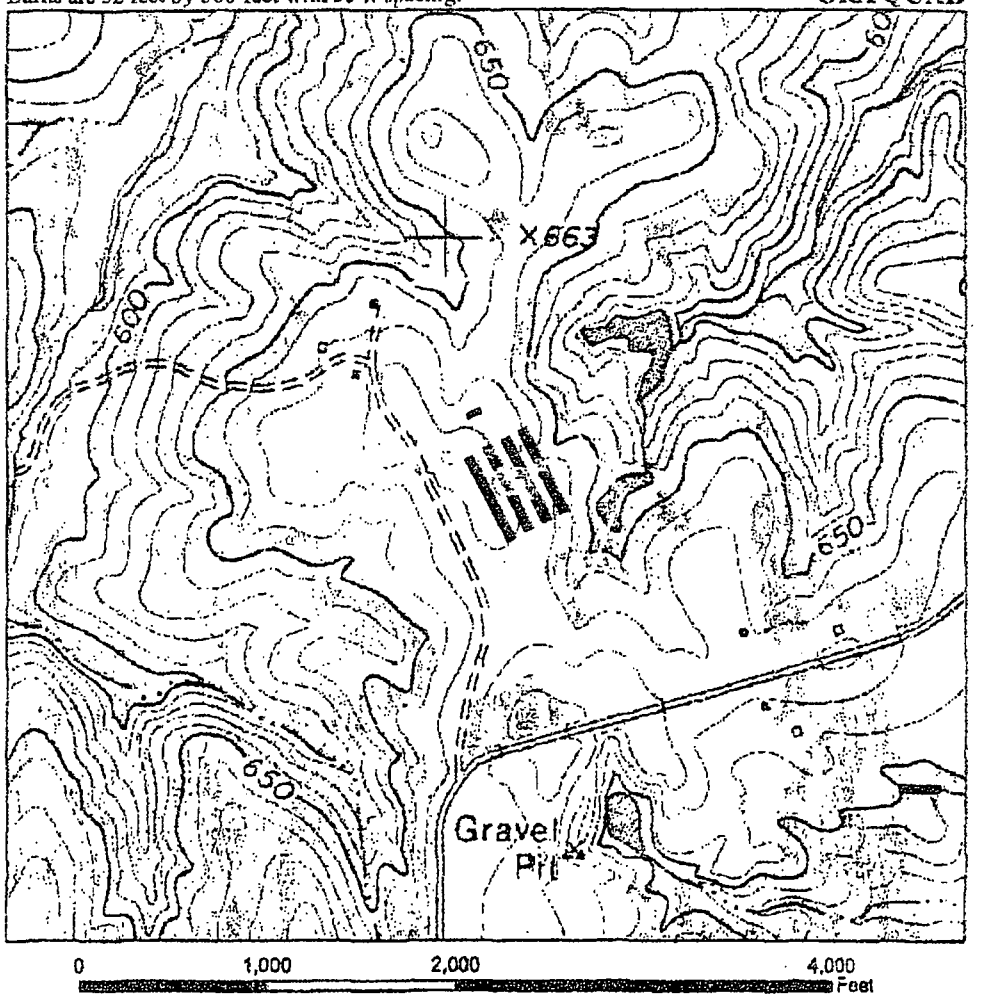
(210-VI-NEH, February 2000)

DHEC 000151

Sumerel Poultry Farm
USGS Map

Barns are 52 feet by 500 feet with 55 ft spacing.

ORA QUAD



Property Lines
Poultry Barns
Dead Bird Composter

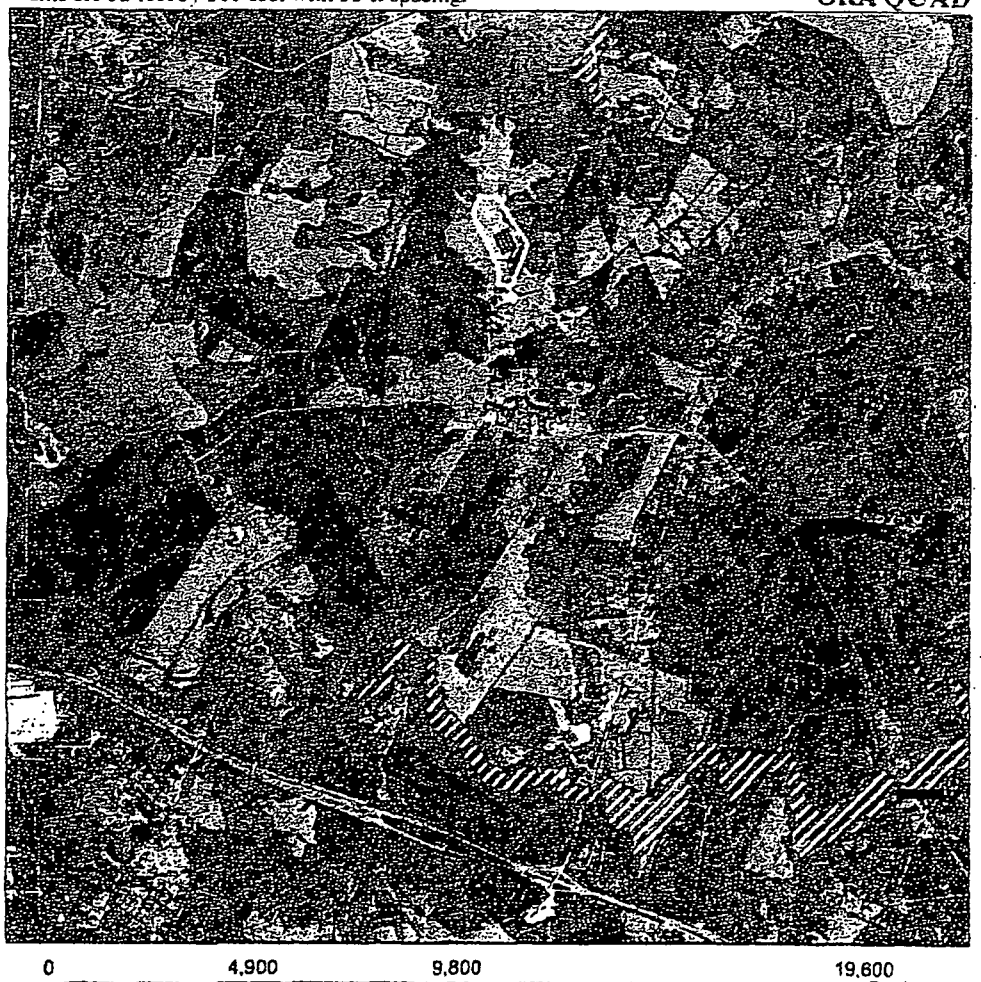
Shealy Engineering, LLC

DHEC 000152

Sumerel Poultry Farm
Floodplain Map

Barns are 52 feet by 500 feet with 55 ft spacing.

ORA QUAD



0 4,900 9,800 19,600 Feet

Property Lines

Poultry Barns

100 Year FEMA Designated Floodplain

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DHEC 000153

IX. Animal Facility Management Plan Signature Page

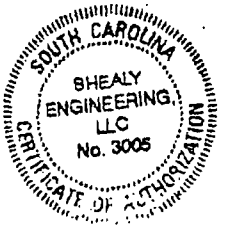
Farm Owner/Operator:

As the owner and operator, I certify that I have been involved in the planning process and I have read and agree with the content of this plan. I understand that I am responsible for complying with the requirements of SC DHEC regulation 61-43 and the requirements outlined in this plan. It is my intent to implement this plan on this operation.	
Signature: Lisa H Sumerel	Date: 5-10-13
Operator Name:	Lisa & Mike Sumerel
Operator Address:	2044 Pooletown Road Laurens, SC 29360 (864)682-5487

Plan Preparer:

As a professional engineer licensed to practice engineering in the state of South Carolina, I certify that to the best of my knowledge and belief that the design is consistent with the requirements of Title 48, Chapter 1 of the 1987 Code of Laws, and pursuant to regulation 61-43 and appropriate NRCS standards.	
Signature: Joy S Shealy	Date: 6/22/13
Plan Preparer Name:	Joy S. Shealy, P.E.
SC Registration Number:	22833
Title:	Agricultural Engineer
Company Name & Contact Information :	Shealy Engineering, LLC 132 Red Alder Court Lexington, SC 29072 (803)238-8410

Plan Preparer – Professional Engineering Seal



DHEC 000154

X. APPENDIX A

Bin Composting System

637.0211 Dead animal composting

(a) General

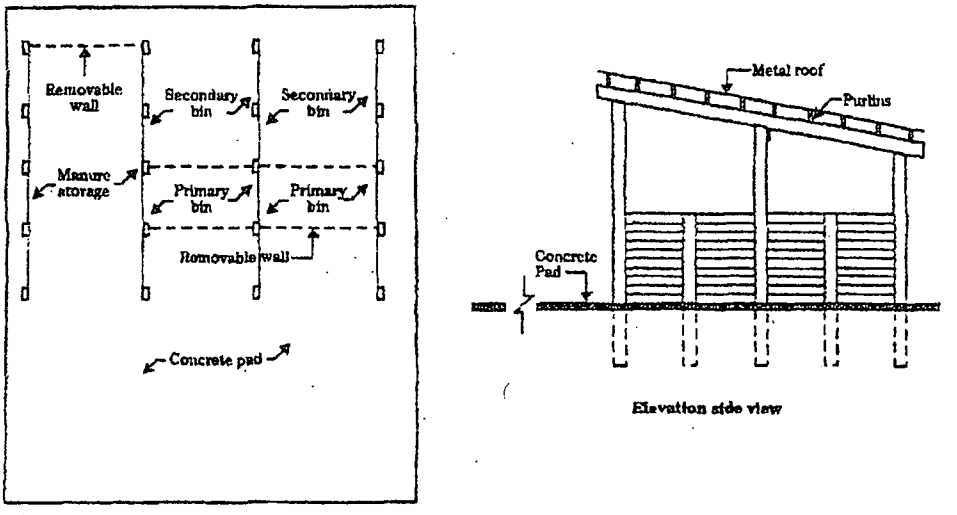
Composting dead animals is an excellent alternative to the traditional methods of their disposal, particularly burning and burying. It provides an environmentally safe and relatively inexpensive method of converting the carcasses into a useful and often marketable product. The composting system for this purpose is easy to implement and requires minimal labor, time, and capital investment.

Dead animal composting has mostly been directed toward broiler mortality, but has also been used to successfully manage swine, turkey, and even bovine mortality. To ensure complete decomposition of larger animals requires a longer composting period. A way to shorten the time required is to make cuts in the larger muscles and open the gut to increase the surface area exposed to biological activity.

The most used method for dead animal composting is the bin method. It can be either a single stage or two-stage method that uses primary and secondary bins. The single stage method is recommended for smaller operations that do not have the necessary equipment, such as front-end loaders available. The two-stage method is recommended for those operations that have a high mortality and the necessary equipment for the composting operations. A third stage may be necessary for larger animals, such as turkeys and mature swine.

Material is loaded into the primary bin (fig. 2–14) in layers (fig. 2–15). The temperature rises to highs between 135 and 150 degrees Fahrenheit within 2 to 4 days and remains elevated for several days. Once the temperature begins to cool from the peak temperature, usually within 7 to 10 days, the material is unloaded from the primary bins. The material from the primary bins is then either loaded into the secondary bins or,

Figure 2–14 Dead bird composter



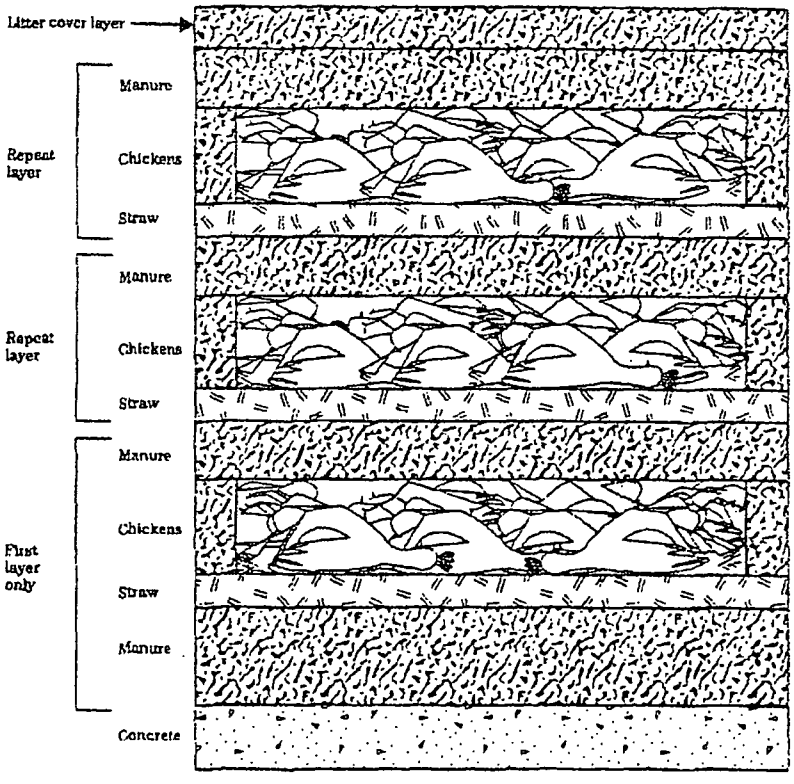
DHEC 000156

for single-stage operations, placed in curing piles. The material in the secondary bins reheats and cools after 7 to 10 days. Curing is generally done in an enclosed storage area or outside under a protective tarp. This allows new material to be loaded into the secondary bins. The finished compost can be sold or applied to the land.

The recipe for dead animal composting should be formulated so that a C:N ratio between 13:1 and 15:1 and a moisture content of 40 to 60 percent are obtained. Dead animal bodies have a low C:N ratio. Poultry manure, often used in the recipe for dead animal composting, also has a low C:N ratio unless it contains a significant amount of bedding material. To achieve a recipe having the recommended C:N ratio, a carbon amendment must be added to the mix. Straw or sawdust is generally used.

The carbon amendment can be omitted from the mix to reduce costs. Without it, however, the mix has a reduced C:N ratio with decreased aeration, and the ammonia-odor increases upon mixing. As such, composting without the carbon amendment results in a tradeoff of decreased expenses for increased odors as well as the risk of incomplete composting. This

Figure 2–15 Dead bird bin composting schematic



DHEC 000157

XI. APPENDIX B

Supplemental Resources for Compost Troubleshooting

DHEC 000158

Table 2. Troubleshooting guide for efficient composting.

Symptoms	Problems	Solutions
Rotten odor	Not enough air; pile too wet	Turn pile; add coarse, dry materials (straw, corn stalks, etc.)
Ammonia odor	Too many greens (excessive nitrogen/lack of carbon)	Add browns (straw, paper or sawdust)
Low pile temperature	Too small; not enough air or moisture; few greens; or cold weather	Make pile larger; add water while turning the pile; mix in nitrogen sources (grass clippings, manure, or a synthetic fertilizer, such as 10-10-10); or insulate the pile with a layer of straw or plastic
High pile temperature	Too large; not enough air	Reduce pile size; turn pile
Pests, such as rats, raccoons or insects	Meat or fatty food scraps in pile	Remove meat and fatty foods from pile; cover with a layer of soil or sawdust; build an animal-proof compost bin.

Excerpted from *Recycling Yard Trimmings: Home Composting*, IL 48, Revised 1997.

Prepared by Bob Polomski, Extension Consumer Horticulturist, and Nancy Doubrava, HGIC Information Specialist, Clemson University.

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Public Service Activities

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XII. APPENDIX C

Compost Substrates List

Appendix 2A — Common Raw Materials for Farm Composting

(Adapted from the On-Farm Composting Handbook, NRAES-54, Northeast Regional Agricultural Engineering Service Cooperative Extension.)

The list of materials appropriate for composting is almost endless. Only materials commonly available to farmers are described here and summarized as follows:

- Bark
- Cardboard
- Cattle manure
- Crop residue
- Fertilizer & urea
- Finished compost
- Fish processing wastes
- Food processing wastes
- Fruit & vegetable wastes
- Grass clippings
- Horse manure
- Leaves
- Lime
- Livestock manure
- Newspaper
- Paper mill sludge
- Peat moss
- Poultry manure
- Sawdust & shavings
- Seaweed & other aquatic plants
- Septage & sewer sludge
- Slaughterhouse & meatpacking waste
- Spoiled hay & silage
- Straw
- Swine manure
- Wood ash
- Wood chips

These materials are described here and are listed in table 2A–1 along with their characteristics (percent nitrogen, C:N ratio, moisture content, and bulk density).

Other materials abundant on the farm or available locally may be good components of a composting mix. Trucking raw materials beyond 50 miles is usually cost-prohibitive, so farmers should seek out local sources of clean organic materials. They should be evaluated in the same manner as the materials described below.

Cattle manure
Nitrogen-rich and very wet. Moisture content and C:N ratio depend on the amount of bedding used, management practices, type of operation, and climate. Generally requires a large amount of dry, high-carbon amendment (often two to three volumes of amendment per volume of manure). Relatively low odor risk if composted within a few weeks. Decomposes quickly. Bedded pack manure is moderately dry with a good C:N ratio. Liquid manure or slurries must be screened or dried unless only small amounts are used in the composting mix. Some trash may be present. Overall, a very good composting material.

Poultry manure
Very high nitrogen content and moderately moist. Needs a high carbon amendment. Litter with sawdust or wood shavings is well suited to composting and may be partly composted when removed from the barn. Nitrogen loss and odor from ammonia is a potential problem because of the high nitrogen content and high pH. Low pH amendments may be needed to lower the alkalinity. Decomposes quickly. The high nitrogen content can result in a fertilizer-grade compost. Good to very good composting material.

Horse manure
Usually contains large amounts of bedding; therefore, dry with a high C:N ratio. Composts well alone or as an amendment for wet cattle manure. Low odor potential. Decomposes quickly, especially if bedding is straw. Often available at little or no cost from local stables, racetracks, pleasure horse owners, fairs, and schools. Some stable wastes contain medication containers, soda cans, and other trash. Excellent composting material.

Swine manure
Nitrogen-rich and very wet. Needs a dry, high-carbon amendment. Strong potential for odors. High moisture content and odor make composting more difficult than other manure. With bedding, solids separation, and/or odor-control measures, it can be a fair to good composting material.

Other livestock manure
Sheep, goat, rabbit, and other livestock manure are usually good for composting. It is collected mostly from bedded manure packs and is, therefore, relatively dry with a high C:N ratio. Without bedding, the manure is nitrogen-rich and wet. Bedded material may be used as an amendment to other livestock manure. Relatively low odor potential. Decomposes quickly. Good composting material.

Crop residue
Variable characteristics depending upon the material, but generally moderate to high moisture and moderate C:N ratio. The C:N ratio and moisture content depend on the age and the amount of fruit and seeds present. Generally, older vegetation is drier and contains less nitrogen. Usually very good structure and good degradability. Some residue may be dry and high in carbon (cornstalks). Plant pathogens are a concern if

compost does not reach a high temperature in all parts of the pile. Excellent to good composting amendments, depending on the material.

Spoiled hay and silage

Moderately dry to wet, depending on conditions. Moderate to high C:N ratio. In most cases, available only occasionally. Added to compost mix as a disposal method and not as a reliable amendment. Good structure and degradability. Possible problems include odor and leachate from silage and weed seeds in hay. Moderate composting material.

Straw

Dry and carbonaceous. Good degradability. Provides very good structure and odor absorption. If used as bedding, it can precondition manure for composting. Availability and cost can be disadvantages. Excellent composting amendment.

Sawdust and shavings

Dry and carbonaceous. Moderate to poor degradability; sawdust degrades faster than shavings. Good moisture and odor absorption. Can also have a dual use as bedding. Usually available at a moderate to low cost. Good to moderate composting amendment.

Leaves

Relatively dry. High in carbon. Good degradability if shredded. Moderate moisture absorption. Low odor potential. Composts alone or as an amendment. Often contains trash, rocks, plastic bags, and so on—especially if collected from streets. Large quantities available, but seasonal supply requires storage and/or special handling and scheduling. Leaves can be obtained free, or a tipping fee may be available. Good to moderate composting material.

Wood chips

Dry and high in carbon. Large particle size provides excellent structure, but poor degradability. Often used as a bulking agent for forced aeration composting. Must be screened from final compost, but can be reused. Moderate to low cost. Has a competing use as a mulch product. Chips from preservative-treated and painted wood should not be used. Very good bulking agent, but poor amendment otherwise.

Bark

Qualities are similar to that of wood chips except for a given tree species, bark contains slightly more nitrogen and easily degradable compounds. May be composted alone for use in potting media or for mulch. Good bulking agent, but poor as a general amendment. Good material for specialty compost products (mulch, potting media) though the composting time is relatively long.

Grass clippings

Moderately wet to dry. Slightly low C:N ratio. Decompose quickly. Moderate to high odor potential depending upon management. Good source of nitrogen for leaf and yard waste mixtures. Usually available free, or a tipping fee may be available. Good composting material if mixed with coarse material. Alone, grass clippings tend to compact and become anaerobic.

Newspaper

Dry. High carbon content. Moderate degradability. Potential for dual use as bedding. Good moisture absorption, but poor structure and porosity. Black inks are generally nontoxic. Large quantities of colored inks and glossy paper are best avoided or should be analyzed because of possible heavy metals and other contaminants. Available in large quantities at little or no cost, or a tipping fee may be available. May need shredding and some sorting initially. Possible problems include storage, dust, and trash around the farmstead. In general, a good to moderate amendment depending upon the structure of the mix.

Cardboard

Dry and high carbon content. Good degradability. Good moisture absorption and structure. Large quantities available for little or no cost, or a tipping fee may be available. Shredding, storage, and some sorting may be needed. Staples in cardboard boxes may need to be removed. Glues in corrugated cardboard may contain high boron levels. Good to fair amendment.

Finished compost

Compost can be recycled as an amendment for wet wastes, either alone or in combination with other amendments. Moderately dry. Moderate to low C:N ratio. Provides a good initial supply of micro-organisms. Frequent recycling may potentially lead to high salt concentrations, but otherwise no significant

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disadvantages. Loss of compost product after recycling is small. Good amendment, especially for lowering the mix moisture content without raising the C:N ratio.

Peat moss

Acidic fibrous material that has resulted from years of anaerobic decomposition. Low in nitrogen. Highly absorbent of water, nutrients, and odors. May hold over 10 times its weight in water. Except in regions where natural deposits exist, peat moss is expensive partly because of its competing uses as an amendment for potted plants and other horticultural crops. Peat moss passes through the composting process virtually unchanged, producing potentially high valued compost. Its odor and water-absorbing qualities make it an excellent amendment, but cost limits its use.

Fruit and vegetable waste

Peels, tops, trimmings, culls, damaged or spoiled fruit. Moderate to wet with a moderate to low C:N ratio depending upon the nature of the waste. Except for pits, good degradability. Poor to fair structure. Standing piles of many fruits and some vegetable waste quickly collapse into a wet mess once decomposition begins. The potential for tipping fees exists. Slight to moderate risk of odor problems. Possible trash from packing operations and markets. Good to fair composting material.

Food processing waste

Variable characteristics depending upon the process. Filter press cakes generally are moderately dry and have high to moderate carbon content. Other food processing by-products are generally wet with moderate to low C:N ratios. Possible problems include high risk of odors, vermin (rats, mice, flies), contaminants from machinery and cleaning solutions used at the processing plant, and poorly degradable components, such as pressing aids. A major advantage is the opportunity to receive a tipping fee. Good to poor composting material depending upon the nature of the waste.

Slaughterhouse and meatpacking waste

Paunch manure, blood, miscellaneous parts. Wet and low C:N ratio. Good degradability. High risk of odors and vermin. More restrictive regulations may apply. Large amounts of amendment are required to lower moisture content and control odors. Except for paunch manure, composting should be considered only if direct land application and other options are not practical.

Fish processing waste

Racks, frames, heads, tails, shells, gurry. Variable characteristics depending on waste, but generally moderately to very wet and high in nitrogen. Lobster, crab, shrimp, and mollusk shells provide good structure. All but mollusk shells decompose quickly. The high risk of odor along with the high moisture require large amounts of dry amendment and/or special handling. More restrictive regulations may apply. Potential for tipping fee. Wet material—racks or gurry—are troublesome, and composting should be considered after other options. Shells are moderate to good composting material if managed properly.

Seaweed and other aquatic plants

Water hyacinth, pond cleanings, wastewater treatment species. High to moderate moisture content, depending on previous drying. C:N ratios vary from low (seaweeds) to moderate (water hyacinth). Good degradability. Generally poor structure, especially for seaweeds. Good sources of minor nutrients, but salt content of seaweed is a possible problem if used in large quantities. Possible trash and weed seeds included with beach cleanings. Low to moderate odor risk. Good composting material with added structure.

Paper mill sludge

Wet or moderately wet if pressed. Moderate to high C:N ratio. Requires a dry amendment with nitrogen—a difficult combination. Good degradability, but poor structure. Slight to moderate risk of odor if mismanaged. Organic contaminants are occasionally found in paper sludge. Potential for tipping fee. Fair composting material.

Wood ash

Very dry with little or no carbon and nitrogen. Contains a fair amount of other nutrients, particularly potassium. The concentrations of heavy metals may be a concern with some ashes. In a composting mix, wood ash would absorb moisture and raise the pH of the mix. It has also been proposed as an odor-adsorbing agent. Handling is difficult as the ash is a fine powder that blows around and creates dust. Particles tend to cement together after they become wet. Tipping fees may be available. Fair to good composting amendment for wet acidic mixes. Should not be used if the pH is high.

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Septage and sewage sludge

Raw and digested. Nitrogen-rich and very wet. Requires two to four volumes of dry amendment per volume of sludge. Septage and raw sludge decompose quickly, digested sludge moderately. Strong odor potential for septage and raw sludge, strong to moderate for digested. Possible contamination from human pathogens and heavy metals. Special regulations apply for pathogen reduction. Restrictions on land use apply for heavy metals. Composting this material usually involves operational and land application permits, process monitoring, and product analysis. The one advantage is the opportunity to collect a fee for composting this material. In general, sewage sludge and septage bring many restrictions and regulations. Though exceptions exist, it is best to avoid this material for farm composting operations.

Fertilizer and urea

Fertilizers, urea, or other concentrated nitrogen sources are sometimes considered as additives to lower the C:N ratio of high carbon material, such as leaves. Although such material does reduce the initial C:N ratio, the benefits are short-lived. Nitrogen from such sources tends to be available much more quickly than the carbon in the organic material. Initially, the available carbon and nitrogen are in balance; but as the easily available carbon is depleted, a surplus of nitrogen soon develops. Eventually, the excess nitrogen is lost as ammonia.

Lime

Like fertilizers, lime is also considered as an additive, either to adjust pH or to control odors. Generally, lime is an unnecessary ingredient and can be detrimental. pH adjustment is rarely necessary in composting. If lime is used for odor control, it can raise the pH enough to cause an excessive loss of ammonia. The same effects should be expected for other concentrated sources of alkalinity including cement kiln dust and wood ash.

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Table 2A-1 Typical characteristics of selected raw materials

Material	Type of value	% N (dry weight)	C:N ratio (weight to weight)	Moisture content % (wet weight)	Bulk density (lb/yd³)
Crop residue and fruit/vegetable-processing waste					
Apple filter cake	Typical	1.2	13	60	1,197
Apple pomace	Typical	1.1	48	88	1,559
Apple-processing sludge	Typical	2.8	7	59	1,411
Cocoa shells	Typical	2.3	22	8	798
Coffee grounds	Typical	–	20	–	–
Corn cobs	Range	0.4 – 0.8	56 – 123	9 – 18	–
	Average	0.6	98	15	557
Corn stalks	Typical	0.6 – 0.8	60 – 73[a]	12	32
Cottonseed meal	Typical	7.7	7	—	—
Cranberry filter cake	Typical	2.8	31	50	1,021
(with rice hulls)	Typical	1.2	42	71	1,298
Cranberry plant (stems, leaves)	Typical	0.9	61	61	—
Cull potatoes	Typical	–	18	78	1,540
Fruit wastes	Range	0.9 – 2.6	20 – 49	62 – 88	–
	Average	1.4	40	80	–
Olive husks	Typical	1.2 – 1.5	30 – 35	8 – 10	–
Potato-processing sludge	Typical	–	28	76	1,570
Potato tops	Typical	1.5	25	–	–
Rice hulls	Range	0 – 0.4	113 – 1,120	7 – 12	185 – 219
	Average	0.3	121	14	202
Soybean meal	Typical	7.2 – 7.6	4 – 6	–	–
Tomato-processing waste	Typical	4.5	11[a]	62	–
Vegetable produce	Typical	2.7	19	87	1,585
Vegetable wastes	Typical	2.5 – 4	11 – 13	–	–
Fish and meat processing					
Blood wastes (slaughterhouse waste and dried blood)	Typical	13 – 14	3 – 3.5	10 – 78	—
Crab and lobster wastes	Range	4.6 – 8.2	4.0 – 5.4	35 – 61	–
	Average	6.1	4.9	47	240
Fish-breading crumbs	Typical	2.0	28	10	–
Fish-processing sludge	Typical	6.8	5.2	94	–
Fish wastes	Range	6.5 – 14.2	2.6 – 5.0	50 – 81	–
(gurry, racks, and so on)	Average	10.6	3.6	76	–
Mixed slaughterhouse waste	Typical	7 – 10	2 – 4	–	–
Mussel wastes	Typical	3.6	2.2	63	–
Poultry carcasses	Typical	2.4[b]	5	65	–
Paunch manure	Typical	1.8	20 – 30	80 – 85	1,460
Shrimp wastes	Typical	9.5	3.4	78	–

See footnotes at end of table.

DHEC 000165

Table 2A-1 Typical characteristics of selected raw materials—Continued

Material	Type of value	% N (dry weight)	C:N ratio (weight to weight)	Moisture content % (wet weight)	Bulk density (lb/yd³)
Manure					
Broiler litter	Range	1.6 – 3.9	12 – 15[a]	22 – 46	756 – 1,026
	Average	2.7	14[a]	37	864
Cattle	Range	1.5 – 4.2	11 – 30	67 – 87	1,323 – 1,674
	Average	2.4	19	81	1,458
Dairy tiestall	Typical	2.7	18	79	–
Dairy freestall	Typical	3.7	13	83	–
Horse—general	Range	1.4 – 2.3	22 – 50	59 – 79	1,215 – 1,620
	Average	1.6	30	72	1,379
Horse—race track	Range	0.8 – 1.7	29 – 56	52 – 67	–
	Average	1.2	41	63	–
Laying hens	Range	4 – 10	3 – 10	62 – 75	1,377 – 1,620
	Average	8.0	6	69	1,479
Sheep	Range	1.3 – 3.9	13 – 20	60 – 75	–
	Average	2.7	16	69	–
Swine	Range	1.9 – 4.3	9 – 19	65 – 91	–
	Average	3.1	14	80	–
Turkey litter	Average	2.6	16[a]	26	783
Municipal waste					
Garbage (food waste)	Typical	1.9 – 2.9	14 – 16	69	–
Night soil	Typical	5.5 – 6.5	6 – 10	–	–
Paper from domestic refuse	Typical	0.2 – 0.25	127 – 178	18 – 20	–
Pharmaceutical wastes	Typical	2.6	19	–	–
Refuse (mixed food, paper, etc.)	Typical	0.6 – 1.3	34 – 80	–	–
Sewage sludge	Range	2 – 6.9	5 – 16	72 – 84	1,075 – 1,760
Activated sludge	Typical	5.6	6	–	–
Digested sludge	Typical	1.9	16	–	–
Straw, hay, silage					
Corn silage	Typical	1.2 – 1.4	38 – 43[a]	65 – 68	–
Hay—general	Range	0.7 – 3.6	15 – 32	8 – 10	–
	Average	2.10	–	–	–
Hay—legume	Range	1.8 – 3.6	15 – 19	–	–
	Average	2.5	16	–	–
Hay—nonlegume	Range	0.7 – 2.5	–	–	–
	Average	1.3	32	–	–
Straw—general	Range	0.3 – 1.1	48 – 150	4 – 27	58 – 378
	Average	0.7	80	12	227
Straw—oat	Range	0.6-1.1	48-98	–	–
	Average	0.9	60	–	–
Straw—wheat	Range	0.3-0.5	100-150	–	–
	Average	0.4	127	–	–

See footnotes at end of table.

DHEC 000166

Table 2A-1 Typical characteristics of selected raw materials—Continued

Material	Type of value	% N (dry weight)	C:N ratio (weight to weight)	Moisture content % (wet weight)	Bulk density (lb/yd^3)
Wood and paper					
Bark—hardwoods	Range	0.10 – 0.41	116 – 436	–	–
	Average	0.241	223	–	–
Bark—softwoods	Range	0.04 – 0.39	131 – 1,285	–	–
	Average	0.14	496	–	–
Corrugated cardboard	Typical	0.10	563	8	259
Lumbermill waste	Typical	0.13	170	–	–
Newsprint	Typical	0.06 – 0.14	398 – 852	3 – 8	195 – 242
Paper fiber sludge	Typical	–	250	66	1,140
Paper mill sludge	Typical	0.56	54	81	–
Paper pulp	Typical	0.59	90	82	1,403
Sawdust	Range	0.06 – 0.8	200 – 750	19 – 65	350 – 450
	Average	0.24	442	39	410
Telephone books	Typical	0.7	772	6	250
Wood chips	Typical	–	–	–	445 – 620
Wood—hardwoods	Range	0.06 – 0.11	451 – 819	–	–
(chips, shavings, and so on)	Average	0.09	560	–	–
Wood—softwoods	Range	0.04 – 0.23	212 – 1,313	–	–
(chips, shavings, and so on)	Average	0.09	641	–	–
Yard waste and other vegetation					
Grass clippings	Range	2.0 – 6.0	9 – 25	–	–
	Average	3.4	17	82	–
Loose	Typical	–	–	–	300 – 400
Compacted	Typical	–	–	–	500 – 800
Leaves	Range	0.5 – 1.3	40 – 80	–	–
	Average	0.9	54	38	–
Loose and dry	Typical	–	–	–	100 – 300
Compacted and moist	Typical	–	–	–	400 – 500
Seaweed	Range	1.2 – 3.0	5 – 27	–	–
	Average	1.9	17	58	–
Shrub trimmings	Typical	1.0	53	15	429
Tree trimmings	Typical	3.1	16	70	1,296
Water hyacinth—fresh	Typical	–	20 – 30	93	405

a Estimated from ash or volatile solids data.
b Mostly organic nitrogen.

DHEC 000167

XIII. APPENDIX D

Sample Record Keeping Forms

DHEC 000168

USDA

NATURAL RESOURCES CONSERVATION SERVICE
(NRCS)

OH-ENG-231b
03/00

Composting Management Record for Bin System

Cooperator Name: _____ , County _____

Species: Cattle/dairy _____, Poultry _____, Swine _____, Sheep/goats _____, Horses _____

Bin # ____ Date bin started _____, Type Carbon Amend. _____, Date bin filled_____

Estimated size of largest animal in bin _____ lb, Design primary stage _____days

Date	Animals added (lb)	Water added (gallons)	Max. Compost Temp (°F)	Weather Conditions	compost turned

Remarks:

DHEC 000169

D H E C

PROMOTE PROTECT PROSPER

South Carolina Department of Health and Environmental Control

BUREAU OF WATER

Agricultural Permit

ND0088307

Permission is hereby granted to:

Lisa Sumerel
2044 Poole Town Road
Laurens, SC 29360

for construction and operation of a **NO-DISCHARGE** agricultural manure and animal by-products treatment and storage system in accordance with the construction plans, specifications, engineering report, animal facility management plan and construction permit application prepared by Joy S. Shealy, P.E., TSP for USDA/NRCS.

COUNTY: Laurens

Project Description:

1. Construction of four (4) new poultry broiler houses.
2. Housed broilers raised on floor - topped with wood shavings.
3. Hay bale bin composting system for dead animal disposal per plans and specifications.
4. Contract disposal of the manure with a permitted manure broker per plans and specifications.
5. Other conditions as stated in animal facility management plan.
6. Treat 669 tons of manure generated as follows:

4 houses X 27,400 birds/house X 4.5 flocks/year	= 493,200 birds per year
109,600 broilers X 4.5 lbs. Av. Live Wt.	= 493,200 lbs normal live weight
109,600 broilers X 6.1 tons/year/1000 bird spaces	= 669 tons/year waste production

Special Conditions: (See attachments).

Permit Number: 19647-AG

Date of Issue: June 12, 2013 **Effective Date:** June 27, 2013

Expiration Dates: Unless construction begins prior to June 25, 2015, and is completed prior to June 24, 2016, this permit will expire. In accepting this permit, the owner agrees to the admission of properly authorized persons at all reasonable hours for the purpose of sampling and inspection.

Treatment Plant Classification: Group 0

WRITTEN AUTHORIZATION TO PLACE THIS SYSTEM INTO OPERATION MUST BE OBTAINED FROM THE DEPARTMENT PRIOR TO PLACING ANIMALS IN THE FACILITY.

Ann R. Clark

Ann R. Clark, Director
Bureau of Water

ARC/WPC/rj

cc: Chrissy Matthews, EQC, Greenwood
Joy S. Shealy, P.E., Shealy Engineering, LLC, Lexington

SPECIAL CONDITIONS
(Poultry)

1. Operate and maintain the waste system, including all special conditions in accordance with Waste Management Plan developed by Joy S. Shealy, P.E., TSP for USDA/NRCS. Operate and maintain this waste management system in accordance with State and Federal law so as to prevent discharges to the environment. Should this waste management plan fail to function as intended, additional control or treatment of the wastes may be required.

2. Disposal of daily mortality will be by composting / incineration. Emergency mortality will be by contract with Republic Services of S.C., Upstate County Regional MSW Landfill, Enoree, SC, unless an alternate method is selected and approved by the Department. If a massive die-off occurs, notify your local inspector immediately, Chrissy Matthews at (864) 223-0333. If you are calling after-hours, please call the Department's twenty four hour number (888) 481-0125 or (803) 253-6488. If you plan to bury the dead animals from a massive die-off, a DHEC representative must approve the site prior to burial. The Department recommends that you develop an emergency plan for a massive die-off situation prior to the occurrence and submit this plan to your local inspector for approval. If a plan and/or site are pre-approved, then you would only be required to notify the Department of the massive die-off, and then implement the pre-approved plan for disposal.

3. If you have mortality on the farm that may be attributed to disease or toxin exposure, please contact Dr. Julie Helm of the State Veterinarian office at (803) 788-2260 for additional assistance in the handling and disposal of infected birds. The State Veterinarian office recommends that the diagnostic lab evaluate samples for deaths in excess of 1% of a house population. This action can help identify disease outbreaks on the farm. The State Veterinarian Office can also provide guidance in preventing the spread of diseases.

4. You are responsible for obtaining any other local permits that may be required for this project, including a building permit and **stormwater permit** in some counties. Please contact your local county offices to inquire about required permits.

5. Drinking water wells installed on this site to provide water for animal or human consumption must be installed with at least the following minimum setbacks required in regulation 61-71 (Well Standards & Regulations):

(a) Sewer lines	20 feet
(b) Lakes, streams, surface-water bodies	50 feet
(c) Septic tanks/tile fields	50 feet
(d) Animal feedlots, barns, stables	50 feet
(e) Waste disposal - land application sites	100 feet
(f) Waste treatment lagoons	100 feet
(g) Herbicide, pesticide & petroleum handling/storage sites	100 feet

A permit for private wells must be obtained from the Department prior to installation. Enclosed is a copy of the application for a well permit. If you have any questions on well permitting, please contact Well Permitting at (803) 898-4174.

SPECIAL CONDITIONS (continued)
(Poultry)

6. An annual report is due by June 1st of each year (starting in 2014) and must include the following:

   (a) Waste sampling results for the last year, if applicable, and the latest rolling average.
   (b) Soil monitoring results, if applicable.
   (c) Groundwater monitoring results, if applicable.
   (d) Calculated application rates for all waste utilization areas, if applicable.
   (e) The adjusted application rates, if applicable, based on the most recent animal waste sampling and soil samples. The application rate change could also be due to a change in field use, crop grown or other factors.

*Annual Reports should be sent to the following address:
SC Department of Health & Environmental Control
Bureau of Water
Compliance Assurance Division
2600 Bull Street
Columbia, SC 29201

7. The facility shall complete and submit a comprehensive report of the above parameters every five (5) years. The Department shall review this report to confirm that the permitted nutrient application rates have not been exceeded. Based on the results of the review, additional soil and/or groundwater monitoring requirements, permit modification, and/or corrective action may be required.

8. **CAMM Certification is required within one year from the effective date of this permit.**

CHRONOLOGY OF THE SUMEREL FARM PERMIT ISSUANCE

April 23, 2012 - A request was made by Lisa H. Sumerel / William M. Sumerel for a Preliminary Site Inspection (PSI).

April 23, 2012 – A Preliminary Site Inspection (PSI) to determine the general suitability for animal feeding operations was performed by Chrissy Matthews.

October 11, 2012 – The Comprehensive Nutrient Management Plan (CNMP) and DHEC Application was received from Lisa Sumerel to construct four poultry houses off of Poole Town Road, Laurens, SC.

October 11, 2012 – Administrative Review was begun.

October 11, 2012 – Administrative Review was complete. Review documents were sent to Bureau of Air Quality (BAQ) and Division of On-Site Wastewater Management, Bureau of Environmental Health.

October 16, 2012 – Memorandum received from the Bureau of Air Quality (BAQ) reviewing the impact of "Down Wind Receptors" as required by R.61-43, 200.70, F.11.

October 22, 2012 – Memorandum received from the Division of On-Site Wastewater Management, Bureau of Environmental Health, indicating fieldwork to determine if the proposed mortality burial site is suitable.

October 25, 2012 – Public Notice # 12-133-A. Five (5) signs were posted for public notice as required by R.61-43, Part 200.60-A. Per the public notice, comments were accepted from October 25, 2012 through November 24, 2012. A petition was received from Roe, Cassidy, Coates & Price, PA, with names of 77 individuals in opposition of the proposed facility.

February 2, 2013 – Technical Review started.

February 25, 2013 – Letter informing all citizens that wrote letters or were listed on the petition was mailed informing of a public meeting for Sumerel and Duckett proposed facilities would be held March 11, 2013 at the Laurens Academy Gymnasium at 6:30 PM.

March 11, 2013 – Public Meeting was held at Laurens Academy Gymnasium to discuss citizens concerns as they related to the applications submitted by both Sumerel and Duckett proposed poultry farms.

March 22, 2013 – Two citizens Medical Evaluation Forms (DHEC 0132) and Authorization to Release Medical Information Forms (DHEC 1623) were received.

March 25, 2013 - Two citizens Medical Evaluation Forms (DHEC 0132) and Authorization to Release Medical Information Forms (DHEC 1623) were received.

April 23, 2013 – Four letters were sent to the individuals that sent in medical information for review that the Department had received their medical concerns and were being evaluated by DHEC Medical Staff.

April 24, 2013 – Medical Evaluation package was mailed to Dr. Harold Gabel and Dr. Linda Bell, State Epidemiologists for SCDHEC.

June 10, 2013 – Medical Evaluation reply received from Dr. Harold Gabel and approved by Dr. Linda Bell.

June 10, 2013 – Technical review completed.

June 12, 2013 – A letter informing all citizens that submitted medical concerns of DHEC medical staff decision as it relates to their condition and the proposed Sumerel Poultry Farm.

June 12, 2013 – Permit # 19,647-AG issued to Lisa Sumerel, Sumerel Poultry Farm, to construct and operate four (4) poultry houses, located off Poole Town Road in Laurens County.

June 12, 2013 – Public Notice of Permit Issuance runs in Laurens County Advertiser newspaper.

July 1, 2013 – An email from Roe, Cassidy, Coates & Price, PA was received by the Department, appealing the decision of the Sumerel Poultry Farm.

D H E C

PROMOTE PROTECT PROSPER

South Carolina Department of Health and Environmental Control

Agricultural Permitting
Review Checklist Summary
Cover Page

Review Start Date Feb 7, 2013 Review Completed Date 6-10-13

Facility Name Sumerel Poultry Farm ND00 88307

Applicant's Name Lisa Sumerel sumerelfamily@backroads.net Phone Number 864-923-9137

Type of Facility Poultry Broiler 52×520 Integrator Columbia Farms

County Laurens EQC Regional Rep. Chessy Matthews

Plan Preparer Jay Sheely, PE TSP (SCDA/NRCS

Public Notice Date (Issue Date) June 12, 2013

Newspaper for Public Notice Laurens County ~~Observer~~ Advertiser - Pub W - Deadline Tue 9 a.m.

Effective Date June 27 2013

Permit Number 19,647-AG

Plan Reviewed by (print) William Chaplin

H Medical Concerns -

Dams and Agricultural Permitting Section
Outreach, Stormwater, Agricultural and Dams Permitting Division
Bureau of Water

DHEC 2518 (1/2008)

DHEC 000005

Summerel Poultry Farms
AD0088307

Review Checklist Summary (Animal)

Task Complete	
	ADMINISTRATIVE REVIEW:
✓	Verify the application form is complete.
✓	Enter the application into EFIS.
✓	Check processed and sent to Finance. ***How much was the check made out for?*** $ 240.00 ***Check #:*** 10016
✓	Create a facility file folder.
✓	Check Preliminary File for any previously received correspondence.
✓	Comments reviewed and counted. ***Number of Comments:*** 82
✓	Determine if a public meeting must be held. (YES) or NO Schedule the public meeting, if required. ***Date & Time of Meeting:*** March 11, 2013 @ 6:30pm ***Location:*** Laurens Academy -
✓	Send a letter to the person(s) submitting health concerns requesting that they submit a physician's statement for review.
✓	Send a copy of the application, facility map and cover memo to the Bureau of Air Quality. ***Date Sent:*** 10-11-12
✓	Set up Public Notice of Application Received. ***Date went on notice:*** 10-25-12 ***Date goes off notice:*** 11-24-12
✓	Send invitation for the Public Meeting to all persons who submitted a written comment or asked to be notified. ***Date Sent:*** Feb 25, 2013
✓	Send a copy of the application, animal facility management plan and cover memo to Bureau of Environmental Health for review and recommendations. ***Date Sent:*** 10-11-12
✓	Send a copy of the application and Animal Facility Management Plan to the District office. ***Date Sent:*** 10-11-12
✓	Verify that a preliminary site inspection was performed on the proposed site submitted in this application. ***PSI Date:*** April 23, 2012
	WATER RESOURCES REVIEW: ***For this review:*** - ***"proposed animal facility" refers to the houses, stacking shed, and/or composter.*** - ***"site" refers to the "proposed animal facility", burial locations, and manure utilization areas.***
✓	Enter the proposed animal facility, burial locations, and manure utilization areas into the Arcview database.

DHEC 000006

Pull the ground water public supply well (Source Water Protection → Public Water Supply Wells) overlay and determine if ~~any~~ public water supply wells are located adjacent to the proposed site? YES or (NO)

If yes, what is the name of the water supply well and distance between the site and the public water supply well? Creamy Apple Farms - Farm 1 - System 3030011, Well G30169, is located NE, 1.86 m.les by land.

Additional requirements or setbacks? As per R 61-58 the minimum separation distance should be at least 200 ft. therefore no additional setbacks are required.

Pull the 303(d) (2004 303D List) impaired water body list overlay and list any impairment and the distance to the impairment from the proposed site.

Proposed Facility:
B-053 Enoree River @ SC 72, located 21.01 m.les by land - the impairments are Copper and Zinc.

Proposed Manure Treatment/Storage Structure:
n/a

Manure Utilization Areas:
n/a - Broiler

Additional requirements or setbacks? Given the distance to Hedwigden (402 ft) from the facility footprint and this being a no discharge facility, no additional setbacks are required.

Pull the stream classification overlay and note the classifications for the water bodies in the drainage route.

Proposed Facility:
Freshwater

Proposed Manure Treatment/Storage Structure:
n/a

Manure Utilization Areas:
n/a - Broiler

Where the classification is not Freshwater, what additional requirements or setbacks are recommended? no additional setbacks are required.

DHEC 000007

Pull the Heritage Corridor overlay and review the proposed site in reference to the Heritage Corridor.

Is the facility located in the Heritage Corridor? **YES** or **NO**

Are any of the manure utilization areas located in the Heritage Corridor?

YES or **NO** N/a - Broker

If the proposed site is in the vicinity of the Heritage Corridor, then note the separation distance? The Abbeville Region & the Heritage Corridor is located SW, 19.67 miles by land.

Additional requirements or setbacks? Given the Air Quality memo and the by land distance, no additional setbacks are required.

Pull the State and National Parks and Forests (Forestry) overlay and review the proposed site in reference to them.

Is the facility located in a State or National Park or Forest? **YES** or **NO**

Is any of the manure utilization areas located in a State or National Park or Forest?

YES or **NO** N/a - Broker

If the proposed site is in the vicinity of a State or National Park or Forest, then note the separation distance? The Sumter National Forest is located E, 8.94 miles by land.

Additional requirements or setbacks? Given the Air Quality memo and the by land distance, no additional setbacks are required.

Evaluate the agricultural facility overlay and evaluate the presence of any other nonpoint sources located in the watershed. Do a query for buildings, active status, and the 10 Digit Hydro Unit recorded below. Do a query for fields, active status, and the 10 Digit Hydro Unit recorded below.

10 Digit Hydro Unit: HUC 10 = 0305010802

Non Point Sources: There are no permitted facilities - There are 20 NUAs.

Additional requirements or setbacks? no additional setbacks are required

DHEC 000008

Review the land use information within ¼ mile of the proposed site and determine if the site is located in the vicinity of a privately owned wildlife refuge, park, or trust property (WMP or GIS)? YES or (NO)

List the land use information. Crop land, mixed woods, Rural Residential

If yes, what is the distance between the proposed facility and the privately owned wildlife refuge, park, or trust property? Upstate Forever is located NW. 2356 miles by land.

Additional requirements or setbacks? Given the by land distance, no additional setbacks are required.

TECHNICAL REVIEW:

→→→	EVERY PLAN:
p.1	Facility location description and the zoning restrictions in the area.
p.17	Facility capacity, animal count, animal type, and normal production animal live weight at any one time.
p.17	Amount of animal manure and other animal by-products generated each year.
n/a	Amount of any scraped/separated solid animal manure generated each year.
n/a	Description of animal manure storage and storage capacity.
n/a	Description of animal manure treatment and capacity.
✓	Animal Manure Nutrient Concentrations or Analysis (DRY and/or WET).
p.21	Animal manure sampling frequency.
✓	Names, addresses, phone numbers of person(s) applying the manure, if different from applicant. Don Bowman - 18,704-AG
✓	Topography maps for the facility, structures, and manure utilization areas.
✓	Adjacent land use within ¼ mile of the property line.
✓	Location of inhabited dwellings and public places within ¼ mile of the property line.
✓	Locations of all water supply wells on the property and within 200 feet of the property line, or within 200 feet of the manure utilization areas.
✓	Maps showing the facility and manure utilization area boundaries and buffer zones.
✓	Right – of – ways (Utilities, roads, etc...) on the proposed site.
✓	Soils maps indicating the soil types for the facility and manure utilization areas.
✓	Description of soil types.
✓	Map showing the property boundaries and tax map numbers of the proposed site and all properties within ¼ mile of the property line.
✓	Information (map or verification) showing the location of the 100 – year floodplain in reference to the proposed site and the manure utilization areas.
	Setbacks verified. *Note any waivers or reductions of setbacks:* 1 - Residential Waivers from Margaret A. Samuel -
	Distance between the ground surface and the seasonal high water table. *Is the separation distance less than 1.5 feet at the proposed site or manure utilization areas?* YES or (NO)

DHEC 000009

N/A	Application Rates for each field.
	Signed land application agreements (including all required information) for manure utilization areas not owned by the applicant.
	Identify if the manure utilization areas are located in multiple AFMP? **YES or NO** ***Adequate land available for all manure applied?*** **YES or NO**
	Calibration methods for each piece of manure application equipment.
	Soil Monitoring Plan.
	Plans and specifications for all manure treatment or storage structures.
SECONDARY REVIEWS:	
	Evaluate potential for increase in pollution of the water of the State. ***Is the proposed facility a No-Discharge operation?*** (YES) or NO ***Is the manure handled by contract disposal with a broker?*** (YES) or NO ***Is the manure handled by utilization on cropland as an alternative fertilizer?*** (YES) or NO ***Is the manure applied at agronomic rates?*** (YES) or NO ***Are the manure application sites and application methods proposed in accordance with the Best Management Practices designed to prevent runoff to surface and ground waters?*** (YES) or NO ***Determination:*** Given the water resources reviews and the animal facility management plan states best management practices will be utilized, thus no anticipated increase in pollution to the waters of the state is not expected.
	Bureau of Air Quality Review of the Potential for an increase in pollution of the air of the State and down-wind receptors. ***Recommendations or Response:*** As per memo dated October 16, 2012 from the Bureau of Air Quality (BAQ) an increase in pollution is not expected from this operation. The BAQ does not recommend any additional setbacks or requirements for this permit.
	Groundwater Review of the proposed burial sites, manure utilization areas, geography, soil types on the site, aquifer vulnerability and manure storage/treatment structures. ***Recommendations or Response:*** As per memo dated October 22, 2012 from the Division of on-site wastewater management, zone of saturation was greater than 72 inches, however the burial site is located within the SWPA, therefore burial will not be allowed.
	Bureau of Disease Control. Send health concerns/physician statements to medical staff for review and recommendations, if applicable. ***Recommendations or Response:*** Four medical evaluations were considered and determined that the facility would not adversely impact these citizens due to distance to the facility.

DHEC 000010

Revised: 11/05/02 [

Preliminary Site Inspection Checklist

(All Facilities Except Swine)
6/28/02 Regulation

Facility Name MIKE SUMERE Date of Inspection: 4/23/12

Type of Facility: BROILERS If chicken: **Breeder, Broiler, Broilers or Layers (circle one)**

# of Houses 4 # of Birds _____ Max. Live weight capacity: _____ Integrator: Col. Farms

Calculation to determine Setback distance: _____ + _____ / 2 = _____ **Avg. Live Wgt.**
(Avg.Exit Wgt + Avg.Entry Wgt)/ 2

SETBACKS: ***(Waivers from adjoining property owners are required if proposed facility doesn't meet the setbacks).***

-**Facility** (excluding lagoon, storage pond, or water utilization areas):**From footing of construction to property line.**

1. At least **200 ft** from public or private wells(excluding applicant's). Y ✓ N__ N/A__
2. At least **50 ft** from potable well(s) owned by applicant. Y ✓ N__ N/A__
3. At least **50 ft** from any ditch or swale (s). **(down slope only)** Y ✓ N__ N/A__
4. At least **200 ft** from **property line** or 1,000 ft from **dwelling**. (weight is <500,000 lbs) Y__ N__ N/A ✓
5. At least **400 ft** from **property line** or 1,000 ft from **dwelling**. (weight is >500,000 lbs) Y ✓ N__ N/A__
6. At least **100 ft** from waters of the state (incl.ephemeral and intermittent streams) **(down slope only)** Y ✓ N__ N/A__

Reduced setbacks: Vegetative buffers can reduce setbacks to ditches, streams or waters of the state meets NRCS standards. Minimum width is 20 feet.
Does this apply: Y__ N__ N/A ✓ if so, which property: _____.

-**Lagoons or Waste Storage Ponds**
(setback exempt, if pond is completely surrounded by land owned by applicant & has no connection tc surface or groundwater).

1. At least **200 ft** from public or private well(s) (excluding applicant's). Y__ N__ N/A__
2. At least **100 ft** from applicant's potable well(s). Y__ N__ N/A__
3. At least **50 ft** from any ditch or swale(s). **(down slope only)** Y__ N__ N/A__
4. At least **300 ft** from **property line** or **1,000 ft** from **dwelling**. (weight is <500,000 lbs). Y__ N__ N/A__
5. At least **500 ft** from **property line** or **1,000 ft** from **dwelling**. (weight is >500,000 lbs). Y__ N__ N/A__
6. Waters of the state, including ephemeral and intermittent streams at least **100 ft. (down slope only)** Y__ N__ N/A__

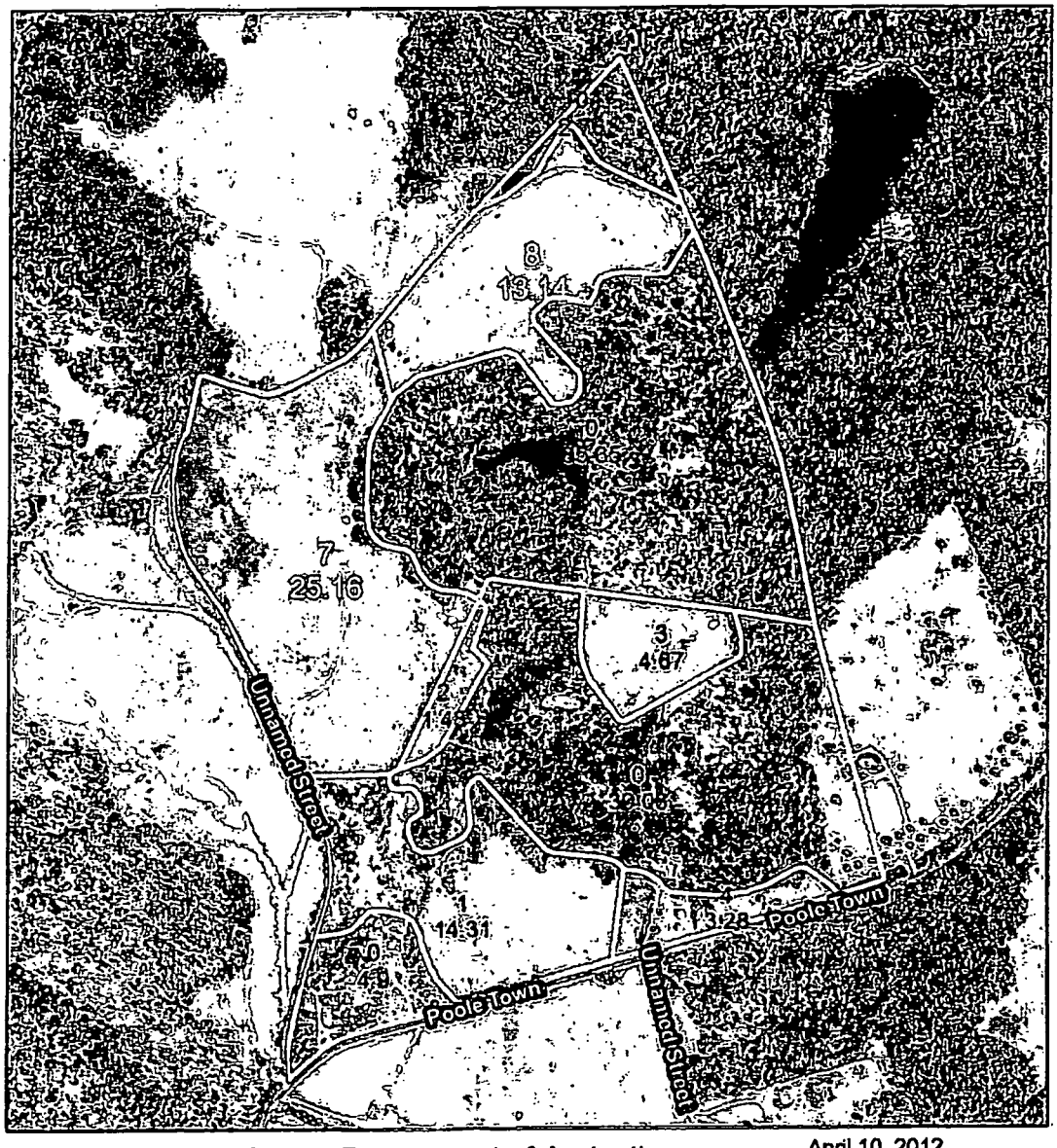
Reduced setbacks: Vegetative buffers can reduce setbacks to ditches, streams or waters of the state if meets NRCS standards. Minimum width is 20 feet.
Does this apply: Y__ N__ N/A__ if so, which property: _____.

500 ft Setback (min. separation distance between a lagoon, treatment system, manure storage pond)
If waters of the state are Outstanding Resource Waters, Critical Habitat Waters of federally endangered species, or shellfish harvesting waters.

DHEC 000444

497-00-00-035
498-00-00-007
498-00-00-005
498-00-00-038
498-00-00-026
498
POOLESTOWN RD
POOLESTOWN RD

386



USDA United States Department of Agriculture
Farm Service Agency

April 10, 2012
April 10, 2012

Farm:

1:7,232

Farm #: 3410
Tract # 2389 & 9163
Sumerel

Disclaimer: Wetland identifiers do not represent the size, shape or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact wetland boundaries and determinations, or contact NRCS.

DHEC 000446

USDA United States Department of Agriculture
Farm Service Agency

April 23, 2012
April 23, 2012

Farm:

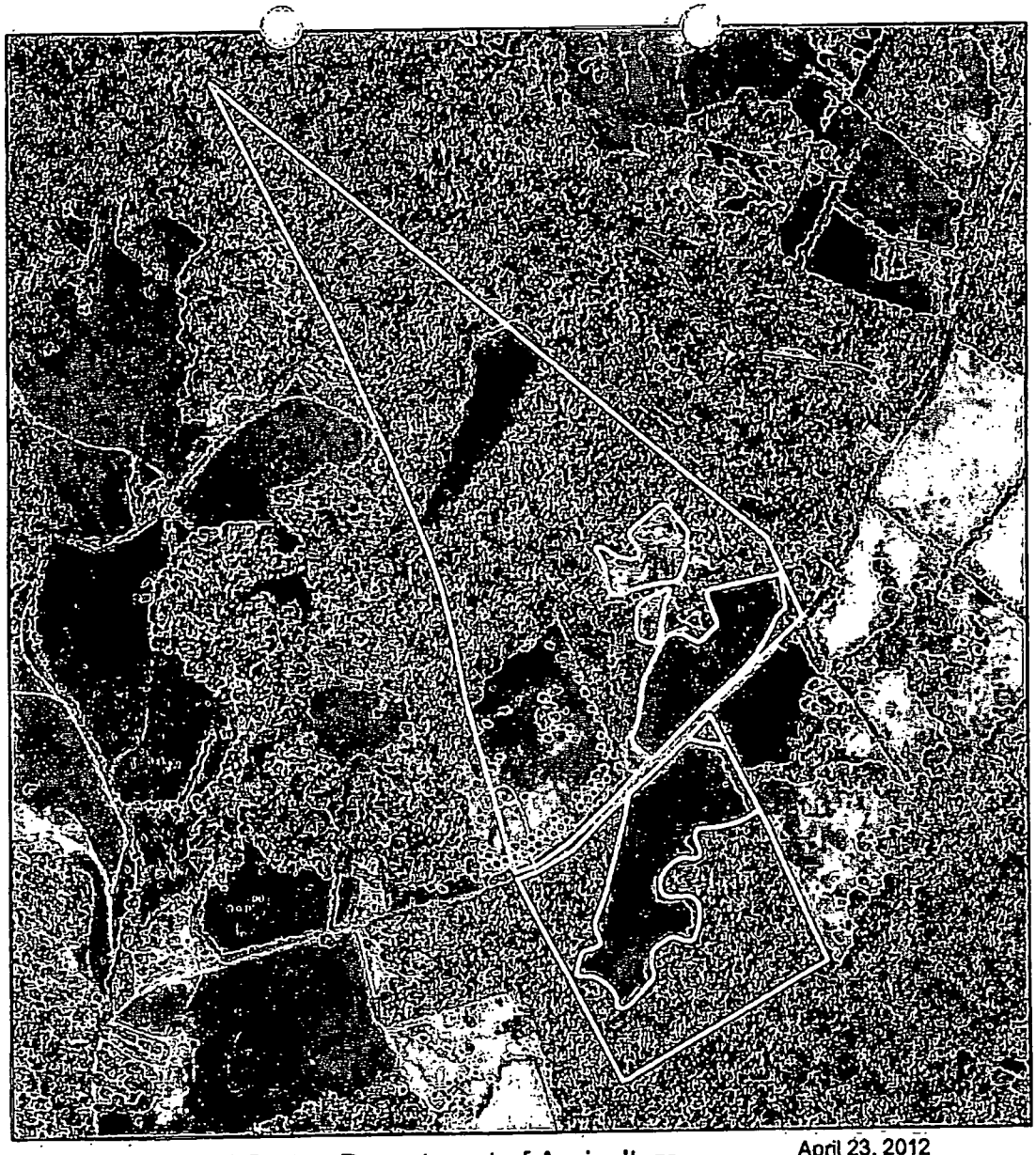
N

1:14,283

FARM: 4074
TRACT: 9745

Disclaimer: Wetland identifiers do not represent the size, shape or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact wetland boundaries and determinations, or contact NRCS.

DHEC 000447



USDA United States Department of Agriculture
Farm Service Agency

April 23, 2012
April 23, 2012

Farm:

N

FARM: 1583
TRACT: 2392

1:10,349

Disclaimer: Wetland identifiers do not represent the size, shape or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact wetland boundaries and determinations, or contact NRCS.

DHEC 000448

D H E C

FIGHT. PROTECT. PROSPER.

Preliminary Site Inspection Request For Proposed Agricultural Facilities

This request form should be filled out completely and submitted to the local DHEC EQC region office. Please see the back of this form for a complete listing of the region offices and the agricultural contacts. A representative will contact you as soon as possible to arrange an appointment. Two tax maps of the site and the surrounding 1320-foot radius of properties must be obtained prior to this meeting. The following items should be identified on these tax maps; adjacent land usage (residential, cropland, timberland, business, etc.), location of inhabited dwellings and wells, location of streams and ponds, location of ditches, and right-of-ways. This information should be labeled on the tax maps for all property within 1320 feet of the proposed facility's property line. The labeled tax maps must be submitted with this form prior to the meeting. The representative will review these maps and walk the proposed site to determine general suitability for a no-discharge facility and / or manure treatment/storage system.

Name Lisa H. Sumerel / William M. Sumerel Date 4/23/12

Address 2044 Poole Town Rd Laurens, S.C. 29360

Phone (Day) 864-682-5487 (Evening) 864-923-9137 (Cell)

Type Farm Poultry (Broiler) County Laurens

Direction To from 221 To Laurens To Right on 49 To Left 308 To Right Poole Town Rd.

Owners Signature William M. Sumerel Jr.

Please note that the Department provides preliminary site inspections as a service to the regulated community. A preliminary site approval is not a commitment by the Department to issue a permit since the precise location of the proposed facilities, and exact setbacks, detailed waste management plans are not known at the time of preliminary inspection. Upon receipt of the complete application package, the Department will make a final determination on permit issuance.

~~498-00-00-005~~

~~498-00-00-026~~

498-00-00-005

498-00-00-026

D H E C

Catherine B. Templeton, Director
Promoting and protecting the health of the public and the environment

April 27, 2012

Mike and Lisa Sumerel
2044 Pooletown Rd.
Laurens, SC 29360

RE: Preliminary Site Approval for 4 Broiler Houses
Location: From Hwy 221 in Laurens, take Hwy 49 to Hwy 308. Turn left on Hwy 308 and go 1 mile and turn right onto Pooletown Rd. The proposed location is ~0.5 mile on the left.
County: Laurens

Dear Mr. and Mrs. Sumerel:

The following information concerns a preliminary site investigation that was conducted on April 23, 2012 to discuss your proposed broiler facility. All requirements relevant to this type of operation contained in part 200 of Regulation 61-43, "Standards for the Permitting of Agricultural Animal Facilities", must be met before an Animal Feeding Operation Permit is issued. The site that you have chosen appears to be suitable for this type of operation. Permission is granted for you to proceed with the planning and design of your system.

In order to obtain an Animal Feeding Operation Permit or authorization to operate one, the following information is required:

1. Two copies of a **Waste Management Plan** and a signed **Standard Application Form for Agricultural Animal Facilities** - *Animal Facilities other than Swine* (DHEC form #3580) must be submitted. The waste management plan must be prepared by an engineer licensed to practice in South Carolina or it may be prepared by the Natural Resource Conservation Service.

2. A statement that the owner(s) will be responsible for operating and maintaining the waste management system in accordance with design criteria.

3. Provide Tax maps that identify the location of the proposed barn(s) and all property owners within ¼ mi. and the land use (residential, cropland, business, church, etc.). Please **NOTE** that the Department requires that the proposed animal houses are located at least 1000 feet from any inhabited residences. However, this distance requirement may be reduced with written consent from the owner of the dwelling.

4. Regulation 61-43 requires that you must notify all property owners within ¼ mi. of your proposed facility's footprint of your intent to build an agricultural facility. Proof of notification of all property owners whose property line is within ¼ mi. of the proposed facility's footprint. A signed Notice of Intent Form (DHEC form # 3579) or a certified mail card is sufficient.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Region 1
Serving Abbeville, Anderson, Edgefield, Greenwood, Laurens, McCormick, Oconee, and Saluda Counties
Greenwood EQC Office • 613 South Main Street • Greenwood, SC 29646 • Phone: (864) 229-0338 • Fax: (864)229-6935 • www.scdhec.gov

DHEC 000180

5. Check for the application fee of $165 made payable to **DHEC's Bureau of Finance.**

6. Any animal or drinking water wells installed at this site must be located at least 50 feet from the broiler houses.

Upon receipt of the items above, we will promptly proceed with our review. **This site approval will expire on April 23, 2013.**

In designing your waste handling practices, you should keep in mind future environmental considerations, such as non-point source pollution and your growth plans. Please consider minimizing potential nuisances such as odors, flies, etc. If nuisances do occur, they will need to be corrected in the shortest time frame possible.

Please note that construction of this facility must not be initiated prior to receiving a Permit from this Department. Once the facility is constructed, no animals may be put into the facility prior to the SC DHEC District Office issuing written authorization to place the facility into operation. Failure to adhere to these requirements may result in an enforcement action.

If you have any questions, please do not hesitate to call me at (864) 223-0333.

Sincerely,

Chrissy Matthews
Environmental Health Mgr.
Region I - Greenwood EQC

Cc: DHEC- Agricultural Waste Permitting Section
File copy

G:\Water\Agriculture\Laurens\Preliminary Site Inspections\sumerel 2012-04-23

DHEC 000181

10/19
9 10

Thursday, October 11, 2012

TRANSMITTAL MEMO

160

To: Leonard Gordon – Bureau of Environmental Health

From: William P Chaplin (803-898-3532)
Agricultural Permitting
Bureau of Water

Applicant: LISA SUMEREL
2044 POOLE TOWN RD
LAURENS SC 29360

Facility: SUMEREL FARMS
Facility # ND0088307
Laurens County

The above-mentioned applicant has submitted an application for an Agricultural Permit to construct and operate a new poultry-small facility located at 2044 Poole Town Rd, Laurens, in Laurens County. The proposed facility will house 109,600 Poultry (Broilers) in four (4) Poultry Houses. Regulation 61-43, "Standards for the Permitting of Agricultural Animal Facilities", requires that the Department accomplish the following through our review of this application. Therefore, the agricultural permitting section is requesting that you review the attached application, location map and design information and determine the following:

There shall be no discharge of pollutants into groundwater, which could cause groundwater quality not to comply with the groundwater standards established in South Carolina Regulation 61-68.

The setback limits given in this part are minimum siting requirements (with exception to those that are not labeled as minimum requirements, which are absolutes). On a case-by-case basis the Department may require additional separation distances applicable to animal facilities, lagoons, treatment systems, manure storage ponds, and manure utilization areas. The Department shall evaluate the proposed site including, but not limited to, the following factors when determining if additional distances are necessary:

1. Geography and soil types on the site;
2. Adjacent groundwater usage;
3. Aquifer vulnerability.

Do you recommend that the Department require additional siting requirements or setbacks taking in consideration the geography, soil types on the site, adjacent groundwater usage, and aquifer vulnerability? If yes, what specific setbacks or siting requirements do you recommend for this site?

DHEC 000279

Monitoring wells may be required by the Department on a case-by-case basis upon Department review of the submittal package.

Additional soil sampling to greater depths may be required by the Department on a case-by-case basis to ensure there is no potential for groundwater contamination. The permit shall give the appropriate depth and frequency for all soil sampling.

The Department may establish additional permitting restrictions based upon soil and groundwater conditions to ensure protection of the groundwater and surface waters of the State (including ephemeral and intermittent streams). Criteria may include but is not limited to soil permeability, clay content, depth to bedrock, rock outcroppings, aquifer vulnerability, proximity to State Approved Source Water Protection Area, and depth to the seasonal high groundwater table.

The Department may establish minimum requirements in permits for soil and/or groundwater monitoring, for manure utilization areas. Factors taken into consideration in the establishment of soil and groundwater monitoring shall include groundwater depth, operation flexibility, application frequency, type of animal manure and other animal by-products, size of manure utilization area, aquifer vulnerability, and proximity to a State Approved Source Water Protection Area and loading rate.

A system for monitoring the quality of groundwater may also be required for the proposed manure utilization areas. The location of all the monitoring wells shall be approved by the Department. The number of wells, constituents to be monitored, and the frequency of monitoring shall be determined on a case-by-case basis based upon the site conditions such as type of soils, depth of water table, etc.

Should groundwater monitoring wells be required for this proposed facility site or manure utilization areas? If yes, please provide the location of the well(s) and the required monitoring program.

Do you recommend that the additional deeper soil sampling be required at the manure utilization areas? If so, please provide the details for deeper soil sampling.

Do you recommend any additional permitting restrictions based upon soil and groundwater conditions the ensure protection of the groundwater? If so, please provide the additional restrictions.

Burial.

1. Burial pits may be utilized for emergency conditions, when the primary method of disposal is not sufficient to handle excessive mortality.
2. Burial pits shall not be located in the 100-year floodplain.
3. Soil type shall be evaluated for leaching potential.
4. Burial pits shall not be located or utilized on sites that are in areas that may adversely impact surface or groundwater quality or further impact impaired water bodies.

5. The bottom of the burial pit may not be within 2 feet of the seasonal high groundwater level.
6. No burial site shall be allowed to flood with surface water.
7. Animals placed in a burial site shall be covered daily with sufficient cover (6 inches per day) to prohibit exhumation by feral animals.
8. When full, the burial site should be properly capped (minimum 2 feet) and grassed to prohibit erosion.
9. Proposed burial pit sites shall be approved by the Department. The Department may conduct a geologic review of the proposed site prior to approval.
10. The Department may require the producer to utilize another method of dead animal disposal if burial is not managed according to the Dead Animal Disposal Plan or repeated violations of these burial requirements occur or adverse impact to surface or groundwater is determined to exist.
11. The Department may require groundwater monitoring for dead animal burial pits on a case-by-case basis. The Department shall consider all of the facts including, but not limited to, the following: depth to the seasonal high water table; aquifer vulnerability; proximity to a State Approved Source Water Protection Area; groundwater use in the area; distance to adjacent surface waters; number of dead animals buried; and frequency of burial in the area.

Does the proposed burial site meet the requirements of the regulation?

Is the proposed burial site suitable?

Do you recommend any additional requirements or siting criteria for the proposed burial site? If so, please provide the additional requirements or siting criteria.

Will groundwater monitoring be required for the proposed burial site? If yes, please provide the location of the well(s) and the required monitoring program.

MEMORANDUM

DATE: 16-October-2012

TO: William P. Chaplin
Agricultural Permitting
Bureau of Water

FROM: Stephen W. Smutz
Air Modeling Section
Bureau of Air Quality

SUBJECT: Review of Air Quality Issues, Permit no. ND0088307
SUMEREL FARMS

Laurens County

South Carolina Regulation 61-43, Part 200.70(E) & 61-43, Part 200.70(F.11), as shown below, requires the Agricultural Permitting Section of the Bureau of Water to determine if proposed new or enlarged poultry facilities will have an impact on air or water. Relevant to air impacts, these state:

> *"The Department shall act on all permits to prevent, so far as reasonably possible considering the relevant standards under state and federal laws, an increase in pollution of the waters and air of the State from any new or enlarged sources."*
>
> *"The setback limits given in this part are minimum siting requirements (with exception to those not labeled as minimum requirements, which are absolutes). On a case-by-case basis, the Department may require additional separation distances applicable to animal facilities, lagoons, treatment systems, manure storage ponds, and manure utilization areas. The Department shall evaluate the proposed site, including, but not limited to, the following factors when determining if additional distances are necessary:"*
>
> *"...11. Down-wind receptors"*

The Bureau of Water, SC Dept. of Health & Environmental Control's Agricultural Permitting Section, has asked the Bureau of Air Quality (*"Bureau"*) to review proposed new or enlarged poultry facilities to determine if these facilities will cause an increase in air pollution. For the purposes of this memo, an "*increase in air pollution*" is defined as an emissions increase that would cause an exceedance of an ambient air quality standard. Additionally, "*down-wind receptors*" as explained in Section 2.10 of the current SC DHEC Bureau of Air Quality "Air Modeling Guidelines" refers to virtual three-dimensional coordinates placed offsite where the concentrations of emissions would be measured for comparison to air quality standards. As a result, down-wind receptors would only apply if a regulated pollutant were emitted, and a US Environmental Protection Agency ("EPA") or SC state standard for that pollutant exists.

To attempt to accurately assess the potential impact from these facilities, the Bureau conducted a review of applicable state and US EPA resources for emissions estimates from poultry houses.

The only document pertinent to the subject available from the US EPA is a study released in December 2002 entitled *"Non-water Quality Impact Estimates for Animal Feeding Operations."* That document provides a summary of research that has been done to evaluate emissions from a variety of animal feeding operations. Included in the body of research are evaluations of the air impacts due to air emissions from the animal production areas (animal housing, manure storage, and treatment areas), emissions from the application of manure to land, and emissions from vehicles used in off-site manure transport and on-site composting.

For animal production areas, manure was the only noted source of air emissions. The following substances were noted to be potential pollutants from manure at animal feeding operations: ammonia, nitrous oxide, methane, and hydrogen sulfide. Emissions of criteria pollutants, such as particulate matter, sulfur dioxide, nitrogen dioxide, and carbon monoxide, may also occur from vehicles used to transport manure. In accordance with SC Regulation 61-62.1, Section II(F)(2)(a), emissions from motor vehicles are exempt from permitting.

Ammonia, nitrous oxide, and methane are not regulated by the Bureau as either criteria pollutants or air toxic pollutants for the simple fact that there are, at present, no state or federal (US EPA) air standards with which to compare emissions of these pollutants. Hydrogen sulfide (H_2S), however, is regulated as an air toxic by the State of South Carolina (South Carolina Regulation 61-62.5, Standard No. 8). Review of US EPA's *"Non-water Quality Impact Estimates for Animal Feeding Operations"* reveals that H_2S is produced from manure decomposing under anaerobic conditions. These conditions only exist in operations using a *wet* manure management system. Sulfates from a dry manure system will be reduced aerobically without emitting hydrogen sulfide. Therefore, based on the research cited, H_2S should *not* be present in poultry farms using a dry manure system.

Since the SUMEREL FARMS facility employs a dry manure system, H_2S emissions should not be present from this facility arising from poultry confinement and feeding operations. Without a release of emissions, impacts will not occur at any offsite down-wind receptors. Thus, the location of the proposed SUMEREL FARMS facility is considered by the Bureau to be in compliance with South Carolina Regulation 61-62.5, Standard No. 8 (air toxic standard) for hydrogen sulfide. Additionally, the agricultural operations of this facility will not cause any area to go out of attainment for this pollutant.

The location of the proposed SUMEREL FARMS facility in Laurens County is considered by the Bureau to be in attainment with all applicable ambient air quality standards. In consideration of the relevant standards under state and federal laws, an increase in air pollution is *not* expected from the proposed operation. In view of the fact that no State or Federal standards exist for odors and the foregoing information, the Bureau does not recommend any additional requirements or setbacks for this permit.

D H E C

PROMOTE PROTECT PROSPER

Preliminary Site Inspection Request For Proposed Agricultural Facilities

This request form should be filled out completely and submitted to the local DHEC EQC region office. Please see the back of this form for a complete listing of the region offices and the agricultural contacts. A representative will contact you as soon as possible to arrange an appointment. Two tax maps of the site and the surrounding 1320-foot radius of properties must be obtained prior to this meeting. The following items should be identified on these tax maps; adjacent land usage (residential, cropland, timberland, business, etc.), location of inhabited dwellings and wells, location of streams and ponds, location of ditches, and right-of-ways. This information should be labeled on the tax maps for all property within 1320 feet of the proposed facility's property line. The labeled tax maps must be submitted with this form prior to the meeting. The representative will review these maps and walk the proposed site to determine general suitability for a no-discharge agricultural facility and / or manure treatment/storage system.

Please Print

Name: Mike / Lisa Simenel Date: 6/24/13

Address: 2044 Poole Town Rd.
Laurens, S.C. 29360

Phone Number: (Day) 864-923-9137 (Evening) 864-682-5487

Type of Facility: Broilers - Composter Fractionator County: Laurens

Directions to Farm: AT Sumter Farms

Owner's Signature: Mike Simenel

Please note that the Department provides preliminary site inspections as a service to the regulated community. A preliminary site approval is not a commitment by the Department to issue a permit since the precise location of the proposed facilities, and exact setbacks, detailed waste management plans are not known at the time of preliminary inspection. Upon receipt of the complete application package, the Department will make a final determination on permit issuance.

RECEIVED
JUN 24 2013
REGION I EQC
GREENWOOD

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

June 27, 2013

Lisa & Mike Sumerel
2044 Poole Town Road
Laurens, SC 29360

RE: Preliminary Site Approval for a Composter and Incinerator
Location: Sumerel Farms on Poole Town Rd (SR313) in Laurens County

Dear Mr. and Mrs. Sumerel:

The following information concerns a preliminary site investigation that was conducted on **June 24, 2013** to discuss the placement of a composting system and incinerator at your facility. All requirements relevant to this type of disposal contained in part 200 of Regulation 61-43, "Standards for the Permitting of Agricultural Animal Facilities", must be met. The site that you have chosen is located in the field North of where the proposed houses will be built. This site appears to be suitable for a composting system and incinerator. Permission is granted for you to proceed with the planning and design of this system.

Please be aware that additional buffer zone requirements may be required on a case-by-case basis. Also, in handling of the dead animals, you should consider minimizing potential nuisances such as odor, flies, etc. However, if nuisances occur, you will need to correct them in the shortest time frame possible.

In designing your system, you should keep in mind future environmental concerns such as possible growth and non-point source pollution.

This site approval will expire on **June 24, 2014.**

If you have any questions, please do not hesitate to contact me at (864) 223-0333.

Sincerely,

Chrissy Matthews

Chrissy Matthews
Upstate EQC Greenwood

Cc: DHEC- Agricultural Waste Permitting Section

Chaplin, Bill <chapliwp@dhec.sc.gov>

Stormwater permit

Chaplin, Bill <chapliwp@dhec.sc.gov> Mon, Jun 10, 2013 at 3:35 PM
Draft To: sumerelfamily@backroads.net

Mike and Lisa,

I wanted to make sure you were aware that if you disturb more than one acre for the construction of your poultry facility, you will need to get a stormwater pollution prevention plan prior to construction.

Please see the attachment for more information.

Bill
William Chaplin, Section Manager
Agricultural Permitting and Dams Safety
SCDHEC
2600 Bull Street
Columbia, SC 29201
email: chapliwp@dhec.sc.gov
803-898-3532 - Office

StormwaterPermits2.doc
79K

Catherine B. Templeton, Director
Promoting and protecting the health of the public and the environment

New Compliance Requirements for SC DHEC Stormwater Permits

SC DHEC Regulation 72-300 and NPDES General Permit #SCR100000 states the following:

> *"After the effective date of these regulations (September 1, 2006), unless a particular activity is exempted by these regulations, a person may not undertake a land disturbing activity without an approved stormwater management and sediment control plan from the appropriate plan approval agency."*

- **Why is the Construction of Confined Agricultural Animal Farm required to obtain a Stormwater Permit?**
  After the federal stormwater regulations changed in 2006, SC DHEC was required to implement new stormwater construction requirements in SC. Previously, confined agricultural animal facilities were exempted from obtaining construction stormwater permits. However, now the state and federal requirements apply to all construction sites disturbing more than one (1) acre. This includes nearly all construction of new and expanding agricultural animal farms in SC. SC DHEC allowed a generous grace period since the issuance of these changes for the industry to prepare and adjust to these changes. However, the time has come that SC DHEC will be enforcing the construction stormwater requirements on all new and expanding farms.

- **How do I obtain a Construction Stormwater Approval from SC DHEC?**
  State & Federal regulations requires that you submit a Notice of Intent (to initiate construction) form and a Stormwater Pollution Prevention Plan to SC DHEC for review. Once the application has been processed and reviewed, a construction stormwater approval will be issued to you. Under current state and federal regulations, this approval must be granted (in addition to the Agricultural Permit which is separate) prior to the initiation of grading and construction activities on your site. Construction activities include clearing, grading, and excavating that result in land disturbance.
  For more information on SC DHEC regulations go to the Stormwater Program website: http://www.scdhec.gov/environment/water/swerfmain.htm

- **What does it cost to get a Stormwater permit?**
  SC DHEC charges a state review fee of $100 per disturbed acre, not to exceed a maximum fee of $2000. In addition to that fee, an additional NPDES General Permit fee of $125 applies. Therefore, the above outlined fees must be submitted to SC DHEC with the Notice of Intent (to initiate construction) form and Stormwater Pollution Prevention Plan for a Stormwater Approval. In addition to this cost, there may be fees associated with obtaining a Stormwater Pollution Prevention plan from a qualified consultant.

- **What is a Stormwater Pollution Prevention Plan?**
The Stormwater Pollution Prevention Plan outlines the requirements for compliance with the state and federal stormwater regulations. The plan will include specifications for erosion control practices that will be utilized on your construction site in order to prevent loss of sediment. In addition, the plan will include a map outlining the proper placement of these controls. The plan also includes all of the recordkeeping, inspection, maintenance and reporting requirements that must be followed during the construction of the facility.

- **Where can I get a Stormwater Pollution Prevention Plan?**
Stormwater Pollution Prevention Plans may be developed by registered professional engineers, registered landscape architects, Tier B land surveyors, or federal government employee (such as NRCS). In most cases, the applicant will have the same individual who prepared their plans for the Agricultural Permit prepare the Stormwater Pollution Prevention Plan.

- **How long will it take to get my Stormwater Approvals?**
Once the Notice of Intent (to initiate construction), fees and the Stormwater Pollution Prevention Plan is submitted to SC DHEC, the review time generally takes approximately twenty (20) calendar days.

- **What will happen if I initiate grading or construction activities without a Stormwater Approval?**
Stormwater approval is required by state and federal regulations, and must be obtained prior to the initiation of grading or construction activities in order for these activities to be considered in compliance with state and federal regulations. SC DHEC will require all land disturbance activities be halted until the Stormwater Approval has been obtained and the owner will be subject to enforcement action and possible monetary penalty.

- **What is required under the Stormwater Approval?**
You, the owner, will be required to ensure that the SC DHEC Approved Stormwater Pollution Prevention Plan is provided to the individuals performing grading and construction activities on your site. You will also be responsible for ensuring that the plan is implemented on the site. The plan will outline the placement and installation specifications for the required erosion control practices. In addition, you will be responsible for ensuring that the weekly inspections are conducted on the site until the site is stabilized. The plan also includes a signature page which you should have all of the contractors working on your site sign prior to starting work.

- **Who can perform the weekly inspections?**
SC DHEC requires that the site be inspected at least once every seven (7) calendar days by qualified personnel. The inspection frequency may be reduced to one time a month once the entire site is temporarily stabilized. Qualified inspection personnel includes the plan preparer, an employee of the plan preparer, a certified inspector (certified through the Clemson CEPSCI program), or a registered professional engineer. A written report of the inspection should be maintained with the plans. Inspections of the site must be performed until the site reached final stabilization.

- **What do I do when construction is complete?**
After construction is complete on this site, the site must be stabilized with a sufficient stand of vegetation. Once the site has at least 70% vegetative cover, the owner must submit a Notice of Termination form to SC DHEC to certify that the project is complete and the site is stabilized. The plan preparer is also required to certify on this form the site is appropriately stabilized.

DHEC 000179

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

The Honorable John D. McLeod, Administrative Law Judge

Case No. 13-ALJ-07-0395-CC

RECEIVED
APR 06 2015
SC Court of Appeals

Rick Still, Donice Still, Christine Orr and Terry Orr.....Appellants.

v.

South Carolina Department of Health and Environmental Control, Lisa Sumerel, and Sumerel Poultry Farm.....Respondents.

NOTICE OF APPEAL

Rick Still, Donice Still, Christine Orr and Terry Orr appeal the Final Order and Decision entered January 12, 2015 by the Honorable John D. McLeod, and the denial of the reconsideration requested which was effected by the Court not issuing an order on Appellants' Motion to Reconsider within 30 days of the filing of Respondents' Response to said motion filed on or about March 6, 2015.

ROE CASSIDY COATES & PRICE, P.A.

Joseph O. Smith, S.C. Bar # 77475
1052 North Church Street
Greenville, South Carolina 29601
(864) 349-2600; (864)-349-0303 fax
jsmith@roecassidy.com
Attorneys for Appellants

April 2, 2015
Greenville, South Carolina

RECEIVED
APR 06 2015
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

The Honorable John D. McLeod, Administrative Law Judge

Case No. 13-ALJ-07-0395-CC

Rick Still, Donice Still, Christine Orr and Terry Orr.....Appellants,

v.

South Carolina Department of Health and Environmental Control,
Lisa Sumerel, and Sumerel Poultry Farm.....Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the above named Respondents by depositing a copy of it in the United States Mail, postage prepaid, on April 2, 2015, addressed to counsel of record as follows.

Stephen P. Hightower
Office of General Counsel
SC DHEC
2600 Bull Street
Columbia, South Carolina 29201
Attorney for Respondent SC DHEC

Thomas E. Hite III
Hite & Stone
P.O. Box 805
Abbeville, SC 29620
Attorney for Respondents Lisa Sumerel and Sumerel Poultry Farm

Joseph O. Smith
ROE CASSIDY COATES & PRICE, P.A.

Greenville, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Rick Still, Donice Still, Christine Orr and Terry Orr, Petitioners, vs. South Carolina Department of Health and Environmental Control and Lisa Sumerel and Sumerel Poultry Farm, Respondents.	Docket No. 13-ALJ-07-0395-CC **FINAL ORDER AND DECISION**

RECEIVED
APR 06 2015
SC Court of Appeals

FILED
JAN 12 2015
SC ADMIN. LAW COURT

APPEARANCES:

For Petitioners:	Joseph O. Smith, Esquire
For Respondent SCDHEC:	Stephen P. Hightower, Esquire
For Respondents Lisa Sumerel and Sumerel Poultry Farm:	Thomas E. Hite, III, Esquire

STATEMENT OF THE CASE

This matter comes before the Administrative Law Court (ALC or Court) pursuant to S.C. Code Ann. § 1-23-310 *et seq.* (Rev. 2005 & Supp. 2013), S.C. Code Ann. § 1-23-600 (Supp. 2013), and S.C. Code Ann. § 44-1-60 (Supp. 2013), for a contested case hearing regarding the South Carolina Department of Health and Environmental Control's (SCDHEC or Department) decision to issue Bureau of Water Agricultural Permit ND0088307, Permit Number 19,647-AG (Permit) to Lisa Sumerel for the operation of Sumerel Farm. The Sumerel Farm, which is listed in the caption as Sumerel Poultry Farm, is a proposed broiler poultry facility located off Poole Town Road in Laurens, South Carolina. Petitioners Rick Still, Donice Still, Christine Orr and Terry Orr, who live on properties located on Poole Town Road in the vicinity of the proposed facility, filed a request for a contested case hearing to challenge the Department issuance of the permit. Pursuant to the Rules of the Administrative Law Court (RALC), and the Notice of Hearing filed on June 20, 2014 and served on all the parties, a hearing on the merits was held on August 25 and 26, 2014, at the ALC in Columbia, South Carolina.

At the hearing, the Court heard testimony from witnesses and admitted into evidence several exhibits. Petitioners called Petitioners Rick Still, Terry Orr, and Christine Orr; David Hargett, Ph.D, who was qualified as an environmental scientist consultant and an expert on water impacts; Carmen Parkhurst, Ph.D, who was qualified as an expert in animal feeding operations, poultry science, and waste management; Respondent Lisa Sumerel and her husband, Michael Sumerel; and three employees of the Department, Chrissy Matthews, who conducted the preliminary site inspections of the site; Stephen Smutz, who conducted the Department's review of potential air impacts; and William P. Chaplin, the Department's permit reviewer. Respondents Lisa Sumerel and Sumerel Farm called two witnesses, Leon Fulmer and Joy Shealy, P.E. Ms. Shealy prepared the Comprehensive Nutrient Management Plan reviewed by the Department and Mr. Fulmer conducted field observations used in the preparation of the plan. The Department did not call any witnesses and presented its case through cross-examination of the Department witnesses called by Petitioners and the witnesses called by Respondents Lisa Sumerel and Sumerel Farm. During its cross-examination of Mr. Smutz, the Department sought and the Court qualified Mr. Smutz as an expert in the field of meteorology and agricultural permitting. Several of the exhibits admitted into evidence were consented to by the parties and were admitted as Joint Exhibits (JE). Two additional exhibits were proffered and admitted into evidence, one by Petitioners and one by Respondents.

During the hearing, Petitioners presented the following issues for review:

1) Whether the Department failed to properly evaluate the environmental impacts of the Sumerel Poultry Farm; and
2) Whether the Department's decision to issue the Permit:
    a. constitutes a violation of constitutional or statutory provisions;
    b. was made upon unlawful procedure;
    c. was affected by error of law;
    d. is clearly erroneous in view of the reliable, probative, and substantial evidence;
    e. and/or was arbitrary and capricious and an abuse of discretion;
    f. and prejudiced Petitioners' substantial rights.

After careful consideration of the issues, the testimony presented and exhibits admitted into evidence during the hearing, the Court concludes that the Department issued the Permit to Lisa Sumerel in accord with all applicable statues and regulations for the reasons set forth below.

FINDINGS OF FACT

Having observed the witnesses and reviewed the exhibits presented at the hearing, and taking into consideration the burden of persuasion and the credibility of the witnesses, the Court makes the following findings of fact by a preponderance of the evidence:

Background

Respondent Lisa Sumerel and her husband, Michael, are residents of Laurens County, South Carolina and reside at 2044 Poole Town Road. The Sumerel's have two adult sons, aged 27 and 30. They live in a rural farming community, and have applied for a permit to construct and operate poultry broiler farm on property located immediately north of their residence. Mrs. Sumerel is a kindergarten teacher at Ford Elementary School in Laurens County, District 55 and plans to retire in two years. Mrs. Sumerel is the holder of the proposed permit issued by the Department. When she retires she intends to help her husband operate the proposed facility by conducting walk throughs in the houses to keep the chicks moving and by keeping the books. Mr. Sumerel will be the primary operator of the proposed facility. He is currently a hay farmer and has farmed or been involved in farming for much of his lifetime and took classes in agriculture in high school. The property where the proposed facility is to be located was given to them by Mr. Sumerel's mother, who is one of their next-door neighbors.

Permitting Process

On April 23, 2012, the Sumerels filed a request with the Department's regional office located in Greenwood, South Carolina for a Preliminary Site Inspection (PSI) for a proposed poultry facility to be located on Poole Town Road in Laurens County, South Carolina. The request was given to Ms. Chrissy Matthews, an eight year employee of the Department who conducts inspections of agricultural facilities. Ms. Matthews's job includes routine and compliance inspections, preliminary site inspections, and she also performs stormwater compliance and routine inspections. Ms. Matthews conducted the PSI on April 23, 2012. The PSI began with a visit to the location off of Poole Town Road (Site) by Ms. Matthews to determine if the setback distances for poultry facilities could be met and the poultry houses for the proposed facility could fit. During this visit, Ms. Matthews observed that the east and south boundaries of

the Site were covered by a large, mature forest. When Ms. Matthews returned from the field she accessed the Laurens County Geographic Information Systems (GIS) website and used its measuring tool to measure the distances from the property lines of the Site to potential footprints for the facility, to determine if there was sufficient room for the houses. Ms. Matthews recorded her findings on a document known as a Preliminary Site Inspection Checklist, which was admitted into evidence as JE 6. A PSI Checklist is an unofficial form used to assist in the evaluation of a site. Based on her observation of the Site, use of GIS, and experience, Ms. Matthews concluded that the Site was generally suitable for an animal feeding operation governed by S.C. Code Ann. Regs. 61-43 Part 200 (2011). By letter dated April 27, 2012, Ms. Matthews notified the Sumerels that the Site "appears to be suitable" for the operation of a poultry farm. The letter also granted the Sumerels permission to plan and design an animal facility, and submit the plans to the Department before April 23, 2013 for review in accord with the regulations governing *Animal Facilities other than Swine*, which is codified at 4 S.C. Code Ann. Regs. 61-43 Part 200.

The Review Process

On October 10, 2012, the Sumerels signed a Comprehensive Nutrient Management Plan (CNMP), which was received by the Department on October 11, 2012. The CNMP was prepared by Shealy Engineering, LLC. Shealy Engineering, LLC is owned by Joy S. Shealy, P.E.[1] Ms. Shealy graduated from Clemson University with a Bachelor of Science degree in agricultural engineering and holds professional engineer licenses for South Carolina, North Carolina, and Georgia. Prior to establishing Shealy Engineering in 2004, Ms. Shealy had worked for the Department. As a SCDHEC employee, Ms. Shealy worked one year in stormwater permitting and six and a half years in agricultural permitting. Also, during her time with the Department, Ms. Shealy was involved with the promulgation of 4 S.C. Code Ann. Regs. 61-43. Ms. Shealy works with Leon Fulmer, an agricultural engineer, who also is a former Department agricultural permitting reviewer whose duties included those now performed by the current Section Manager of the Agricultural Permitting Section. As an employee of Shealy Engineering, LLC, Mr. Fulmer conducts site inspections to determine if a site is suitable for a poultry facility and to obtain detailed information for the preparation of animal facility management plans. In addition to these

[1] Subsequent to the preparation of the CNMP, on June 2, 2014, Ms. Shealy sold Shealy Engineering, LLC to Shealy Consulting. (Tr. pp. 402, 478).

duties, Mr. Fulmer is the operator of a broiler poultry facility.

The CNMP for the Sumerel facility proposes the construction and operation of a four poultry house broiler facility with a total facility capacity of 109,600 broilers, which "will be brought into the house as chicks and are confined for a period of sixty-three (63) days or until they reach an exit weight of eight and three quarter (8.75) pounds" with a normal production live weight of 493,200 pounds. The proposed facility would be sited so that all applicable set back distance are met or exceeded. Specifically, the proposed facility complies with the following set back distances: 1) potable wells (required 200 feet, actual 1,300 feet); 2) potable wells owned by the applicant (required 50 feet, actual 500 feet); 3) waters of the State located downslope (excluding ephemeral & intermittent streams) (required 100 feet, actual 150 feet); 4) ephemeral or intermittent streams located downslope (required 100 feet, actual 150 feet); 5) ditches or swales located downslope (required 50 feet, actual 50 feet); 6) property line (500,000 lbs or less) (required 200 feet, actual 200 feet); and 7) occupied residence (required 1,000 feet, actual 1,300 feet). The CNMP also provided documentation that the Sumerels had notified all property owners with property located within 1,320 feet from the footprint of the proposed facility, including Petitioners, as required by the regulation's public notice provision.

On the same day that it was received, the Sumerel application package was sent to the Department's Agricultural Permitting Section for review. William P. Chaplin, the Section Manager of the Agricultural Permitting and Dam Safety Section, reviewed the permit and made all of the decisions regarding its issuance. Mr. Chaplin has worked for the Department since 1992. For twelve years, his duties included septic tank inspections and mosquito control. Mr. Chaplin has been the Section Manager of Agricultural Permitting and Dam Safety Section for the last eight years.

The Department's review began when compliance generated requests to the Bureau of Air Quality and the Division of On-Site Wastewater Management's, Bureau of Environmental Health to evaluate air and groundwater requests. Stephen W. Smutz, of the Bureau of Air Quality's Air Modeling Section, responded to the request in a Memorandum, dated October 16, 2012, on the Air Quality Issue of the proposed facility. In his memorandum, which set forth his evaluative process, Mr. Smutz made the following conclusions: 1) that "[i]n consideration of the relevant standards under state and federal laws, an increase in air pollution is not expected from the proposed operation;" and 2) that "[i]n view of the fact that no State or Federal standards exist

for odors and the foregoing information, the Bureau does not recommend any additional requirements or setbacks for this permit." William H. Burriss of the Bureau of Environmental Health, Division of On-site Wastewater Management responded to the Agricultural Permitting Section's request in a memorandum dated October 22, 2012. The memorandum incorporated field notes that indicated the fieldwork performed to determine if the proposed mortality burial site was suitable. Based on this information, Mr. Chaplin concluded that the proposed burial site was not suitable for mortality disposal.

On October 25, 2012, the Sumerel application was placed on public notice, in accord with 4 S.C. Code Ann. Regs. 61-43 Part 200.60(A). Ms. Matthews posted five signs in the vicinity of the Site notifying the public about the application and informing the public that from October 25, 2012 through November 24, 2012, the Department would be accepting comments on the application.

The Department's technical review of the Sumerel application package began on February 2, 2013. On February 25, 2013, the Department sent out letters to the seventy-seven (77) individuals on the petition and those who wrote letters in opposition to the Sumerel facility, notifying them that the Department had scheduled a public meeting to be held on March 11, 2013 at Laurens Academy Gymnasium at 6:30 PM. The public meeting was held on March 11, 2013 as planned.

In May 2013, the Sumerels submitted amendments to their facility plans. Included in the amendments was a Dead Animal Composting Facility Management Plan (Composting Plan), which changed the mortality disposal method from burial to hay bale composting, incineration, and landfill disposal. On May 28 and 29, 2013, the Department received CNMP pages, which included incorporation of the new mortality disposal methods contained in the CNMP. On June 10, 2013, the Department completed its technical review of the Sumerel application.

On June 12, 2013, the Department issued the Permit to Lisa Sumerel for the operation of a no-discharge broiler poultry feeding operation. The Permit authorizes the construction and operation of four poultry broiler houses, each housing 27,400 birds, for a total of 109,600 birds at any one time. The facility can house up to 4.5 flocks per year and the average animal live weight of each flock is 493,200 lbs. The Permit also authorizes mortality disposal through the use of a hay bale composting system and/or incineration. The Permit also contained a Special Conditions section that enumerates eight requirements, including requirements that: 1) local permits such as

building and stormwater be obtained; 2) any drinking water wells installed on the property for animal or human consumption meet certain regulatory setbacks; and 3) the owner or operator obtain Confined Animal Manure Manager (CAMM) Certification from Clemson University within a year of the Permit's effective date.

Twelve days after receiving the Permit, on June 24, 2013, the Sumerels submitted a request to the Greenwood Regional Office for a PSI to be conducted in order to evaluate the exact locations of the composting and incineration for mortality disposal, including the siting of the composter and incinerator(s) on their facility. That same day, Ms. Matthews conducted a PSI inspection of the Sumerel property to see if the property north of where the proposed poultry houses will be built is suitable for the placement of a hay bale composting system and incinerator. By letter dated June 27, 2013, Ms. Matthews notified the Sumerels that placement of hay bale composting system and incinerator hay bale composting system and incinerator north of the proposed site for the poultry houses was approved. The PSI was not necessary to, nor used by Mr. Chaplin in his decision to authorize composting for poultry mortality at the proposed facility.

Petitioners' Objections to the Issuance of the Permit

Petitioners take issue with the Department issuance of the Permit to Mrs. Sumerel, claiming that the Department's review was inadequate. They cite general quality of life claims and the following specific claims: the Odor and Vector Abatement Plans do not conform to regulatory requirements; the Department inadequately considered water impacts because potential impacts from grading activities and stormwater runoff were not considered; the proposed facility was a large facility because the information on the average live weight in the CNMP was inaccurate; and the Department's review of the Composting Plan was inadequate. The parties presented testimony and exhibits regarding each of these claims and based on this evidence, the Court makes the following additional findings of fact:

Petitioner Rick Still testified that he and his wife moved to the area for the quiet enjoyment of nature and the outdoors. The Stills live at 1734 Poole Town Road and their residence is located 1,650 feet from the footprint of the proposed facility. The Stills claim that they utilize their land surrounding their home and outdoor space on a frequent basis, including using the large outdoor kitchen on the property. Mr. Still is concerned that the Sumerel operation will have numerous negative impacts upon his right to the quiet and peaceful enjoyment of his property. Namely, Mr. Still expressed deep concerns about the environmental impacts and

possible nuisance in the form of foul and offensive odors, dust, feathers, and other airborne emissions intruding into his property and interfering or prohibiting him and his wife from enjoying it as they currently do. Mr. Still was also concerned about the inadequacy of the CNMP, the Composting Plan and the Department's evaluation of those documents and approval of the Sumerel Permit. He also voiced a concern that should the Sumerel facility go into operation it would immediately cause a drastic devaluation of his property.

Petitioner Terry Orr testified that he and his wife Christine also live on Poole Town Road. The Orrs live at 1174 Poole Town Road and their residence is located 3,600 feet from the footprint of the proposed facility. The Orrs also own a pond located approximately 2,000 feet northeast of the proposed facility. Mr. Orr testified that he uses the pond property nearly every day for hiking, fishing and other recreation. He expressed serious concern that nuisance odors would interfere with the use and enjoyment of his property. Mr. Orr was also very concerned that the airborne emissions and water runoff would have detrimental environmental impacts on his pond, which is interconnected with upslope water bodies that are in close proximity to and downslope from the proposed Sumerel site.

Finally, Petitioner Christine Orr testified about her concerns over the proposed Sumerel operation. Mrs. Orr testified that she likes to go out in her yard with the family dogs on a regular basis. She went on to say that she regularly enjoys sitting on her front porch, reading a book, and enjoying the quiet. She said "that's my weekend thing." As with Mr. Still and her husband, Mrs. Orr expressed serious concerns about the proposed Sumerel operation. She believes it will prohibit her from enjoying her property as she currently does by generating nuisance odors, vectors, and various emissions harmful to the surrounding environment. Mrs. Orr said the proposed operation was not traditional farming in any sense and more akin to an industrial factory.

A. Odor and Vector Abatement Plans

The Sumerel CNMP contains three sections addressing odor and vector abatement. Section 7.2, labeled "Vector Control and Abatement," provides a list of actions for the Sumerels to take in order to address vector issues generally and specifically. Section 7.3, labeled "Air Quality," provides information regarding odor. Finally, Section 7.6 of the CNMP, which is labeled "Site Specific Vector and Odor Abatement Plan," contains additional odor and vector

abatement procedures. Section 7.2 contains the following detailed set of general and specific actions that the Sumerels are to take to address vectors:

Removing all excess building materials.
Removal of any excess feed from the houses or around bins.
Keeping grass and weeds mowed.
Keeping all buildings free of trash and debris.
The proper use and servicing of bait stations.
Proper and timely disposal of dead animals.
Keeping all manure cleaned up caused by spillage from around the houses. Keep all temporary stored manure covered and dry.
Any spillage or feed should be cleaned as soon as possible and all feed will be kept dry.
Covers on feed storage bins should be used. Drainage away from all feed storage containers should be provided to reduce moisture accumulation.

Actions to be taken for the abatement of an ***insect*** problem:
Mow vegetation around the facility.
Clean up any spilled feed.
Repair or replace equipment that is spilling feed.
Use covers to prevent feed from getting wet.
Dispose of any wet or contaminated feed.
Check for leaks from waterers, etc. and repair as needed.
Remove any garbage or trash from the facility.
Remove and dispose of all dead animals immediately and appropriately.
Use approved baits, poisons, etc. as appropriate.

Actions to be taken for the abatement of a ***rodent*** problem:
Mow vegetation around facility.
Clean up any spilled feed.
Repair or replace equipment that is spilling feed.
Use covers to prevent feed from getting wet.
Dispose of any wet or contaminated feed.
Remove all excess building materials.
Remove any garbage or trash from the facility.
Check for damage or leaks from waterers, etc. and repairs as needed.
Remove and dispose of all dead animals immediately and appropriately.
Use approved baits, poisons, etc. as appropriate.

Actions to be taken for the abatement of ***scavenging animal*** problems:
Remove and dispose of all dead animate immediately and appropriately.
Mow vegetation around facility
Clean up any spilled feed.
Repair or replace equipment that is spilling feed.
Use covers to prevent feed from getting wet.
Dispose of any wet or contaminated feed.

Remove all excess building materials.
Remove any garbage or trash from the facility.
Check for digging activities that could damage or weaken buildings and repair as needed.
Contact the proper officials for additional control measures.

For more details on specifics (rats, filth, flies, etc.) information may be obtained for the Clemson Agricultural Extension Offices or the NCRS office. A source of information is also available from Clemson's South Carolina Confined Animal Manure Manager's program, in Chapter 10 of the applicable species, available at: http://www.clemson.educ/camm/
(emphasis added).

Section 7.3 contains the following information:

NRCS does not have specific technical criteria for these consideration that are required for CNMPs. However, the following items may be considered when addressing Air Quality, most Air Quality issues are associated with odor.

Air quality in and around structures, waste storage areas, and treatment sites may be impaired by excessive dust, gaseous emissions such as ammonia, and odors. Poor air quality may impact the health of workers, animals, and persons living in the surrounding areas. Ammonia emissions from animal operations may be deposited to surface waters, increasing the nutrient load to these regions. Proper siting of structures and waste storage facilities can enhance dispersion and dilution of odorous gases. Enclosing waste storage or treatment facilities can reduce gaseous emissions from AFOs in areas with residential development in the region.

For an odor to be detected downwind, odorous compounds must be (a) formed, (b) released to the atmosphere, and (c) transported to the receptor site. These three steps provide the basis for most odor control. If any of the steps is inhibited, the odor will diminish.

Growing and Storage Facilities

Odor problems can be prevented or reduced through adequate drainage, runoff management, proper care to keep animals and animal facilities clean and dry, and appropriate animal by-product removal, handling, and transport.

Locate animal by-product management facilities and utilization areas as far as practical from neighboring residences, recreational areas, or other conflicting land uses. Avoid sites where radical shifts in air movement occur between day and night, such as those near large bodies of water or steep topography. A component's location in relation to surrounding topography may also strongly influence the transfer of odor because of daily changes in temperature and

resulting airflow. To provide optimum conditions, prevailing winds should carry odors away from nearby residences.

Providing conditions or design features that alter the microclimate around specific components can further mitigate odor. An abundance of sunlight and good ventilation helps keep livestock and poultry areas dry and relatively odor free. Southern exposure with adequate slope to provide drainage for runoff is a preferred condition. Keeping animal by-products aerated and at appropriate moisture and temperature levels slows the development of anaerobic conditions and reduces odor.

Mitigation of Odor

Odor-causing substances from animal by-products are frequently attracted to dust particles in the air. Collecting or limiting the transport of dust aids in reducing odor. Vegetation is very effective in trapping dust particles. For example, pine trees planted downwind trap odor-laden dust particles and can provide a visual barrier to the animal operation. In addition, vegetation, landform, and structures can channel wind to carry odors away from nearby residences.

Chemical additives for the control or reduction of odors may be added to the bedding in the house or during removal.

Section 7.6 of the CNMP, which is labeled "Site Specific Vector and Odor Abatement Plan" contains the following information:

Odor & Vector Abatement Plan
Columbia Farms

Columbia Farms has approved the following treatments in the event that an odor problem is identified at the farm:

PI T Poultry Liter Treatment
Disinfectants

Columbia Farms has approved the following pesticide treatments in the event than a vector problem is identified on the farm:

Beneficial Insect Treatment for flies (wasps)
Larvidex
Phenolx
Rabon 50 Wettable Powder Insecticide
Rat Baits (Brands rotated for resistance prevention)

Section 7.2 lists specific actions that the Sumerels are to take if there are vectors. In addition, the Vector Abatement Plan contains separate sections containing items for specific

vectors such as insects, rodents, and scavenging animals. Similarly, Section 7.3 provides information addressing the locations of areas that can cause odors. For example, the Section contains information about how vegetation can be used to control odor and how chemical additives can be added to bedding to control odor. Finally, with regard to odor, Section 7.6 identified the specific chemical approved by the integrator for use in the bedding material, which is also known as litter. With regard to vectors, that Section specified the rodenticide and insecticides authorized by Columbia Farms for use at the proposed facility.

Petitioners, however, claim that the information contained in CNMP Section 2, Vector Control and Abatement Vector Control, and CNMP 7.6, Site Specific Vector and Odor Abatement Plan, fails to meet the regulatory requirements in Part 200.150(A) and Part 200.160(A) because they are best management practices (BMPs) and not "site specific" requirements. Specifically, Petitioners assert that the Department's permit reviewer acknowledged that the vector control requirements in the regulations do in fact require a site specific vector abatement plan. Petitioners also assert that the professional engineer and drafter of the CNMP testified that Section 7.2 was not a site-specific plan but rather general BMPs an operator may use in the event a particular issue listed arose and that Section 7.6 labeled "Site Specific Vector and Odor Plan" was *integrator* rather than *site* specific and would be the same for any facility in which Columbia Farms acted as the integrator.

Petitioners' claims are not supported by the record. Ms. Shealy testified that Section 7.6 contains the site specific odor and vector abatement plans and that they comply with the regulatory requirements. Further, she testified that if Mr. Chaplin identified any problems with the CNMP she made the necessary correction to them and did not recollect being notified about a problem with Section 7.6. In pertinent part, Part 200.150 provides that "[t]he Animal Facility Management Plan shall contain an odor abatement plan for the animal facility, lagoon, treatment system, manure storage pond, and manure utilization areas, which ***may*** consist of" five enumerated criteria. 4 S.C. Code Ann. Regs. 61-43 Part 200.150(A) (emphasis added). Similarly, Part 200.160 provides that a "Vector Abatement Plan shall at a minimum consist of . . . [a] list of ***specific actions to be taken*** by the producer ***if*** vectors are identified as a problem." 4 S.C. Code Ann. Regs. 61-43 Part 200.160(A)(2) (emphasis added). By providing that the odor plan may consist of certain criteria and that the vector plan shall consist of a list of specific action to be taken, the regulations do not mandate "site specific" criteria limited in application to

only the proposed facility and no other facility. Rather, they require plans that are capable of controlling odor and vectors.

While challenging the Odor and Vector Abatement Plans based on the ground that they purportedly fail to comply with Part 200.150(A) and Part 200.160(A), respectively, Petitioners have offered no testimony or documentary evidence to establish whether the plans are effective in spite of the purported regulatory error. In fact, Respondents elicited testimony from one of Petitioners' witnesses that significantly undercuts Petitioners' claim. Dr. Carmen Parkhurst, Ph. D., is a professor of Poultry Science at North Carolina State University. The Court qualified Dr. Parkhurst as an expert in animal feeding operations, poultry science and waste management. In response to questioning by the Department, Dr. Parkhurst stated that, while he believed that it needed to be better defined, if the Sumerels followed the Vector Abatement Plan it was his expert opinion that the requirements would not be harmful and that they would deal with the vector issues. This testimony stands without contradiction and severely undercuts Petitioners' claim.

Further, Petitioners' assertion that the Department permit reviewer, Mr. Chaplin, acknowledged that the vector control requirements in the regulations do in fact require a site specific vector abatement plan, is misplaced. As noted above, Part 200.160(A)(2) does not require a "site specific" criteria that would be applicable to only one particular site and no other. Although in the cited testimony, Mr. Chaplin does state "[t]hat's correct" in response to a question about whether Part 200.160(A) "requires a site specific in that it has to identify what Mr. and Mrs. Sumerel are going to do to address each one of these problems specifically, not a list of potential best practices?" However, in that response, Mr. Chaplin also stated "[i]t says if vectors are identified as a problem. So they be able to run their facility and they don't have any vectors [sic]." This statement, without more, is incapable of constituting a Department interpretation that the Court is bound to follow. Moreover, given that Petitioners' own expert stated that the application of the Vector Abatement Plan would not be harmful and would achieve the goal of dealing with vectors, the Court finds that Petitioners' have failed to present sufficient evidence to show that the Vector Abatement Plans is inadequate. Accordingly, Petitioners have failed to establish that the Odor and Vector Abatement Plans in the CNMP are inadequate.

B. Water Impacts

Petitioners contend that the Department failed to adequately consider and evaluate the potential impacts of the Sumerel operation to the waters of the State. Specifically, Petitioners assert that the Department's review was inadequate because it was limited to determining whether the Site was suitable for mortality disposal by burial and because it did not consider the grading and stormwater management runoff.

The Department's review of water quality issues, set forth in the Agricultural Permitting Review Checklist Summary, was prepared contemporaneously by Mr. Chaplin and was admitted into evidence as Joint Exhibit 5 without objection. According to that document, Mr. Chaplin's conducted the following review:

1) Source Water Protection – checked ground water public supply well overlay and determined that the no public supply well was in the vicinity but a well, identified as G30169, is located 1.86 miles away. No additional setback distance is necessary because the regulatory minimum distance is 200 feet;

2) Impaired Water review - reviewed the 2004 303(d) State impaired water body list to distances from the proposed facility, manure treatment/storage structure, and manure utilization areas. Determinations – Proposed facility is located 21.01 miles from the Enoree River which is impaired for copper and zinc; Manure Utilization Areas – not applicable because the proposed facility will manage manure disposal with a broker; and that "Given the distance to headwaters (402 feet) from the facility footprint and this being a no discharge facility, no additional setbacks are required."

3) Stream classification – freshwater –"no additional setbacks are required."

4) Nonpoint sources – In Hydro Unit Code 0306010802 there are no other permitted facilities and there are 20 manure utilization areas. "No additional setbacks are required."

5) Topography maps for the facility site and 100-year floodplain map for facility site (JE 1, DHEC 112-13) – "Given the water resources reviews and the animal facility management plan states best management practices will be utilized, thus no anticipated increase in pollution to the waters of the state is not expected."

6) "Groundwater Review of the proposed burial sites, manure utilization areas, geography, soil types on the site, aquifer vulnerability and manure storage/treatment structures. ***Recommendations or Response***: As per memo dated October 22, 2012 from the Division of on-site wastewater management, zone of saturation was greater than 22 inches, however, the burial site is located within the SWPA. Therefore burial will not be allowed."

(emphasis in original).

Although Petitioners acknowledge that the Department correctly determined that the Site was not suitable for mortality burial, and acknowledge that the Department conducted 1) water quality reviews to determine the location of public supply wells, 2) 303(d) impaired water body list, and 3) reviewed and noted the stream classifications for the water bodies in the drainage route, Petitioners nevertheless claim that the Department should have considered the grading and stormwater runoff from the Site as part of the permitting process. To support their argument, Petitioners presented the testimony of Dr. David Hargett, Ph. D., who was qualified as an expert environmental science consultant and in water impacts. Specifically, Dr. Hargett noted that the necessary grading for the Sumerel facility would result in approximately 300,000 or more square feet (or some 6 acres) of land on the site disturbed and graded. Dr. Hargett testified that this massive grading endeavor will create "an industrial footprint with a high degree of imperviousness, a high degree of runoff." He went on to testify that this runoff would go downslope where there are multiple waters of the State and waters of the United States that are at risk from this operational runoff. Dr. Hargett opined that it was within the Department's purview to ensure these waters could handle the additional stresses presented by the Sumerel operation including manure contaminated runoff, ammonia emissions and other water transported and airborne emissions from the facility.

In response to Dr. Hargett's assertion, Respondents presented testimonial and documentary evidence regarding grading and stormwater runoff issues. Mr. Chaplin, testifying on behalf of the Department, stated that the animal facility permitting regulations contained in 4 S.C. Code Ann. Regs. 61-43 do not address stormwater. All stormwater issues are addressed in a separate permitting process conducted by the stormwater permitting section. In addition, Mr. Chaplin stated that since the proposed facility is a no-discharge facility and does not have manure utilization areas, the only expected runoff is from stormwater. Similarly, Ms. Shealy and Mr. Fulmer testified that the stormwater permitting process is separate from the agricultural permitting process.

Moreover, Dr. Hargett's testimony is contradicted by the testimony of Petitioners' second expert witness, Dr. Carmen Parkhurst, Ph. D. In response to questioning by the Department, Dr. Parkhurst stated as follows:

> Q: Okay. You're aware that in South Carolina grading, land grading and all those issues are covered in a separate permit?
> A: Yes, sir.

Q: Okay. So you would agree that the Department's permit and the plans that were submitted here would not necessarily – it would not be required of them to have those documents because they're not going to be reviewed by the reviewer in this case, correct?
A: That's correct.
Q: Okay. That doesn't mean they can't grade that site successfully?
A: Yes.
Q: Okay.
A: ***My only concern with the grading was that it was going to be costly.***
Q: Well, it may be costly, but you would agree that cost real only impacts the permittee and –
A: Yes, sir.
Q: -- whether they're willing to spend that money, correct?
A: Yes, sir.
Q: ***But you would agree that if they're willing to spend their money and they can make an adequate plan and it's reviewed by the Department and they follow it, that site could be turned into a perfectly safe and functioning poultry farm?***
A: ***Yes, sir.***

(emphasis added).

Further, Respondents established that the Sumerels were notified of the need to obtain a separate stormwater permit. Mr. Chaplin testified that he sent an e-mail along with an attachment entitled "New Compliance Requirements for SC DHEC Stormwater Permit" to the Sumerels. These documents were received into evidence, without objection, as Respondents Exhibit 1. Additionally, the Permit, which was entered into evidence as Joint Exhibit 3, provides in Special Condition 3 that "[y]ou are responsible for obtaining any other local permits that may be required for this project, including a building permit and **stormwater permit** in some counties." (emphasis in original). Finally, Mr. Sumerel, who will operate the facility, testified that he was aware that he will have to obtain a separate stormwater permit before he could grade the site and that he intended to apply for the required permit.

Part 200.70 provides that the Department, *inter alia*, "shall evaluate" the proposed site the following criteria to determine if additional distances are necessary: proximity to 100-year floodplain; location in the watershed; classification or impairment of adjacent waters; proximity to a State Designated Focus Area, Outstanding Resource Water, and State Approved Source Water Protection Area; proximity to other known point source discharges and potential water quality nonpoint sources; runoff prevention; and aquifer protection. 4 S.C Code Ann. Regs. Part

200.70(F). Mr. Chaplin's Checklist clearly shows that the Department considered each of the regulatory required water quality impacts and determined that the setback distances for the proposed facility were adequate to prevent an increase in water pollution. While Dr. Hargett passionately testified for why stormwater runoff and grading issues should be considered as a part of the water quality review for the proposed facility; that testimony was more than contradicted by Petitioners other expert, Dr. Parkhurst. Dr. Parkhurst acknowledged that grading and stormwater concerns are for poultry facilities in South Carolina are considered and reviewed in a separate permitting process. Despite this fact, unlike Dr. Hargett, Dr. Parkhurst had no reservations with the Department's review of grading and stormwater issues in a separate permitting process. Indeed, Dr. Parkhurst stated that his "*only concern* with the grading was that it was going to be *costly*" and Dr. Parkhurst agreed that if the Sumerel's were willing to spend the money necessary the Department could permit a "perfectly *safe* and functioning poultry farm." (emphasis added).

Further, the Court finds unpersuasive Dr. Hargett's statements that it was within the Department's purview to ensure these waters could handle the additional stresses presented by the Sumerel operation including manure contaminated runoff, ammonia emissions and other water transported and airborne emissions from the facility. In raising these as potential issues, Dr. Hargett failed to provide the Court with information necessary to ascertain if the alleged issues would cause an increase in pollution of the waters and air of the State. For example, Dr Hargett stated "[m]y experience in working with similar sites is that it's well documented that ammonia from concentrated animal feeding operations does affect water quality in surrounding receiving waters." However, Dr. Hargett was not offered or qualified as an expert on air quality issues, e.g., the level of ammonia emission from an animal feeding operation. Moreover, even if he had been qualified as such an expert, his testimony would be of no value because, at a minimum, he did not establish that there is a regulatory standard for ammonia in freshwater in South Carolina and, if so, what was the standard. Indeed, the Court notes that when Petitioners questioned Mr. Smutz, who was qualified as an expert, without objection, in the field of meteorology and agricultural permitting air quality issues, about ammonia emissions, he stated that since there are no state or federal standard and that without knowing at what concentration a substance is harmful it is impossible to determine when there would be an increase in pollution.

Since Mr. Smutz was qualified as an expert and none of his testimony was contradicted by Dr. Hargett, the Court finds no probative value in Dr. Hargett's statement.

Accordingly, based upon the evidence presented, the Court finds that Petitioners have not established that the Department did not conduct an adequate evaluation of potential water impacts posed by the Sumerel facility.

C. Average Live Animal Weight

Petitioners contend that the proposed Sumerel poultry operation is not a small facility subject to the 200 foot setback distance proscribed in Part 200.80(A)(5), but a large facility subject to the 400 foot property setback under Part 200.80(A)(6). Petitioners' claim the CNMP utilizes an outdated exit weight of 8.75 lbs. to arrive at an incorrect normal production animal live weight for the facility.

The CNMP is based on a normal production animal live weight for the facility of 493,200 pounds. This calculation is based upon a .25 lb. entry weight and 8.75 lb. exit or "process" weight yielding a 4.5 lb. average animal live weight: (8.75 exit weight + .25 entry weight)/2 = 4.5 average live weight). The CNMP specifies that there will be 109,600 birds on site at any one time thus yielding the 493,200 lb. normal production animal live weight: (109,600 x 4.5 normal production animal live weight = 493,200 pounds).[2] Based upon this calculation the Sumerel facility was designated a "small" operation under the regulations subject to the 200 foot property line setback.

Petitioners presented the testimony of Dr. Carmen Parkhurst, Ph. D. Dr. Parkhurst testified that the exit weight of broilers is determined by the length of the grow cycle. He testified that the 8.75 exit weight utilized in the CNMP was a dated and inaccurate number and that chickens tend to get bigger over time through genetic selection. To support his claim, Dr. Parkhurst pointed to his own recent study completed on March 1, 2014, in which he grew 80,000 birds over a sixty (60) day cycle. In that study, he alleged that the average exit weight of the birds in his study was 9.37 lbs. Based on these factors, Dr. Parkhurst testified that over the course of the designated sixty-three (63) day grow cycle the average exit weight of the birds grown at the Sumerel facility would likely be over nine pounds rather than the 8.75 lb. average utilized in the CNMP.

[2] See p. 25 for further explanation of this calculation.

In response, Respondents offered the testimony of Mr. Fulmer and Joy Shealy of Shealy Engineering, LLC. Mr. Fulmer testified that the CNMP provides "[t]he birds will be brought into the houses as chicks and are confined for a period of sixty-three (63) days or *until they reach an exit weight of eight and three quarter (8.75) pounds*." (emphasis added). Ms. Shealy testified that the integrator determines the average exit weight of the birds and informs the grower. Ms. Shealy stated that she and Mr. Fulmer got the average exit weight figure from the grower, and in this case, she believed Mr. Sumerel got the figure from Columbia Farms.

In addition to the testimony set forth above, the Court also received testimony from the Sumerels that is relevant to this issue. Mrs. Sumerel testified that the property upon which the proposed facility will be constructed was given to her husband and herself by her mother-in-law. The mother-in-law retains property abutting the proposed facility on the north and east. Mrs. Sumerel also testified that her mother-in-law fully supports their construction and operation of a poultry facility next to her property. In his testimony, Mr. Sumerel stated that his mother owns ninety (90) acres running along the northern, eastern, and southeastern boundaries of the proposed facility.

Considering the evidence adduced during the merits hearing, the Court finds that Petitioners have not met their burden with regard to live animal weight. Dr. Parkhurst's testimony established that each integrator, the company that owns the birds grown by the farmer, sets their own exit weight for the farms' flocks, and that the exit weight depends on the market and internal corporate factors for each integrator. Petitioners did not establish with credible evidence that the exit weight would exceed the amount calculated in the CNMP. Since it is the Petitioners' burden to establish that the calculations in the CNMP are incorrect, the Court finds that Petitioners' failure to ascertain from the integrator what exit weight they were requiring for the Sumerel facility is fatal to their claim.

D. Hay Bale Composting System

As discussed earlier, as part of the Department's review of the Sumerel application package, Mr. Chaplin requested that the Division of On-Site Wastewater, Bureau of Environmental Health to determine whether mortality could be disposed of by burial at the Site. This review was performed by Mr. Burriss, who sent a memorandum to Mr. Chaplin detailing the fieldwork performed to determine if the proposed mortality burial site was suitable. Based on

this information, Mr. Chaplin concluded that the proposed burial site was not suitable for mortality disposal.

In May 2013, the Sumerels submitted amendments to their facility plans. The amendments, which included the submission of a Composting Plan, changed the mortality disposal method from burial to hay bale composting, incineration, and landfill disposal. The amendments also included changes to the CNMP, which included incorporation of the new mortality disposal methods. Mr. Chaplin testified that composting of animal mortality is permitted under Part 200 regulations. Although permitted by regulation, Mr. Chaplin did not want to render a decision on whether it could be used in this case without seeking expert advice, since he had not observed a hay bale composting system in operation. Mr. Chaplin contacted Mr. Steven Henry, an employee of the National Resources Conservation Service (NRCS), an agency under the United States Department of Agriculture (USDA) for information on the system. The Department accepts for processing plans designed by a registered South Carolina professional engineer or an employee of the USDA, NRCS. Based on his discussions with Mr. Henry, Mr. Chaplin determined that hay bale composting systems were an appropriate way to compost dead animals.

The Composting Plan was prepared by Ms. Shealy and contains detailed information regarding construction and operation of the hay bale composting system. According to the Composting Plan, the composter will be located north of the location of the poultry houses. Based on the United States Geological Survey (USGS) Map included in the Composting Plan, the composter will be located at least 500 feet from the nearest water body. Hay bale composting is designed primarily for poultry broiler mortality disposal but is also used to dispose of swine, turkey, and bovine (cows and cattle) mortality. The composter works by loading the material in alternating layers of manure and the dead birds as indicated in Figure 2-15 entitled the *Dead bird bin compositing schematic*. Specifically, the diagram specifies from bottom to top the following: a concrete pad; first layer consisting of manure, straw, chickens, and manure; and then successive layers topped with a litter cover layer.

Regarding the operation of the Composter, Mr. Sumerel testified that the manure needed for the composter will come from the poultry houses and will be stored outside under a tarp at the facility. Mr. Sumerel also confirmed that composter would be built on top of either a compacted clay or concrete base.

Based on this information, Mr. Chaplin determined that the Compositing Plan was appropriate for the disposal of the mortality form the proposed facility and that on June 12, 2014, Mr. Chaplin determined that the Permit should be issued with conditions. Mr. Chaplin testified that the PSI performed by Ms. Matthews was not necessary for him to reach his determination on whether to authorize the hay bale composting system.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Court concludes the following as a matter of law:

The ALC has jurisdiction over this contested case matter pursuant to S.C. Code Ann. § 1-23-380 (Supp. 2013), S.C. Code Ann. § 44-1-60 (Supp. 2013), and 4 S.C. Code Ann. Regs. 61-43, Part 200.70(G). In reviewing this matter, the Court serves as the finder of fact and makes a *de novo* determination regarding the matters in controversy. Hill v. S.C. Dep't of Health & Envtl. Control, 389 S.C. 1, 9, 698 S.E.2d 612, 616 (2010) (citing Brown v. S.C. Dep't of Health & Envtl. Control, 348 S.C. 507, 512, 560 S.E.2d 410, 413 (2002)). The standard of proof to be used by the Court in weighing the evidence and making a decision on the merits during a contested case proceeding is the preponderance of the evidence. S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2013); CarMax Auto Superstores W. Coast, Inc. v. S.C. Dep't of Revenue, 397 S.C. 604, 609, 725 S.E.2d 711, 713-14 (Ct. App. 2012) (citations removed). In addition, Petitioner bears the burden of proof proving his case by the preponderance of the evidence. Young v. S.C. Dep't of Health & Envtl. Control, 383 S.C. 452, 459, 680 S.E.2d 784, 759 (Ct. App. 2009). Further, it is appropriate for the Court, while evaluating the evidence, to give due consideration to an "agency's expertise, technical competence and specialized knowledge." S.C. Code Ann. § 1-23-330(4) (Supp. 2013) ("The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.").

Pursuant to the Administrative Procedures Act, the South Carolina Rules of Evidence are applicable to this hearing. S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2013). Under Rule 702, SCRE, "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." An expert is granted wide latitude in determining the basis of his or her opinion, and where an expert's testimony is based upon facts sufficient to form an opinion, the trier of

fact must weigh its probative value. Small v. Pioneer Mach., Inc., 329 S.C. 448, 470, 494 S.E.2d 835, 846 (Ct. App. 1997). The trier of fact may give an expert's testimony the weight he or she determines it deserves. Florence County Dep't of Soc. Servs. v. Ward, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992). Additionally, the trier of fact may accept the testimony of one expert over that of another. S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 220-21, 417 S.E.2d 586, 589 (1992). However, expert testimony is limited to issues of fact as issues of law is generally inadmissible. Vortex Sports & Entm't, Inc. v. Ware, 378 S.C. 197, 207, 662 S.E.2d 444, 450 (Ct. App. 2008). "Regulations are interpreted using the same rules of constructions as statutes." Murphy v. S.C. Dep't of Health & Envtl. Control, 396 S.C. 633, 639, 723 S.E.2d 191, 195 (2012). "In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole." Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). "When interpreting a regulation, [a Court looks] for the plain, ordinary meaning of the words of the regulation, without resort to subtle or forced construction to limit or expand [its] operation." Converse Power Corp. v. S.C. Dep't of Health & Envtl. Control, 350 S.C. 39, 47, 564 S.E.2d 341, 346 (Ct. App. 2002). "The true guide to statutory construction is not the phraseology of an isolated section of provision, but the language of the statute as a whole considered in light of the manifest purpose." Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 260, 626 S.E.2d 6, 10 (2005). "The construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons." Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006).

The Permitting Process

All animal facilities in South Carolina are governed by the regulations governing the Standards for the Permitting of Agricultural Animals Facilities. These regulations, which are codified at 4 S.C. Code Ann. Regs. 61-43, were promulgated by the Department pursuant to the Pollution Control Act. See 4 S.C. Code Ann. Regs. 61-43 Part 100.200, Part 200.200, Part 400.130, and Part 500.60. Under this comprehensive regulatory scheme, the regulations governing the permitting of poultry facilities are found in Part 200, Animal Facilities other than Swine. 4 S.C. Code Ann. Regs. 61-43 Part 200. All permits issued under this Part are no-discharge permits. 4 S.C. Code Ann. Regs. 61-43 Part 200.20(B). As a no-discharge permit,

manure generated by the facility is not discharged into the environment. Pursuant to Part 200, an applicant is required to first have a PSI inspected by the Department. 4 S.C. Code Ann. Regs. 61-43 Part 200.50(A); Part 200.70(D). The purpose of the PSI is to determine if a new animal facility or an addition to an existing facility is capable of being placed at the location. If the proposed site is approved, the applicant is notified in writing and the applicant is able to finalize facility plans and the application.

Part 200.50 sets forth the requirements for the submission of Animal Facility Management Plan to the Department for review. An application package must include the following, if applicable:

1. A complete application form;
2. An Animal Facility Management Plan prepared by the qualified Natural Resource Conservation Service (NRCS) personnel or a South Carolina registered professional engineer;
3. Groundwater monitoring well details;
4. Odor Abatement Plan
5. Vector Abatement Plan;
6. Dead Animal Disposal Plan;
7. Soil Monitoring Plan;
8. Plans for other manure storage or treatment structures;
9. Documentation that the applicant has sent Notice of Intent to Build or Expand forms to all parties entitled to such notice;
10. An Emergency Plan;
11. Written agreements for the reduction of setbacks;
12. Application and other required fees.

4 S.C. Code Ann. Regs. 61-43 Part 200.50(B). Prior to submission of the application package, the applicant is required under the regulation to notify "all property owners within 1320 feet of the proposed location of the facility (footprint of construction) of the applicant's intent to build an animal facility." 4 S.C. Code Ann. Regs. 61-43 Part 200.60(A). Once the Department receives the application, the Department shall "post up to four notices on the perimeter of the property or in close proximity to the property, in visible locations as determined by the Department." 4 S.C. Code Ann. Regs. 61-43 Part 200.60(A). The Department reviews all comments received

regarding the application and may hold a public meeting to discuss and seek resolution of public concerns about Sumerel Farm if twenty (20) or more comments are received from different people. 4 S.C. Code Ann. Regs. 61-43 Part 200.60(D).

Part 200.70 contains the decision-making requirements for the Department. 4 S.C. Code Ann. Regs. 61-43, Part 200.70. All decisions made by the Department are subject to the mandate to "act on all permits to prevent, so far ***as reasonably possible considering relevant standards under state and federal laws***, an ***increase in pollution of the waters and air*** of the State from any new or enlarged sources." 4 S.C. Code Ann. Regs. 61-43 Part 200.70(E) (emphasis added). Specifically, Department is required to consider the following non-exclusive factors, if applicable:

1. Proximity to 100-year floodplain;
2. Geography and soil types on the site;
3. Location in a watershed;
4. Classification or impairment of adjacent water;
5. Proximity to State Designated Focus Area; Outstanding Resource Water; Heritage Corridor; Historic Preservation District; State Approved Source Water Protection Area; state or national park or forest; state or federal research area; and privately-owned wildlife refuge, park, or trust property;
6. Proximity to other point source discharges and potential nonpoint sources;
7. Slope of the land;
8. Animal manure application method and aerosols;
9. Runoff prevention;
10. Adjacent groundwater usage;
11. Down-wind receptors; and
12. Aquifer vulnerability.

4 S.C. Code Ann. Regs. 61-43 Part 200.70(F).

In addition, the facility must meet all the applicable siting criteria contained in 4 S.C. Code Ann. Regs. 61-43 Part 200.80, which are minimum distances that the Department may, on a case-by-case basis, increase. S.C. Code Ann. § 46-45-80 (Supp. 2013); see 4 S.C. Code Ann. Regs. 61-43 Part 200.70(F).

Of particular note in this case is the separation distance for facilities with a normal live production weight of 500,000 pounds or less. Specifically, Part 200.80 provides that:

> [t]he separation distance required between the animal facility or growing areas (pens or barns not including range areas) and the lot line of real property owned by another person is 200 feet or 1000 feet from the nearest residence, whichever is greater, when the normal production animal live weight at any given time is 500,000 pounds or less.

4 S.C. Code Ann. Regs 61-43 Part 200.80(A)(5). "'Normal production animal live weight at any given time' means the maximum number of animals at the facility at any one time multiplied by the average live weight of those animals." 4 S.C. Code Ann. Regs. 61-43 Part 50(WW). "'Average animal live weight' means the sum of the average exit weight of the animal from the facility and the average entry weight divided by two, as shown by the following formula: Average animal live weight = (Average Exit Weight + Average Entry Weight)/2." 4 S.C. Code Ann. Regs. 61-43 Part 50(K). The 200 foot property line setback distance can be reduced by a written waiver of the affected property owner. 4 S.C. Code Ann. Regs. Part 200.80(G).

A. Odor and Vector Abatement Plans

Petitioners claim that the Odor and Vector Abatement Plans contained in the CNMP do not comply with the regulatory requirements for such plans. The regulatory requirements governing odor and vector abatement plans are located in Parts 200.50, 200.150 and 200.160. Part 200.50, which contains the requirements for animal feeding operation management plan, provides in pertinent part that:

> B. A producer who proposes to build a new animal facility or expand an existing animal facility shall make application for a permit under this part using an application form as designated by the Department. The following information shall be included in the package.
>
> * * *
>
> 4. The Animal Facility Management Plan shall contain an odor abatement plan for the animal facility, lagoon, treatment system, manure storage pond, and manure utilization areas. For more specific details, see Section 200.150 (Odor Control Requirements).
>
> 5. A Vector Abatement Plan shall be included for the animal facility, lagoon, treatment system or manure storage pond, and manure utilization areas. For more specific details see Section 200.160 (Vector Control Requirements).

4 S.C. Code Ann. Regs. 61-43 Part 200.50(B)(4) and (5).

Part 200.150 provides in pertinent part that:

> The Animal Facility management Plan shall contain an odor abatement plan for the animal facility, lagoon, treatment system, manure storage pond, and manure utilization areas, which ***may*** consist of the following:

1. Operation and maintenance practices which are used to eliminate or minimize undesirable odor levels in the form of a Best Management Plan for Odor Control;
2. Use of treatment processes for the reduction of undesirable odor levels;
3. Additional setbacks from property lines beyond the minimum setbacks given in this part;
4. Other methods as may be appropriate; or
5. Any combination of these methods.

4 S.C. Code Ann. Regs. 61-43 Part 200.150(A) (*emphasis added*).

Part 200.160 provides in pertinent part that:

A. The Vector Abatement Plan shall at a minimum consist of the following:

1. ***Normal management practices*** used at the animal facility, lagoon, treatment system, manure storage pond, and manure utilization *areas* to ensure there is no accumulation of organic or inorganic materials to the extent and in such a manner as to create a harborage for rodents or other vectors that may be dangerous to public health.

2. A ***list of specific actions to be taken*** by the producer if vectors are identified as a problem at the animal facility, lagoon, treatment system, manure storage pond, or any manure utilization area. These actions should be listed for each vector problem, e.g., actions to be taken for fly problems, actions to be taken for rodent problems, etc.

4 S.C. Code Ann. Regs. 61-43 Part 200.160(A)(*emphasis added*).

Taken together, the language of the various regulations can be summed up as requiring that every animal facility management plan must have: an odor abatement plan for the animal facility, lagoon treatment system, manure storage pond, and manure utilization areas, as applicable, which may consist of, but not required, the five enumerated criteria; and a vector abatement plan that contains BMPs and a list of specific actions to be taken for specific identified vectors.

Petitioners nevertheless claim the information in the foregoing Sections consist of BMPs and not "site specific" requirements as required under the regulations. The best evidence of the intent of the regulation is its language and "[w]here the [regulation's] language is plan and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Reviewing each regulation under this standard does not

support Petitioners' claim. Part 200.150(A) provides that the odor abatement plan must contain a plan that addresses the appropriate components of the facility such as the animal facility, lagoon, and manure utilization area. The Odor Abatement Plan contained in Section 7.3 and 7.6 complies with the regulatory standard. It provides information on how to control odors in growing and storage areas through the use of general information such as the use of vegetation and chemical treatment and specifically identifies the chemical approved by the integrator, who own the broilers, for use around the birds.

Similarly, Part 200.160(B) provides that the vector abatement plan must contain BMPs to be used and a list of specific actions to be taken if vectors are identified. The Vector Abatement Plan contained in Sections 7.2 and 7.6 complies with these requirements. Section 7.2 complies with Part 200.160(A)(1) in that it contains numerous BMPs, categories by vector type, i.e., insect, rodent, and scavenging animal, to be used if such vectors become a problem. Section 7.6 complies with Part 200.160(A)(2) in that it lists specific rodenticides and insecticides that are to be used in the event of specific vectors. Since the regulation merely asks for the plan to contain a list of the actions to be taken and does not mandate the inclusion of information such as the precise number of rodenticide bait traps and their locations, which would clearly be "site specific," it is clear that Vector Abatement Plan complies with the regulation. Thus, the express language of the regulation does not support Petitioners' claim.

Petitioners claim that to interpret the regulations as set forth above would be to say that a Facility Management Plan may contain general BMPs and integrator, rather than site specific abatement measures. "When interpreting a regulation, [a Court looks] for the plain, ordinary meaning of the words of the regulation, without resort to subtle or forced construction to limit or expand [its] operation." Converse Power Corp., 350 S.C. at 47, 564 S.E.2d at 346. Further, "[t]he true guide to statutory construction is not the phraseology of an isolated section of provision, but the language of the statute as a whole considered in light of the manifest purpose." Floyd, 367 S.C. at 260, 626 S.E.2d at 10. With regard to odor abatement, Part 200.150 expressly mandates that facility operators are to use BMPs normally associated with proper operation. 4 S.C. Code Ann. Regs. 61-43 Part 200.150(B) ("Producers ***shall utilize Best Management Practices normally associated with the proper operation and maintenance*** of an animal facility, lagoon, treatment system, manure storage pond, and any manure utilization area to ensure an undesirable level of odor does not exist.") (emphasis added). Further, Part 200.150 expressly provides that

although a producer cannot "cause, allow, or permit emission into the ambient air" of any substance or substances "in quantities that an undesirable level of odor is determined to result," and that after such a determination the Department may specific abatement or control practices. 4 S.C. Code Ann. Regs. 61-43 Part 200.150(C), (D), and (E). With regard to vector abatement, the regulation does not mandate BMPs but provides a substantial list of BMPs that the Department may require. 4 S.C. Code Ann. Regs. 61-43 Part 200.160(D). Since Part 200.150(B) mandates BMPs and only mandates specify criteria after an operating facility has been found to be emitting undesirable levels of odor, and Part 200.160(D) provides a list of BMPs that the Department can require and which the Sumerel Vector Abatement Plan incorporated, the Court finds ample support in the Odor Abatement Plan and Vector Abatement Plan contained in the CNMP fully comply with the requirements set forth in Part 200.150 and Part 200.160, respectively.

Finally, the Court is persuaded by the testimony of Dr. Parkhurst when he was cross-examined about the Vector Abatement Plan. Dr. Parkhurst stated that, while he believed that it should be better defined, if the Sumerels followed the Vector Abatement Plan, it was his expert opinion that the BMPs would not be harmful and that they would deal with the vector issues. This Count finds this concession important since Petitioners have characterized the Vector Abatement Plan as not being protective of the public and environment. Accordingly, because the express language of Part 200.150 and Part 200.160 do not mandate "site specific" odor and vector abatement plans and because the Odor Abatement and Vector Abatement Plans in the Sumerel CNMP contain all of the required actions and most of the recommended actions, the Court concludes that Petitioners' claims are unfounded.

B. Water Impacts

Petitioners contend that the Department failed to uphold the charge of Part 200.70, which mandates that "[t]he Department shall act on all permits to prevent, so far as reasonably possible considering relevant standards under state and federal laws, an increase in pollution of the waters and air of the State from any new or enlarged sources." 4 S.C. Code Ann. Regs. 61-43 Part 200.70(E). Petitioners' argue that the Department did not consider all of the relevant information necessary to adequately evaluate potential impacts of the Sumerel operation upon the surrounding waters of the State and therefore the agency's determination that the proposed operation presents no detrimental water impacts was clearly erroneous, affected by an error of law, made upon unlawful procedures and arbitrary and capricious. The Court does not agree and

finds that the Department adequately evaluated whether the Sumerel operation would cause an increase in pollution to the waters of the State as required under the applicable regulations.

In evaluating a permit application under Part 200, the Department is required to consider the non-exclusive list of consideration set out in Part 200.70(F). The requirements of that provision are as follows:

> The setback limits given in this part are minimum siting requirements . . . . On a case-by-case basis the Department may require additional separation distances applicable to animal facilities . . . . The Department shall evaluate the proposed site including, but not limited to, the following factors when determining if additional distances are necessary:
>
> 1) Proximity to 100-year floodplain;
> 2) Geography and soil types on the site;
> 3) Location in a watershed;
> 4) Classification or impairment of adjacent water;
> 5) Proximity to State Designated Focus Area; Outstanding Resource Water; Heritage Corridor; Historic Preservation District; State Approved Source Water Protection Area; state or national park or forest; state or federal research area; and privately-owned wildlife refuge, park, or trust property;
> 6) Proximity to other point source discharges and potential nonpoint sources;
> 7) Slope of the land;
> 8) Animal manure application method and aerosols;
> 9) Runoff prevention;
> 10) Adjacent groundwater usage;
> 11) Down-wind receptors; and
> 12) Aquifer vulnerability.

4 S.C. Code Ann. Regs. 61-43 Part 200.70(F).

The plain and clear language of this subsection requires that the Department take the factors listed in subsection (F)(1)-(12) into account when evaluating an animal feeding operation permit application such as the one at issue. It is within the Department's discretion as to whether, after consideration of those factors and others, the facility requires additional setbacks. Further, with regard to the following particularly sensitive areas, the regulations mandate that the Department shall evaluate them for more stringent requirements: 1) Source water protection; 2) 303(d) Impaired Waterbodies List; 3) Proximity to Outstanding Resource Waters; and 4) Aquifer Vulnerability Area. 4 S.C. Code Ann. Regs. 61-43 Part 200.140(C). Based upon the evidence presented in this case, the Court finds that the Department fulfilled its obligations under the regulations.

The Department's review of water quality issues, set forth in the Agricultural Permitting Review Checklist Summary, was admitted into evidence as Joint Exhibit 5 without objection. The Review Checklist Summary set forth each of the criteria contained in Part 200.70(F) and requires the reviewer to input the steps taken to obtain the relevant information and to provide a determination as to whether "additional requirements or setbacks" were required. A review of the Review Checklist Summary indicates that Mr. Chaplin reviewed each of the twelve (12) criteria set forth in Part 200.70(F) and rendered setback determinations on all relevant criteria. Further, Mr. Chaplin testified that he completed the form contemporaneous to his review of the criteria, and neither the form nor Mr. Chaplin's testimony on this fact was challenged by the Petitioners. Accordingly, the Court finds that the Department complied with the requirements contained in Part 200.70(F).

Instead of challenging the review of the twelve (12) mandated criteria set forth in Part 200.70(F), Petitioners challenge the water quality review on the grounds that the Department did not consider the grading necessary to prepare the Site for construction and stormwater runoff. According to Dr. Hargett, this grading will create large areas of impermeable surface, thereby increasing runoff at the site. The Department countered this argument by presenting evidence establishing that issue regarding grading of a proposed facility and stormwater runoff are considered and reviewed by the Department in a separate permitting process.

Mr. Chaplin, testifying on behalf of the Department, stated that the animal facility permitting regulations contained in 4 S.C. Code Ann. Regs. 61-43 do not address stormwater. All stormwater issues are addressed in a separate permitting process conducted by the stormwater permitting section. In addition, Mr. Chaplin stated that since the proposed facility is a no-discharge facility and that it had not manure utilization areas, the only expected runoff is from stormwater. Similarly, Ms. Shealy and Mr. Fulmer testified that the stormwater permitting process is separate from the agricultural permitting process.

It is well established that "[t]he construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons." Sloan, 370 S.C. at 469, 636 S.E.2d at 607. The Department's reviewer, Mr. Chaplin, testified that the animal facility permitting regulations contained in 4 S.C. Code Ann. Regs. 61-43 do not address stormwater. However, Petitioners assert that stormwater is covered because "runoff prevention" is one of the mandatory review criteria enumerated in Part

200.70(F). 4 S.C. Code Ann. Regs. 61-43 Part 200.70(F)(9). Also, Petitioners posit that "Runoff" is a defined by regulation as "rainwater or other liquid that drains over land on any part of a land surface and runs off of the land surface." 4 S.C. Code Ann. Regs. 61-43 Part 50(FFF). After reviewing the Part 200, the Court is convinced that Department's interpretation is not contrary to the plain language of the regulation and would not lead to an absurd result.

As discussed in the permitting process section, Part 200 contains Standards for the Permitting of Agricultural Animal Facilities (other than swine).[3] The "part applies to: a. [a]ll new animal facilities; b. [a]ll expansions of existing animal facilities; c. [n]ew manure utilization areas for existing animal facilities . . . and all land where animal manure and other animal by-products are applied." 4 S.C. Code Ann. Regs. 61-43 Part 200.10(B)(1) and (3). A "manure utilization area" is defined as "land on which animal manure (including swine manure) is spread as a fertilizer and is synonymous with land application site or land application area." 4 S.C. Code Ann. Regs. 61-43 Part 50(SS).

If an applicant seeks a permit for a facility that will apply manure, the Animal Facility Management Plan is required to include "[c]oncentration of constituents in liquid animal manure" or "[c]oncentration of constituents in dry animal manure." 4 S.C. Code Ann. Regs. 61-43 Part 200.50(B)(2)(f) and (g). Part 200 also requires that such Animal Facility Management Plan include the following: "[a] crop management plan which includes the time of year of the animal manure application and how it relates to crop type, crop planting, and harvesting scheduled (if applicable) for all manure utilization areas;" and "[f]acility and manure utilization information" 4 S.C. Code Ann. Regs. 61-43 Part 200.50(B)(2)(h) and (i). In addition to these requirements, Part 200 contains the following regulatory provisions: Part 200.100 (Manure Utilization Area Requirement); Part 200.110 (Spray Application System Requirements); and Part 200.120 (Frequency of Monitoring for Animal Manure). 4 S.C. Code Ann. Regs. 61-43 Parts 200.100; 200.110; and 200.120. Runoff as it relates to manure utilization areas is discussed in the following subsections of these regulations: Part 200.100(B)(9) ("fields that are high in phosphorous may also be required to incorporate additional runoff control or soil conservation features as directed by the Department"); Part 200.110(D)(1) ("As determined by soil conditions, the hydraulic application rate may be reduced below the agronomic rate to ensure no surface ponding, runoff, or excessive nutrient migration to the groundwater occurs."); and Part

[3] Part 100 governs the standards for swine and in most respects its provisions are identical to Part 200.

200.110(F) ("Conservation measures, such as terracing, strip cropping, etc., may be required in specific areas determined by the Department as necessary to prevent potential surface runoff from entering or leaving the manure utilization areas. The Department may consider alternate methods of runoff controls that may be proposed by the applicant, such as berms."). 4 S.C. Code Ann. Regs. Parts 200.100(B)(9); 200.110(D)(1); and 200.110(F).

These provisions clearly indicate that when runoff is referred to in the Part 200 regulations it is in the context of discharge of manure into the environment. Nothing in the regulations indicate that grading and general stormwater runoff is considered. Indeed, information on these issues is not required to be included in the Animal Facility Management Plan. See 4 S.C. Code Ann. Regs. 61-43 Part 200.50. Further, the regulations do not contain any separate provisions like those for manure utilization fields and spray fields. Accordingly, the Court finds that interpretation that grading and stormwater issues are not reviewed under the Part 200 regulations is fully supported by the regulations when considered in their entirety.

C. Average Live Animal Weight

Petitioners contend that the 8.75 lb. average exit weight figure utilized in the Sumerel Plan is dated and inaccurate and that the birds will have an exit weight of at least nine (9) lbs. Based upon this figure, according to the Petitioners, the Sumerel operation is a "large animal feeding facility" subject to the 400 foot property line setbacks which cannot be accommodated on the proposed site.

The Court disagrees with Petitioners position on this issue and finds the testimony of Petitioners' expert unpersuasive and sufficiently challenged by the Respondents' witnesses. Dr. Parkhurst testified that the average exit weight of a broiler chicken over a sixty-three (63) day flock cycle would be at least nine (9) lbs. He pointed to his own very recent study in which he grew 80,000 birds over a sixty (60) day cycle which yielded an average exit weight of 9.37 lbs. per bird. But, Dr. Parkhurst did not present information regarding the conditions under which the flock was grown. For example the size of the barn and the type of feed provided to the birds. However, even if this information was presented, the Court would still have found Dr. Parkhurst's testimony unpersuasive since Dr. Parkhurst presented no testimony contradicting the average exit weight being required by Columbia Farms. Dr. Parkhurst testified that each integrator sets their own exit weight for their flocks based on factors including market forces and internal corporate factors.

In the Court's view, Dr. Parkhurst's testimony fails to show by a preponderance of the evidence that the average exit weight is inaccurate. Since the Permit mandates that the facility must be operated in accord with the CNMP, the fact that it requires removal of the birds when the average live exit weight reaches 8.75 pounds is a binding condition of the permit and is enforceable by the Department. Accordingly, the Court finds that the preponderance of the reliable evidence established that the 8.75 lbs. average exit weight figure utilized for the Sumerel CNMP is accurate and the proposed facility is correctly permitted as a small animal facility.

D. The Department's Review of the Application

Petitioners contend the Permit is invalid because the application was purportedly incomplete. To support this contention, the Petitioners set forth a litany of alleged deficiencies. Specifically they allege as follows: 1) nowhere within the CNMP and the Composting Plan indicates or establishes where a manure stacking shed for storage of such material would be located; 2) the Composting Plan fails to specify a clay of concrete pad or which model incinerator will be used; 3) the Composting Plan does not contain diagrams indicating how a hay bale composting system works, and 4) the Composting Plan lacks an adequate Odor and Vector Abatement Plan. "An adequate *de novo* review renders harmless a procedural due process claim of the lower administrative body." Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Office, 346 S.C. 158, 174, 551 S.E.2d 263, 274 (2001); see also Waste Mgmt. of Carolinas, Inc. v. S.C. Dep't of Health & Envtl. Contol, et al., 2008 WL 4659522 at * 3, Docket No. 07-ALJ-07-0429-CC (Sept. 4, 2008) ("since the ALC hears these cases de novo, after an evidentiary hearing on the merits of this case, the Court can factually and legally address these issues, and decide whether a permit should be issued according to the proper legal standards."). In this case, all parties were noticed and in fact appeared for a merits hearing that lasted two days. Each side was accorded latitude to present their case and each party made their case. Therefore, any procedural insufficiencies with the CNMP and the Composting Plan can be corrected by this Court based on the Court's view of the record before it.

With regard to the stacking shed, Mr. Chaplin testified that Part 200 does not have a requirement for a stacking shed, and that a producer can stack manure outside of the barns for up to three days without being covered. He also testified that because of cost many permittees wait until after they have constructed their facility and are in operation before applying for a stacking

shed permit because of NRCS's cost sharing program. Given these factors, the Court finds that the fact that neither the CNMP nor the Composting Plan contains information regarding the stacking shed is immaterial to the permit since it is not required by regulation.

With regard to whether a pad should be required under the hay bale composter, the Court finds that the Permit should specify that the composter must be placed upon a clay or concrete pad in accord with Part 200.100(B)(21) ("If the manure is stockpiled more than three (3) days, the manure shall be stored on a concrete pad or other approved pad (such as plastic or clay lined) and covered with an acceptable cover to prevent odors, vector attraction, and runoff."). Further, the Court finds that the Sumerels are not required to identify the model of incinerator that they intend to use. Part 200 provides that if they do not use a model already approved by the Department, they will have to apply for a permit from the Department Bureau of Air Quality before they could install and operate an incinerator. 4 S.C. Code Ann. Regs. 61-43 Part 200.40(F) and Part 200.140(C).

With regard to diagrams contained in the Composting Plan, the Court finds that the purpose of the illustrations is to provide a graphic representation of how the composting system should work. In reviewing the diagram in Figure 2-15, the Court finds that there is no indication that the illustration is not a hay bale composting system. In addition to the concrete pad and layers of manure and dead poultry, the illustration indicates that the poultry are to be placed on a layer of straw, which in turn is on top of a layer of manure. Further, the illustration indicates that the top-most layer is a layer of litter which acts as a cover. During her testimony, Ms. Shealy stated that the diagram illustrates the layering recommendation that is applicable to all types of composter, including hay bale composters. Based on the representations of composting systems described during the trial, the Court finds that this illustration does not appear to be that of a drum system. Therefore, the Court finds the illustrations adequate for their intended purpose.

Finally, with regard to the Odor and Vector Abatement Plans, the Court has previously discussed this in depth with regard to the CNMP. With regard to the Composting Plan, the Court finds the plans contained in the document more than adequate since Part 200.130, which governs the requirements for dead animal disposal has no requirements for such plans. See 4 S.C. Code Ann. Regs. 61-43 Part 200.50(B)(4) and (5).

Accordingly, the Court finds for the reasons set forth above, the procedural defects asserted by Petitioners are insufficient grounds upon which to deny the Permit.

E. Impact Upon Petitioners' Substantial Rights

Finally, Petitioners claim that allowing the Sumerel facility to be constructed and to operate will harm their quality of life and constitute a nuisance. These claims are unspecified and are cumulative to the specific issues presented above. The Court finds that these claims are at best speculative, as the facility has not been constructed or placed in operation. Further, the Court notes that the legislative purpose for the promulgation of the Standards for Permitting of Agricultural Animal Facilities is to set objective criteria for the Department and for courts reviewing Department permitting decisions to balance the competing interests of the public and the farming. Based upon the evidence presented at trial, the Court finds that the proposed Sumerel operation will not have detrimental effects upon Petitioners' substantial rights, including the quiet use and enjoyment of their property.

ORDER

Based upon the forgoing Findings of Fact and Conclusions of Law, the Court finds that Petitioners have failed to meet their burden of proof and have not shown by a preponderance of the evidence that the Department issued Permit No. 19647-AG in violation of 4 S.C. Code Ann. Regs. Part 200 or that the Department's decision: 1) constituted a violation of constitutional or statutory provisions; 2) was made upon unlawful procedure; 3) was affected by error of law; 4) is clearly erroneous in view of the reliable, probative, and substantial evidence; and/or 5) was arbitrary and capricious and an abuse of discretion; and 6) prejudiced Petitioners' substantial rights.

I further find and conclude that the Department has fully, correctly and completely complied with all statutory and regulatory prerequisites to the issuance of the subject permit.

Therefore based upon the foregoing,

IT IS HEREBY ORDERED that the issuance of Bureau of Water Agricultural Permit ND0088307, Permit Number 19,647-AG to Respondents Lisa Sumerel and Sumerel Poultry Farm by the South Carolina Department of Health and Environmental Control is **AFFIRMED.**

AND IT IS SO ORDERED.

John D. McLeod
Administrative Law Judge

January 12, 2015
Columbia, South Carolina

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SC Court of Appeals

CERTIFICATE OF SERVICE

I, Anthony R. Goldman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

January 12, 2015
Columbia, S.C.

Anthony R. Goldman
Judicial Law Clerk

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SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

November 6, 2015

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

The Honorable John D. McLeod, Administrative Law Judge

Case No. 13-ALJ-07-0395-CC
Appellant Case No. 2015-000700

Rick Still, Donice Still, Christine Orr and Terry Orr.....Appellants,

v.

South Carolina Department of Health and Environmental Control and
Lisa Sumerel and Sumerel Poultry Farm .....Respondents.

FINAL BRIEF OF APPELLANTS

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I. STATEMENT OF THE ISSUES ON APPEAL

1. Is the ALC's conclusion that the preponderance of the evidence established that the 8.75 lbs. average exit weight figure utilized in the Sumerel Comprehensive Nutrient Management Plan is accurate and the proposed facility correctly permitted as a "small animal facility" not supported by the substantial evidence presented at trial and affected by one or more error of law?

2. Did the ALC err in finding that DHEC conducted a full and adequate evaluation of the proposed concentrated poultry operation as required under the applicable statutes and regulations, including S.C. Reg. 61-43 Part 200.70(F)(7)?

II. STATEMENT OF THE CASE

This matter came before the Administrative Law Court pursuant to S.C. Code Ann. § 1-23-310 *et seq.* and the S.C. Code Ann. § 44-1-60, for a contested case hearing regarding the South Carolina Department of Health and Environmental Control's ("DHEC" or "Department") decision to issue Bureau of Water Agricultural Permit No. 19647-AG (the "Permit") dated June 2, 2013 to Lisa Sumerel for the operation of Sumerel Poultry Farm – a proposed broiler animal feeding operation off Poole Town Rd. in Laurens, South Carolina. A hearing was held before the ALC in this matter on August 25 and 26, 2014, in Columbia, South Carolina.

The Appellants, Rick and Donice Still and Christine and Terry Orr were the Petitioners in the case below. Appellants presented the testimony of two experts witness - Dr. David Hargett, Ph. D., who the Court qualified as an expert environmental science consultant and on water impacts and Dr. Carmen Parkhurst, Ph. D., a Professor Emeritus of Poultry Science at North Carolina State University who the Court qualified as an expert in animal feeding operations, poultry science, and waste management. Appellants also called several DHEC personnel who took part in evaluating the Sumerel Permit application and Management Plans and decision to approve the Permit. Those witnesses included Chrissy Matthews, who performed the two preliminary site inspections at the proposed site, Stephen Smutz from the Bureau of Air Modeling section who evaluated potential harmful emissions of regulated airborne pollutants, and the Section Manager over Agricultural Permitting William Chaplin who oversaw the entire permit review, performed the final review of the Sumerel application and approved the Permit. Appellants also called the permit applicant Lisa Sumerel and designated operator Mike

Sumerel as witnesses in their case. Finally, Appellants Terry Orr, Christine Orr, and Rick Still testified on their own behalf.

Respondents Lisa and Mike Sumerel presented the testimony of Leon Fulmer and Joy Shealy, both of Shealy Engineering, LLC, the firm that drafted both the Comprehensive Nutrient Management Plan (*hereinafter* the "Management Plan" or "CNMP") and the Dead Animal Disposal Plan (*hereinafter* "DAD Plan") for the Sumerel facility.

The Department presented no witnesses, relying on cross examination of those called by Appellants and the Sumerel Respondents. The Department also did not put up a case in chief.

At the conclusion of trial, the ALC requested the parties each provide proposed orders to the Court. Per the ALC's instructions, the Appellants submitted their proposed order on October 21, 2014. Respondents then submitted a proposed order on December 4, 2014. The lower court asked Appellants to offer comments on/responses to the Respondents proposed order, which were submitted on December 22, 2014.

The ALC issued its Final Order and Decision on January 12, 2015 (the "Order") upholding DHEC's decision to issue the Sumerel Permit. On January 22nd Appellants filed a Motion to Reconsider the Court's January 12th Order. (R. pp. 37-49). DHEC filed a Reply to that motion on February 5th. (R. pp. 50-71).[1] The ALC did not issue a ruling on Appellants Motion to Reconsider, and therefore, upon the passage of thirty days, effectively denied the Motion. Appellants filed a Notice of Appeal on April 6, 2015.

[1] Appellants filed a letter in response to a particular portion of the Department's Reply. (R. pp. 72-75). On February 11th, the ALC emailed all counsel to address the AgraMetrics issue. (R. p. 76).

III. STATEMENT OF THE FACTS

On April 23, 2012 the Department received a Preliminary Site Inspection Request from the Sumerels for a proposed animal feeding operation on Poole Town Rd. in Laurens, South Carolina. On April 23rd, Chrissy Matthews from DHEC's regional office in Greenwood conducted a preliminary site inspection. (*See* R. pp. 377-78). Ms. Matthews performs inspections for agricultural facilities, including routine, compliance, and preliminary site inspections. (R. p. 82/Tr. p. 19). During her inspection, Ms. Matthews completed a Preliminary Site Inspection Checklist reflecting her evaluation of the property. By letter dated April 27, 2012, DHEC notified the Sumerels that it preliminarily approved the site for a broiler facility and instructed them to proceed with obtaining and submitting the proper permit application materials. The Sumerels obtained Joy Shealy, of Shealy Engineering to prepare and submit the plan and application materials to DHEC.

On October 11, 2012 the Department received an application and Comprehensive Nutrient Management Plan ("CNMP") for Sumerel Poultry Farm. The Management Plan and application called for the construction and operation of four poultry houses, each housing 27,400 broilers for a total facility capacity of 109,600 birds. The Sumerels sent out notices to several of their nearby neighbors as required by the regulations, including the Rick and Donice Still and Terry and Christine Orr. (R. pp. 269-300).

On October 11, 2012 the Department began and completed its Administrative Review of the Sumerel application. (R. pp. 377-78). That same day William Chaplin sent review documents to the Bureau of Air Quality and Division of On-Site Wastewater Management in the Bureau of Environmental Health. (R. pp. 377-78; R. pp. 393-95). On

October 16, 2012 Chaplin received a memorandum from the Bureau of Air Quality reviewing the impact on "down-wind receptors." (R. pp. 396-97). The memorandum concluded that the proposed Sumerel facility will "be in attainment with all applicable ambient air quality standards [and] [i]n consideration of the relevant standards under state and federal laws, an increase in air pollution is not expected from the proposed operation." (R. p. 397). On October 22, 2012 Chaplin received a memorandum from the On-Site Wastewater Management Division indicating fieldwork was performed to determine if the proposed mortality burial site was suitable. It was determined that the proposed burial site was not suitable for mortality disposal. (R. p. 125/Tr. p. 191).

The Department posted numerous public notice signs as required in the nearby area noting it would accept comments on the Sumerel facility. (R. pp. 377-78). A petition with the names of 77 individuals opposed to the Sumerel operation was submitted to the Department on October 25, 2012. (R. pp. 377-78).

DHEC began its technical review of the Sumerel application and CNMP on February 2, 2013. (R. pp. 377-78). On February 25, 2013 the Department sent out letters to the 77 individuals on the petition and those who wrote letters in opposition to the Sumerel facility notifying them of a public meeting to be held on March 11, 2013. (R. pp. 377-78). During that public meeting citizens voiced their concerns relating to the Sumerel facility's detrimental impacts on the community.

On March 23, 2013 the Sumerels submitted amendments to their CNMP. (R. pp. 206-337; R. pp. 338-373). The March 23rd amendments included submission of a new Dead Animal Disposal Plan changing the mortality disposal method from burial to hay bale composting and incineration. (R. pp. 338-373). On March 28th and 29th additional

amendments to the CNMP were submitted to the Department, which included incorporation of the new mortality disposal methods. (R. pp. 217-18, 228, 234-35, 237-38, 240-41, 243-44, 305). On June 10, 2013 DHEC completed its technical review of the Sumerel application. (R. p. 378).

On June 12, 2013 the Department issued Permit No. 19647-AG to Lisa Sumerel for the operation of a broiler poultry feeding operation. (R. pp. 374-76). The Permit allows for the construction of 4 new poultry broiler houses, each housing 27,400 birds, for a total of 109,600 birds at any one time. (R. pp. 374-76). The Permit allows for 4.5 flock turns per year making the total number of birds per year on the Sumerel site 493,200. (R. pp. 374-76). Utilizing the numbers from the CNMP, the Permit indicates that the average animal live weight of those birds will be 493,200 lbs. and they will generate 669 tons of waste per year. (R. pp. 374-76). The Permit allows use of a hay bale composting system and incinerators for mortality disposal. (R. pp. 374-75). The Permit's Special Conditions section requires that drinking water wells installed on the property for animal or human consumption meet certain regulatory setbacks. (R. p. 375). Under that section the operator Mike Sumerel is required to obtain CAMM Certification from Clemson University within a year of the Permit's effective date. (R. p. 376).

Twelve days after receiving the Permit the Sumerels submitted a request to DHEC for a preliminary site inspection to be conducted in order to evaluate the feasibility of composting and incineration for mortality disposal, including the siting of the composter and incinerator(s) on their facility. (R. p. 398). On June 24th Chrissy Mathews went to the Sumerel property to conduct this preliminary site inspection for the new mortality disposal methods. (R. p. 399). Over two weeks after issuing the Permit, on June 27,

2013 DHEC sent the Sumerels a letter preliminarily approving the proposed composting system and incineration for mortality disposal. (R. p. 399).

On July 1, 2013 Appellants appealed the issuance of Permit No. 19647-AG to the Department requesting Board review. (R. p. 378). By letter dated July 18, 2013 the DHEC Board denied Appellants' request, making the permitting decision a "final agency decision." On August 12, 2013 Appellants filed a contested case with the ALC challenging the issuance of the Sumerel Permit.

Appellants challenged the Sumerel Permit on several grounds contending that DHEC's decision to issue it violated constitutional or statutory provisions; was made upon unlawful procedure; affected by error of law; clearly erroneous in view of the reliable, probative, and substantial evidence; arbitrary and capricious and an abuse of discretion. Specifically, Appellants contended that due to the true average exit or "process" weight of the birds and/or under applicable regulatory definitions, the Sumerel operation was a "large animal facility" subject to 400 ft. property line setbacks. These increased setbacks, all agreed, rendered the Sumerel operation impossible due to the size and shape of the land upon which it is slated to operate. Appellants also argued that DHEC failed to perform a full or adequate evaluation of the permit application package as required under the regulations. To that end, Appellants offered evidence that the Department issued the Permit upon an incomplete application and failed to adequately consider and evaluate the potential environmental impacts of the Sumerel operation, including those to the waters of the State.

The ALC found that Appellants did not offer sufficient evidence warranting reversal of the Department's decision to issue the Permit. The lower court accepted the

all-important 8.75 lbs. average process weight figure utilized in the Sumerel CNMP and concluded that the Sumerel operation was correctly classified as a "small animal feeding operation" subject to the lesser setback distances. The ALC also found that DHEC took all the necessary actions to evaluate and proposed operation prior to issuing the Permit.

IV. LEGAL ARGUMENTS AND AUTHORITIES

A. The ALC's conclusion that the Sumerel Poultry Farm is a "small animal feeding operation" subject to the lesser 200 foot property line setback is not supported by the substantial evidence presented at trial and affected by errors of law

The standard of proof used by the ALC in weighing the evidence and making a decision on the merits during a contested case proceeding is the preponderance of the evidence. S.C. Code Ann. §§ 1-23-330(1), 600(A)(5) (Supp. 2008). Appellants have the burden of proving their assertions that the Department's decisions were in error under the statutory and regulatory standards. *See Leventis v. South Carolina Dep't of Health and Envtl. Control*, 340 S.C. 118, 132-33, 530 S.E.2d 643, 651 (Ct. App. 2000). "Findings of fact based upon a 'preponderance' of the evidence are those reflected by the greatest 'weight, amount, credibility or truth' as reflected by the whole of the evidence before the court." *South Carolina Coastal Conservation League v. South Carolina Dept. Health and Envt'l Control*, 2003 WL 22873168 at *18 (Jan. 9, 2013) *quoting Frazier v. Frazier*, 228 S.C. 149, 89 S.E.2d 225, 235 (1955). The preponderance of the evidence is "[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other." BLACK'S LAW DICTIONARY (9th ed. 2009). "The preponderance of the

evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in the mind the belief that what is sought to be proved is more likely true than not true." SANDERS § 9.5 *Quantum of Evidence in Civil Cases* (1999) *citing Frazier v. Frazier*, 228 S.C. 149 (1955). In general, "expert opinion evidence is to be considered or weighed by the triers of the facts like any other testimony or evidence . . . the triers of fact cannot, and are not required to, arbitrarily or lightly disregard, or capriciously reject, the testimony of experts or skilled witnesses, and make an unsupported finding to the contrary of the opinion." 32A C.J.S. EVIDENCE § 727, at 82-83 (1996).

A party who has exhausted all administrative remedies available within an agency and who is aggrieved by an ALC's final decision in a contested case is entitled to judicial review. S.C. Code Ann. § 1-23-380 (Supp. 2012). In an appeal from a decision by the ALC, the Administrative Procedures Act (APA) provides the appropriate standard of review. *See* S.C. Code Ann. § 1-23-610(B)(Supp. 2012). An appellate court may reverse the ALC's decision if that decision is:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-610(B)(Supp. 2012).

Thus, the appellate court reviews the ALC's findings to determine if they were supported by substantial evidence or were controlled by an error of law. *Hill v. S.C. Dep't Health & Envtl. Control*, 389 S.C. 1, 9, 698 S.E.2d 612, 616 (2010). A reviewing court may reverse or modify an administrative decision if the findings of fact are not supported by substantial evidence. "Substantial evidence is 'evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached.'" *Risher v. South Carolina Dep't of Health and Envtl. Control*, 393 S.C. 198, 211, 712 S.E.2d 428, 434 (2011)(*internal citations omitted*).

1. *The preponderance of reliable evidence presented at trial established that the average exit weight for the Sumerel facility would be at least 9 pounds making it a "large animal feeding operation"*

S.C. Reg. 61-43 Part 200.80 specifies the siting requirements (setback distances) for animal facilities other than swine. The applicable setback distances for a particular facility are determined by the birds' "normal production animal live weight" which "means the maximum number of animals at the facility at any one time multiplied by the average live weight of those animals." S.C. Reg. 61-43 Part 50(WW). The average animal live weight is "the sum of the average exit weight from the facility and the average entry weight divided by two...: Average animal live weight = (Average Exit Weight + Average Entry Weight)/2." S.C. Reg. 61-43 Part 50(K). A "small animal facility means an animal facility that has a capacity for 5000,000 pounds of normal production animal live weight or less at any one time." S.C. Reg. 61-43 Part 50(HHH). A "large animal facility" is "an animal facility that has capacity for more than 500,000 pounds of normal production animal live weight at any one time." S.C. Reg. 61-43 Part

50(NN). The regulations require a 200 foot property line setback from the lot line of real property owned by another person when the normal production animal live weight at any time is 500,000 pounds or less. S.C. Reg. 61-43 Part 200.80(A)(5). For a large facility, where the normal production animal live weight at any one time is greater than 500,000 pounds, the property line setback increases to 400 feet. S.C. Reg. 61-43 Part 200.80(A)(6).

At trial Appellants contended that the Sumerel poultry operation is actually a "large animal facility" subject to the 400 foot property setback under 200.80(A)(6) which cannot be accommodated by the proposed site. Appellants' claimed that the Sumerel CNMP utilizes an outdated average exit weight of 8.75 lbs. to arrive at an incorrectly calculated normal production animal live weight of 493,200 lbs. for the facility.

The Sumerel CNMP calculates the normal production animal live weight for the facility to be 493,200 pounds. (R. p. 215). This calculation is based upon a .25 lb. entry weight and 8.75 lb. exit or "process" weight yielding a 4.5 lb. average animal live weight: (8.75 exit weight + .25 entry weight)/2 = 4.5 average live weight). (R. p. 215). The Management Plan specifies that there will be 109,600 birds on site at any one time thus yielding the 493,200 lb. normal production animal live weight: (109,600 x 4.5 normal production animal live weight) = 493,2000 lbs. (R. p. 215). Based upon this calculation the Sumerel facility was designated a "small" operation under the regulations subject to the 200 foot property line setback.

According to the maps submitted with the Management Plan, the barns as sited meet that 200 foot setback distance. (R. p. 302). The testimony of all that were asked at trial, including Mike Sumerel, Lisa Sumerel, William Chaplin, Dr. Hargett and Dr.

Parkhurst was uniform in agreeing that the Sumerel site could not accommodate a "large animal feeding facility" as it lacked the space to account for a 400 foot property line setback required for that size operation. (R. p. 88/Tr. p. 41:18-23; R. pp. 92-93/Tr. pp. 60-61; R. p. 128/Tr. p. 203:1-25). The maps included in the Management Plan also show that the proposed facility fits closely within the 200 foot property line setbacks for small facilities. (R. p. 302).

Appellants presented the testimony of Dr. Carmen Parkhurst, Ph. D., a Professor Emeritus of Poultry Science at North Carolina State University. Dr. Parkhurst has dedicated his nearly 50 year long career to agriculture, primarily in the area of poultry science. He holds both a master's degree and Ph. D. in Poultry Science from Ohio State University. Dr. Parkhurst has been with North Carolina State University since 1971 as a professor. Following a brief retirement in 2008, he returned to N.C. State and now acts as Manager of the University's Animal & Poultry Waste Management Center. The Court qualified Dr. Parkhurst as an expert in animal feeding operations, poultry science and waste management. (R. p. 146/Tr. pp. 274-76.).

Dr. Parkhurst testified that the exit weight of broilers is determined by the length of the grow cycle. (R. p. 159/Tr. p. 326:15-23). He opined that the 8.75 exit weight utilized in the Sumerel CNMP was a dated and inaccurate number. (R. p. 150/Tr. pp. 290-91). Dr. Parkhurst testified that chickens tend to get bigger over time through genetic selection. (R. p. 150/Tr. p. 291:20-21). He opined that the average exit weight has and will continue to rise with genetic selection, new houses and other advancements in the grow process. (R. pp. 150-51/Tr. pp. 290-94). Dr. Parkhurst pointed to his own recent study completed on March 1, 2014 in which he grew 80,000 birds over a 60 day

cycle. (R. p. 150/Tr. pp. 291-92). The average exit weight of the birds in his study was 9.37 lbs. (R. pp. 150-51/Tr. pp. 292-93). Dr. Parkhurst testified that over the course of the designated 63 day grow cycle the average exit weight of the birds grown at the Sumerel facility would likely be over nine pounds rather than the 8.75 lb. average utilized in the CNMP. (R. pp. 150/Tr. pp. 291-94; R. p. 158-59/Tr. pp. 324-26; R. pp. 159-60/Tr. pp. 328-30). Based on what he considered the more accurate exit weight number, Dr. Parkhurst testified that the Sumerel operation would yield over 500,000 pounds of live production weight making it a "large animal facility." (R. p. 150/Tr. p. 292:12-15). On cross examination the Department pushed extensively on the issue of exit weight. Dr. Parkhurst reiterated that 9 lbs. average process weight was a minimum making the weight difference per bird at least .25 lbs. While the Department tried to downplay the significance of what in isolation may be viewed as a nominal weight difference, it is more than significant when multiplied by 109,600 per flock or 493,200 birds per year. (R. pp. 159-60/Tr. pp. 328-30). During DHEC examination, Dr. Parkhurst affirmed that the integrators each set their own process weight, which is influenced by market and internal corporate forces. (R. p. 156/Tr. p. 316). Dr. Parkhurst noted however that ***all integrators*** produce birds that are nearly the same weight, only varying by a few hundredths of a point - "what one integrator has the other ones within a few hundredths of a point of being the same." (R. p. 160/Tr. p. 329:1-4). That slight variation does not come close to bridging the gap between the 9 lb. plus average exit weight identified by Dr. Parkhurst as the more accurate and current figure and the 8.75 lb. exit weight relied upon in the Sumerel CNMP.

The Sumerels offered the testimony of Leon Fulmer of Shealy Engineering, LLC. Mr. Fulmer is an agricultural engineer who works with Joy Shealy at Shealy Engineering, LLC. Mr. Fulmer has a B.S. from Clemson University and worked in the Department's agricultural permitting program for approximately nine years until coming to work for Shealy Engineering in 2006. (R. p. 178/Tr. p. 402). He worked with Joy Shealy on the Sumerel CNMP and DAD Plans. All parties questioned Mr. Fulmer on the average exit weight issue. During direct examination Mr. Fulmer was directed to pg. 1 of the Management Plan that contains certain pertinent information regarding the Sumerel facility such as the owner's name and address. (R. p. 179/Tr. p. 408; R. p. 207). Page 1 has a "Basic Operation Description" which provides a summary type overview of the Sumerel operation including a sentence that reads "[t]he birds will be brought into the houses as chicks and are confined for a period of 63 days or until they reach an exit weight of eight and three quarter (8.75) pounds." (R. p. 207). On cross examination Appellants explored the issue with Mr. Fulmer. Under questioning, Mr. Fulmer testified that "the [the integrator] *don't necessarily dictate the exact weight*, but they will determine *exactly when* they want the birds pulled from the farm, which normally will then dictate the live weight coming out." (R. p. 181/Tr. p. 416:3-10)(*emphasis added*). On cross examination Appellants' attorney pressed Mr. Fulmer on the issue, asking for details on how an integrator would determine when the average weight of a flock had reached the 8.75 mark and whether and how they would pull the birds before the end of the scheduled grow cycle. (R. pp. 181-82/Tr. pp. 416-420). Mr. Fulmer provided little to no detail or explanation of how this would be the case in general or for the Sumerel facility. All indications in the CNMP, and Permit itself, indicate, call for and allow a 63

day flock cycle (or 4.5 "turns" per year) for the Sumerel facility. (R. pp. 206-337; R. pp. 374-76). There is nothing within the Plan or Permit calling for or specifying weight monitoring, record keeping or reporting so that Columbia Farms as the integrator would come out before the end of the scheduled 63 days cycle to haul off the birds because they reached the 8.75 lbs. exit weight average. Mr. Fulmer was definitive that the integrator specifies the duration of the grow cycle, which in turn dictates the average exit weight. (R. p. 181/Tr. p. 416:3-10). He was much less sure and specific on how an integrator would pull birds prior to the end of a specific grow cycle.

Respondents Mike and Lisa Sumerel also offered the testimony of Joy Shealy, the professional engineer who drafted and signed off on the Sumerel Management and DAD Plans. Ms. Shealy is a licensed professional engineer in South and North Carolina. She received a B.S. in Agricultural Engineering from Clemson University and worked for the Department in the agricultural permitting section for several years prior to establishing Shealy Engineering, LLC in 2004. Ms. Shealy testified that the integrator determines the average exit weight of the birds and informs the grower. (R. p. 190/Tr. pp. 449-50). According to Ms. Shealy she and Mr. Fulmer get the average exit weight figure from the grower and in this case she believed Mr. Sumerel got the figure from Columbia Farms. (R. p. 194/Tr. pp. 466-67). Neither Ms. Shealy, Mr. Fulmer, or the Respondents could say how up to date the 8.75 average exit weight was. Such an important and impactful piece of information needs to come from a reliable and identifiable source. Ms. Shealy did not testify that 8.75 lbs. exit weight was Columbia Farm's number. Rather, she only said either her or Mr. Fulmer obtained it from Mr. Sumerel.

Despite the evidence presented at trial the ALC erroneously concluded that "the preponderance of reliable evidence established that the 8.75 lbs. average exit weight figure utilized for the Sumerel CNMP is accurate and the proposed facility is correctly permitted as a small facility." (R. p. 33). As a "small animal feeding operation" the ALC found it was rightly subject to the 200 foot property line setback proscribed under Part 200.80(A)(5), rather than the 400 foot property line setback mandated under Part 200.80(A)(6). (R. p. 18). The overwhelmingly greater weight of reliable evidence presented at trial established that the 8.75 figure utilized in the Sumerel CNMP was inaccurate and the facility should be deemed a "large animal feeding operation" subject to 400 foot property line setbacks under Part 200.80(A)(6).

At trial the Appellants provided expert testimony of Dr. Carmen Parkhurst who testified that the 8.75 average live weight figure utilized in the Sumerel CNMP was inaccurately low. (R. p. 150/Tr. pp. 290-92). As noted above, Dr. Parkhurst's expert opinion on this seminal issue was based upon his vast knowledge and experience in the industry as well as his own recently completed study in which 80,000 birds grown over a 60 day period weighed an average 9.37 lbs. He offered his expert opinion that the average process weight across *all integrators* is at least 9 pounds and that *all integrators* (which necessarily includes Columbia Farms) grow birds weighing within hundredths of a pound of each other. (R. pp. 159-60/Tr. pp. 328-29). Respondents did not provide expert testimony or any reliable evidence to contradict Dr. Parkhurst's expert opinion on this issue. Rather they provided double hearsay testimony from Joy Shealy who could not testify as to the source of the 8.75 figure other than stating that she got it from her associate Leon Fulmer who obtained it from Mr. Sumerel who "she believed" got it from

Columbia Farms. Ms. Shealy's assumption based upon double hearsay testimony pales in comparison to Dr. Parkhurst's detailed expert opinion on the issue. In issuing its ruling, the ALC also relied upon the CNMP's "Basic Operation" page which states the birds would be pulled from the facility after a 63 day grow cycle or when they reach an average weight of 8.75 lbs. No witness, including Joy Shealy or Leon Fulmer, could provide any detailed information on how the Sumerels would take on this onerous and daunting task. In fact, Mr. Fulmer's testimony on cross examination undermined this position when he admitted that the integrators "don't necessarily dictate the exact weight, but they will determine exactly when they want the birds pulled from the farm, which normally will then dictate the live weight coming out." (R. p. 181/Tr. p. 416:3-10).

The ALC's Order found that Appellants failed to show the 8.75 average live weight figure utilized in the CNMP was inaccurate surmising:

> Dr. Parkhurst's testimony established that each integrator, the company that owns the birds grown by the farmer, sets their own exit weight for the farms' flocks, and that the exit weight depends on the market and internal corporate factors for each integrator....Since it is the Appellants' burden to establish that the calculations in the CNMP are incorrect, the Court finds that Appellants' failure to ascertain from the integrator what exit weight they are requiring for the Sumerel facility is fatal to their claim.

(R. p. 19).

The ALC's finding that Appellants' position is fatally undermined because they did not ask Columbia Farms what exit weight it requires and presumably offer that figure to the Court was in err. (R. p. 19). The Court's conclusion regarding exit weight and the basis for it ignores the greater weight of reliable probative evidence and the record as a whole. The Court's reasoning that Dr. Parkhurst testified the integrator sets the exit weight and he did not ask Columbia Farms what it required for its process/exit weight

ignores his testimony as a whole. Namely, Dr. Parkhurst testified that the average process weight across *all integrators* is at least 9 pounds and that *all integrators* grow birds weighing within hundredths of a pound of each other. (R. pp. 159-60/Tr. pp. 328-29)("What one integrator has the other ones within a few hundredths of a point of being the same."). Therefore Appellants did in fact offer testimony on Columbia Farms exit weight via the expert testimony of Dr. Parkhurst which was based upon reliable and identifiable sources rather than double hearsay testimony offered by Respondents. The lower court's findings on this issue rely on a portion of Dr. Parkhurst's testimony in which he agreed that market and internal corporate factors impact exit weight. (*See* R. pp. 19, 33). Therefore, according to the ALC, evidence needed to be presented as to what Columbia Farms, as the integrator, requires as an exit weight. There being none in the Court's view negated Appellants' position on the issue. The ALC's ultimate conclusion depends upon the absence of evidence as to what Columbia Farms requires as an average process weight. However, Dr. Parkhurst's testimony provided this purportedly absent evidence.

In addition, Appellants contend that not submitting what would have been blatant hearsay testimony to the ALC leaves Dr. Parkhurst's expert opinion unscratched. His expert opinion that the process weight of the birds would be at least 9 lbs. was based upon clearly articulated facts and his knowledge and experience from decades in poultry science; including the results of his own recently completed study. (R. pp. 150-51/Tr. pp. 290-94; R. pp. 158-59/Tr. pp. 324-26; R. pp. 159-60/Tr. pp. 328-30). Dr. Parkhurst had no need to speak with Columbia Farms about this issue as he is more than equipped with the knowledge to offer an expert opinion on process weight. His testimony concerning

process weight is much more reliable and probative evidence than a statement from Columbia Farms, who as the integrator has an interest in the permit being issued. Even if Dr. Parkhurst had asked and been given a response from Columbia Farms President his testifying to that figure would have been inadmissible hearsay testimony. The ALC erred in discounting Dr. Parkhurst's testimony on this seminal issue because he did not speak with the Columbia Farms President.

Furthermore, a Columbia Farms representative's statement of what exit weight it requires would be inconsequential because Dr. Parkhurst (as Appellants' expert) opined that the 8.75 average exit weight in the Sumerel CNMP was inaccurately low. That expert opinion was based upon extensive experience in and knowledge of the industry developed over a long career. Dr. Parkhurst testified that a 63 day flock cycle would yield at least a 9 lbs. bird. He also testified that the average process weight across *all integrators* is at least 9 pounds and that *all integrators* grow birds weighing within hundredths of a pound of each other. (R. pp. 159-60/Tr. pp. 328-29)("What one integrator has the other ones within a few hundredths of a point of being the same."). "All integrators" necessarily includes Columbia Farms. That aside, assuming Columbia Farms told Dr. Parkhurst that it requires an 8.75 lbs. exit weight, his expert opinion would remain unchanged. The conclusion that Appellants' choosing not to ascertain what Columbia Farms representatives say its required exit weight is fatally undermines scientific evidence based expert testimony was in err. It is not Appellants' obligation to seek out and obtain statements from the integrator, who has an interest in the permit being upheld, that would potentially rebut their expert's testimony.

2. ***The ALC's conclusion on the average exit weight issue relies upon double hearsay testimony***

Furthermore, it was not shown that Columbia Farms actually provided the 8.75 process weight figure utilized in the Sumerel CNMP. Joy Shealy was the professional engineer who, per regulatory requirements, signed off on the Sumerel CNMP. When questioned at trial Ms. Shealy could not identify the origin of the 8.75 figure beyond presuming Mr. Sumerel obtained it from Columbia Farms. (R. p. 194/Tr. pp. 467-68).

Ms. Shealy's testimony regarding Columbia Farms exit weight constitutes double hearsay making it patently unreliable and an inappropriate basis for findings of the Court. S.C. R. Evid. 805, 802-804. The Court's Order states that "Ms. Shealy testified that the integrator determines the average exit weight of the birds and informs the grower. Ms. Shealy stated that she and Mr. Fulmer got the average exit weight figure from the grower, and in this case, she believed Mr. Sumerel got the figure from Columbia Farms." (R. p. 19);(R. p. 194/Tr. pp. 466-67)("I do not get it specifically and directly from Columbia Farms...I got it from Mr. Sumerel or my – Leon got it from Mr. Sumerel, but they get that information from their desired integrator."). Ms. Shealy, Mr. Fulmer, nor the Respondents could say how up to date the 8.75 exit weight figure was. Such an important and impactful piece of information needs to come from a reliable and identifiable source. Third hand/double hearsay testimony is the poster child of unreliableness and should not form the basis for any of the Court's findings; certainly not on this seminal and determinative issue. This is especially true when Ms. Shealy's testimony is weighed against Dr. Parkhurst's. Ms. Shealy's testimony on average process weight constitutes double hearsay based upon her assumption that Mr. Sumerel got the figure from Columbia Farms. In contrast, Dr. Parkhurst's testimony that the average process weight across *all integrators* is at least 9 pounds and that *all integrators* grow

birds weighing within hundredths of a pound of each other is based upon reliable and identifiable sources, including his decades of experience and own recently completed study.

Therefore, the ALC erred in concluding that "the preponderance of reliable evidence established that the 8.75 lbs. average exit weight figure utilized for the Sumerel CNMP is accurate and the proposed facility is correctly permitted as a small facility." (R. p. 33). The most reliable evidence of average live weight was Dr. Parkhurst's expert testimony which stated the 8.75 figure utilized was inaccurately low. Respondents provided essentially nothing on this issue to adequately contradict Petitioners' position offering merely Ms. Shealy's presumption that Mr. Sumerel obtained the figure from Columbia Farms and a reference to an operational summary that was contradicted by Respondent's own witness, Mr. Fulmer. (*See* R. p. 181/Tr. p. 416).

3. *The ALC erred in excluding Dr. Parkhurst's testimony regarding the AgraMetrics Report*

In addition, the Court's exclusion of Dr. Parkhurst's testimony regarding the AgraMetrics report was in err and prejudicial to the Petitioners as that testimony provided further evidence of the inaccuracy of the 8.75 lbs. process weight figure utilized in the CNMP. (R. p. 154/Tr. pp. 305-07). On cross examination DHEC counsel questioned Dr. Parkhurst extensively on the average live weight issue including asking if there was some "readily available source" reflecting the current average live weight of broiler chickens in 2014. (R. p. 153/Tr. pp. 302-303). In response, Dr. Parkhurst cited to an industry report from AgraMetrics "that gets the data from literally every company in the US and generates a weekly average body weight of poultry [report]." (R. p. 153/Tr. pp. 303-04). He testified that this AgraMetrics report reflected an average live weight above the 8.75

lb. figure utilized in the Sumerel CNMP. (R. p. 153/Tr. pp. 303-04). The ALC sustained DHEC's objection to admission of Dr. Parkhurst's testimony concerning "information from a third party", namely the AgraMetrics report. (R. p. 154/Tr. pp. 305-07). Appellants contend exclusion of this testimony was in err and Dr. Parkhurst, as a qualified expert in poultry science, could rely upon and cite to third party materials in support of his expert opinion. *State v. Hutto*, 325 S.C. 221, 481 S.E.2d 432, 436 (1997).[2]

As detailed above, based on the evidence presented to the ALC, the Sumerel Poultry Farm will produce chickens with an average live weight in excess of 500,000 lbs. making it a "large animal feeding operation" subject to the 400 foot property line setback. The uniform testimony at trial was that the parcel upon which the operation is to be located cannot accommodate a "large" facility and therefore DHEC wrongly approved the CNMP and issued the Sumerel Permit.

4. *The applicable regulatory definitions make the Sumerel Poultry Farm a "large animal feeding operation"*

As noted above, the ALC's conclusion that the Sumerel will yield birds with an average process weight of 8.75 lbs. and resultant discounting of Dr. Parkhurst's testimony to the contrary relies upon one sentence in the "Basic Operation Description" that states "[t]he birds will be brought into the houses as chicks and are confined for a period of 63 days or until they reach an exit weight of eight and three quarter (8.75) pounds." (R. p. 207). Assuming *arguendo* that the birds will be removed when they

[2] "The rationale for this exception to the rule against hearsay is that the expert, because of his professional knowledge and ability, is competent to judge for himself the reliability of the records and statements on which he bases his expert opinion. Moreover, the opinion of expert witnesses must invariably rest, at least in part, upon sources that can never be proven in court. An expert's opinion is derived not only from records and data, but from education and from a lifetime of experience. Thus, when the expert witness has consulted numerous sources, and uses that information, together with his own professional knowledge and experience, to arrive at his opinion, that opinion is regarded as evidence in its own right and not as hearsay in disguise." *Hutto* 481 S.E.2d at 436(*internal citations omitted*).

reach an average of 8.75 lbs., the *capacity* of a facility determines whether it is a "small" or "large" animal facility per the regulatory definitions. "'Large Animal Facility' means an animal facility that has a capacity for more than 500,000 pounds of normal production animal live weight at any one time." S.C. Reg. 61-43 Part 50(NN). "'Small Animal Facility' means an animal facility that has a capacity for 500,000 pounds of normal production animal live weight or less at any one time." S.C. Reg. 61-43 Part 50(HHH). According to the CNMP and Permit, the Sumerel facility will house 109,600 birds at any one time. (R. p. 215; R. pp. 374-76). Dr. Parkhurst uncontroverted expert testimony was that birds grown over a 63 day grow cycle will average over 9 lbs. rather than the 8.75 lbs. average utilized in the CNMP. (R. pp. 150-51/Tr. pp. 291-94; R. pp. 158-59/Tr. pp. 324-26; R. pp. 159-60/Tr. pp. 328-30). Therefore, whether the Sumerels actually have the birds hauled off when they reach 8.75 lbs. is inconsequential. The Permit allows the Sumerels to house 109,600 birds at one time for a 63 day grow cycle. Thus, the proposed facility necessarily has the capacity to produce a flock with an average live weight in excess of 500,000 lbs. making it a "large animal facility" per the definition of that term under Part 50(NN).

B. The ALC erred in finding that DHEC conducted a full and adequate evaluation of the proposed animal feeding operation as required under the applicable statutes and regulations

S.C. Reg. 61-43 Part 200 sets forth a comprehensive scheme for the licensing and operation of facilities for animals other than swine. Under the permitting scheme, an applicant is required to first have a proposed site inspected by the Department. S.C. Reg. 61-43 Parts 200.50(A), 200.70(D). If the proposed site is approved, the applicant will be notified in writing and is free to finalize facility plans and other permit application

materials. Before submitting the application, an applicant must notify "all property owners within 1320 feet of the proposed location of the facility (footprint of construction) with the applicant's intent to build an animal facility." S.C. Reg. 61-43 Part 200.60(A). DHEC reviews all comments received regarding the application and holds a public meeting to discuss and seek resolution of public concerns about the proposed facility if twenty (20) or more public comments are received. S.C. Reg. 61-43 Part 200.60(D).

The decision-making process for animal facility permits is set forth in S.C. Reg. 61-43 Part 200.70. The regulations mandate that "[t]he Department shall act on all permits to prevent, so far as reasonably possible considering relevant standards under state and federal laws, an increase in pollution of the waters and air of the State from new or enlarged sources." S.C. Reg. 61-43 Part 200.70(E). The reviewer will determine whether the facility meets all the applicable siting requirements contained in Part 200.70. Subpart (F) notes that those setback distances are minimum siting requirements and "[t]he Department shall evaluate the proposed site including but not limited to" consideration of the following non-exclusive factors:

1) Proximity to 100-year floodplain;

2) Geography and soil types on the site;

3) Location in a watershed;

4) Classification or impairment of adjacent water;

5) Proximity to State Designated Focus Area; Outstanding Resource Water; Heritage Corridor; Historic Preservation District; State Approved Source Water Protection Area; state or national park or forest; state or federal research area; and privately-owned wildlife refuge, park, or trust property;

6) Proximity to other point source discharges and potential nonpoint sources;

7) Slope of the land;

8) Animal manure application method and aerosols;

9) Runoff prevention;

10) Adjacent groundwater usage;

11) Down-wind receptors; and

12) Aquifer vulnerability.

S.C. Reg. 61-43 Part 200.70(F).

The permit decision-making process requires the reviewer to seek and receive input from the Bureau of Air and the Bureau of Environmental Health's Wastewater Management section to determine whether the proposed facility will harm the air or waters of the State. Further, the reviewer must consider all relevant comments received by the Department. S.C. Reg. 61-43 Part 200.60(F). The Department's reviewer completes a checklist that contains some of the relevant regulatory requirements and provides space to note if certain actions were taken and the rationale for them. The regulations mandate that a permit cannot be issued unless the Department receives a complete permit application package. S.C. Reg. 61-43 Parts 200.70(A) and (C).

At trial Appellants argued that DHEC conducted an inadequate evaluation of the proposed Sumerel operation, failing to fully consider the proposed operation's impact on the surrounding environment, including upon the nearby receiving waters, in violation of the regulatory mandate that "[t]he Department shall act on all permits to prevent, so far as reasonably possible considering relevant standards under state and federal laws, an increase in pollution of the waters and air of the State from any new or enlarged sources." S.C. Reg. 61-43 Part 200.70(E).

Part 200.80 sets out applicable setback distances for animal feeding operations and requires that an animal facility be at least 100 feet from waters of the State, including ephemeral and intermittent streams located down slope from the facility. R. 61-43 Part 200.80(A)(2). That subsection also requires a 100 foot setback between dry animal manure and other animal by-product treatment or storage facility and waters of the State, including ephemeral and intermittent streams located down slope. S.C. Reg. 61-43 Part 200.80(C)(3).

Appellants contend that the Department failed to adequately consider and evaluate the potential impacts of the Sumerel operation to the waters of the State and whether additional setbacks were warranted in light of the mandatory considerations listed in Part 200.70(F).

The Sumerel CNMP contains several aerial maps which show the barn placement, property line setback distances, nearby water bodies and applicable water-based setbacks. (R. pp. 302-303). The first two aerial maps show multiple waters of the State located to the east and northeast of the Sumerel facility broiler houses. (R. pp. 302-303). All witnesses who testified on the subject agreed that these waters are located down slope of the Sumerel site. (*See e.g.* R. p. 164/Tr. p. 347:12-18). One of the larger, if not largest, down slope water bodies shown on the maps is a lake to the northeast which is owned by Terry and Christine Orr. (R. p. 163/Tr. pp. 341-42). According to Terry Orr this is an approximately 10 acre lake on the Orrs' land which he utilizes nearly every day hiking with his dogs and fishing in the lake among other things. (R. pp. 161-62/Tr. pp. 336-39). The maps show that these water bodies are interconnected by a stream flowing from the water body nearest the operation to those downslope of it to the north-northeast;

including the Orr's lake. (R. pp. 302-303). At trial, all parties recognized and agreed that operation of the Sumerel broiler facility requires the disturbance and grading of multiple acres of the land on the proposed site. (R. p. 98/Tr. pp. 82-83; R. p. 101/Tr. p. 95; R. pp. 112-13/Tr. pp. 140-44; R. p. 147/Tr. p. 277:17-24).

The undisputed evidence presented in this case showed that the Department's water impact evaluation focused upon the proposed burial site and whether it would be feasible for mortality disposal. The CNMP for Sumerel Poultry Farm initially called for burial as the mortality disposal method. (R. p. 219). In the Department's evaluation process, William Chaplin, sent the Bureau of Environmental Health a Memorandum requesting that the Sumerel site be evaluated for potential water impacts. (R. pp. 393-95). That Memorandum specifically stated that "[t]he Department shall evaluate the proposed site including, but not limited to, the following factors when determining if additional setbacks are necessary: (1) Geography and soil types on the site; (2) adjacent groundwater usage; [and] aquifer vulnerability." (R. p. 393). That document expressly asked if additional setbacks were necessary "taking into consideration the geography, soil types on the site, adjacent groundwater usage, and aquifer vulnerability." (R. p. 393). It also asked for recommendations on groundwater monitoring for the proposed facility or manure utilization areas and whether the proposed burial site was feasible. (R. pp. 394-95). According to the testimony of Mr. Chaplin the Department sent William Burriss to the Sumerel property in order to evaluate the proposed burial site. (R. pp. 125-26/Tr. pp. 192-93). Chaplin testified that Mr. Burriss' water review was exclusively an evaluation of the proposed burial site, and he took nothing else into consideration. (R. pp. 125-

26/Tr. pp. 192-93). Mr. Burriss found the burial site unsuitable, causing the Department to require the Sumerels plan for an alternative disposal method.

In his review process, Mr. Chaplin filled out a Department form entitled "Agricultural Permitting Review Checklist" which contains a section labeled "Water Resources Review." (R. pp. 380-81). The checklist shows what water related considerations DHEC took into account beyond Mr. Burriss' burial site evaluation in evaluating the Sumerel plans. Specifically, the Checklist indicates Mr. Chaplin looked at public supply wells and impaired water body list, neither of which in his opinion warranted additional setbacks. (R. pp. 380-81). The final water resource item in the Checklist instructs the reviewer to pull the stream classification overlay and note the classifications for the water bodies in the drainage route. (R. p. 381). Mr. Chaplin noted those were "freshwater" and found no additional setbacks necessary. (R. p. 381).[3] There was no other evidence presented below indicating that the Department undertook any further water impact review or considerations beyond the items detailed above, including siting of the manure storage area and determination of whether it met the appropriate setbacks.

Appellants presented Dr. David Hargett, Ph. D. who was qualified as an expert environmental science consultant and in water impacts. (R. pp. 109-10/Tr. pp. 128-29). Dr. Hargett has a master's degree in Soil Science from N.C. State and a Ph. D. in Land Resources, with a Soil Sciences minor, from the University of Wisconsin. Dr. Hargett has experience in these fields and working on a wide variety of environmental

[3] Throughout the Checklist Mr. Chaplin noted that any questions involving a proposed manure treatment or storage area was not applicable. (R. pp. 379-84). Testimony in the course of trial indicated that due to the change in dead animal disposal method to composting, the Sumerels would have to have a manure storage area as litter was a necessary component of that process. (R. p. 98/Tr. p. 82:1-15; R. pp. 130-31/Tr. pp. 212-14).

consultation and evaluation matters for many years. He took issue with several facets of the Department's review and approval of the Sumerel Permit; most prominently the agency's water impact evaluation.

Dr. Hargett testified that looking only at the feasibility of the proposed burial site was inadequate to determine that there would be no detrimental impacts to the waters of the State from the Sumerel operation. (R. p. 112/Tr. p. 138:9-25). He also testified at length about the necessity of a grading plan to be in place and considered by the Department in its water impact evaluation process if it is to be considered adequate and reliable. (R. pp. 112-13/Tr. pp. 140-44). Specifically, Dr. Hargett noted that the necessary grading for the Sumerel facility would result in approximately 300,000 or more square feet (or some 6 acres) of land on the site disturbed and graded. (R. p. 113/Tr. p. 141:6-10). Dr. Hargett testified that this massive grading endeavor will create "an industrial footprint with a high degree of imperviousness, a high degree of runoff." (R. p. 113/Tr. p. 141:9-14). He went on to testify that this runoff would go downslope where there are multiple waters of the State and waters of the United States that are at risk from this operational runoff. (R. p. 114/Tr. pp. 145-46). Dr. Hargett opined that it was within the Department's purview to ensure these waters could handle the additional stresses presented by the Sumerel operation including manure contaminated runoff, ammonia emissions and other water transported and airborne emissions from the facility. (R. p. 117/Tr. pp. 157-58). Dr. Hargett characterized the grading and stormwater management plan as "overwhelmingly relevant" information necessary for the proper evaluation of potential impacts to the waters of the State. (R. p. 113/Tr. pp. 142-43). Without this

information, Dr. Hargett opined DHEC did not adequately evaluate potential water impacts:

> A: The major – the most major concern that I have is the general absence of recognizing where's the stormwater management activity going to go...There may also be additional waters of the state, wetlands, perennial streams, intermittent streams or ephemeral streams that are not shown on the resource maps...[When] we viewed the large pond on the Orr property...I observed personally that there were extensive waters of the state that were not mapped in similar fashion...And so you have these hydrologic influences upstream. There are certainly some of those upstream of the upper pond and the lower pond that are not indicated in the resource maps which were used by the engineer and by DHEC to access the site. So their information is incomplete. That's one major body of concern.... My experience in working with similar sites is that it's well documented that ammonia from concentrated animal feeding operations does affect water quality in surrounding receiving waters. And those issues haven't been addressed.
>
> ***
>
> Q: So your overall assessment of this particular permit and the Department's evaluation of it, do you believe their assessment was adequate?
>
> A: No, sir. I think it's more fair to fay it was incomplete. It was based upon incomplete information that there are still numerous aspects, I'll call them moving targets, in the operations of this facility.... It's a very incomplete program that I think is what DHEC has reviewed.

(R. pp. 116-17/Tr. pp. 155-57). In Dr. Hargett's expert opinion, DHEC could not determine that the Sumerel operation would not cause an increase in pollution in the waters of the State. (R. p. 112/Tr. p. 138; R. p. 117/Tr. p. 157).

DHEC made much of the stormwater permitting process being a separate application and permit. No one disagreed with the Department in that regard. The only two witnesses to testify as to what that process entails, Dr. Hargett and Leon Fulmer, both said that the stormwater permitting process does not take into consideration emissions or runoff from the proposed agricultural operation site that is to be graded. (R. p. 123/Tr.

pp. 183-84; R. p. 184/Tr. pp. 425-28). In Dr. Hargett's opinion these two evaluations are necessarily linked, and the grading and stormwater plan information is "highly relevant information and without that the package is incomplete." (R. p. 123/Tr. p. 184:2-9; *See also* R. p. 119/Tr. p. 166). Mr. Chaplin recognized that runoff and stormwater are variables greatly affecting the health of downslope waters and the ambient air around the facility:

> Q: Now, the regulation at hand, 61-43, and it's cited several times, Part 270(E) requires the Department determine that there's going to be no increase to the waters and air of the state [of] pollutants; is that not accurate?
>
> A: That's true.
>
> Q: Now, runoff and stormwater are going to greatly affect the health of downslope waters and the ambient air and around the facility?
>
> A: That's true.

(R. p. 142/Tr. p. 260:5-10). He also testified that the agency did not know where the runoff from the Sumerel operation would flow because the site would be graded prior to construction:

> Q: In doing your evaluation, does the Department know where the water runoff is going to go from this operation?
>
> A: There are topo maps included with the plan, but as far as where the water's going to run off, it's difficult to tell because the site's going to be graded at some point prior to them building these houses.

(R. p. 129/Tr. p. 207:10-17). Importantly, Mr. Chaplin testified that the Sumerel facility met the applicable setback distances under S.C. Reg. 61-43 in regards to waters of the State; rather than testifying that those waters would not suffer detrimental environmental impacts from the Sumerel operation. (R. p. 133/Tr. pp. 222-23).

DHEC did not produce any witnesses whatsoever on the issue of the Department's water evaluation, including William Burriss. The only testimony on this issue from the Department was its cross examination of Mr. Chaplin who did not challenge Dr. Hargett's opinions on the necessity of knowing grading and stormwater information to make the determination that the Sumerel operation would not cause an increase in pollution to waters of the State. In fact, Mr. Chaplin agreed that runoff had substantial effects on downslope waters and the Department did not know where runoff from the Sumerel operation would flow because the site would be graded prior to operation. Thus, the evidence established that the Department lacked relevant information, including the Sumerel's grading and stormwater plans, necessary to adequately evaluate potential impacts to the waters of the State posed by the Sumerel operation. The evidence is undisputed that DHEC did not have this information when evaluating the Sumerel application and concluding the permit should issue.

1. ***Dr. Hargett's expert opinion on water impacts is not undermined by Appellants' poultry science expert***

The lower court's Order attempts to undermine Dr. Hargett's unchallenged expert testimony concerning detrimental water impacts by citing a singular response of Appellant's poultry science expert, Dr. Parkhurst. Specifically, the ALC found that Dr. Parkhurst's testimony that the proposed site could be a "safe and functioning poultry facility" if the Sumerels were willing to spend the money on adequate grading plans completely undermined Dr. Hargett's lengthy and in depth expert testimony on detrimental water impacts and the need for grading plan information to properly evaluate them. (R. pp. 15-16). Dr. Hargett was the only witness qualified as expert on water impacts by the ALC. (R. pp. 109-10/Tr. pp. 128-29). His testimony is determinative on

the issue of water impacts. Dr. Parkhurst was qualified as expert in animal feeding operations, poultry science and waste management. (R. p. 146/Tr. pp. 274-76). The testimony cited in the Order is Dr. Parkhurst opining that if the Sumerels are willing to spend the money on grading then the site could be a "safe and functioning poultry farm." (R. pp. 16-17; R. p. 150/Tr. pp. 311-12). This testimony was not an opinion that grading would or would not have impacts on the receiving waters surrounding the operation but rather that grading could provide for a functioning poultry facility. Dr. Parkhurst is eminently qualified to opine as to the later, and not the former. His testimony therefore did not undermine Dr. Hargett's as to the potential water impacts of the Sumerel operation and DHEC's failure to adequately evaluate them, and the ALC's finding to the contrary was in err.

2. ***DHEC failed to consider the "slope of the land" as required under S.C. Reg. 61-43 Part 200.70(F)(7)***

The applicable regulations list mandated factors the Department must consider in evaluating a proposed animal feeding operation site including taking into account the "slope of the land." S.C. Reg. 61-43 Part 200.70(F)(7). The Court ruled that Petitioners' failed to show DHEC did not consider mandated factors under 200.70(F). The Court based this conclusion by reasoning that the Department's Review Checklist shows DHEC considered each of the regulatory required water quality impacts and determined no additional setbacks were necessary. (R. pp. 17, 29-30). The Department's Review Checklist does not show it considered the mandated "slope of the land" factor listed under 200.70(F)(7) as a required consideration. (R. pp. 379-84). This is an impactful factor that, as Appellants' water impact expert testified, is necessarily altered by the

extensive grading required for the facility and therefore grading plans are necessary to take into account in order to adequately evaluate water impacts.

3. *The ALC erred that finding "runoff prevention" only applies to control of manure discharge*

At trial, Appellants argued DHEC must know the details of the proposed operation's grading plans in order to fulfil its obligations under Part 200.70(F)(9) which require consideration of "runoff prevention." In Appellants' view, "runoff prevention" includes consideration and evaluation of any runoff that may occur from or due to the proposed operation and its impact on the surrounding environment- namely nearby receiving waters. The operation's physical characteristics, including slope of the land once graded necessarily have direct impacts on runoff dynamics. At trial Respondents attempted to combat this position by establishing the stormwater permitting process was a separate permit process taken on at a later date. In its Order, the ALC takes great pains to confine "runoff prevention" to "discharge of manure into the environment" concluding that "[n]othing in the regulations indicates that grading and general stormwater runoff is considered." (R. pp. 30-32).

This position was not taken in any respect during trial and therefore should leave the ALC without a basis upon which to make such a conclusion. The testimony and evidence presented to the ALC did not include any discussion or evidence concerning DHEC's interpretation of "runoff prevention" as that term is used in 200.70(F)(9). It certainly did not address, much less indicate, that the Department interpreted the term in the narrow context of preventing manure discharge. This argument/position was offered for the first time in Respondents' Proposed Order and therefore it is inappropriate for the lower court's utilization in the Order.

Regardless, the ALC ignores the definition of "runoff prevention" which does not confine it to manure discharge. "Runoff prevention" is "rainwater or other liquid that drains overland on any part of a land surface and runs off of the land surface." 61-43 S.C. Reg. Part 50(FFF). The ALC erroneously accepted Respondents' post trial argument on this issue and wrongly concluded the Department fulfilled its obligation to evaluate all of the factors listed under Part 200.70(F).

4. *The CNMP's Odor and Vector Abatement provisions are insufficient*

A complete application contains certain site specific provisions including odor and vector abatement plans and a dead animal disposal plan for the particular animal facility. S.C. Reg. 61-43 Part 200.50(B)(4)-(6).

Specifically, Part 200.50(B) requires:

> A producer who proposes to build a new animal facility or expand an existing animal facility shall make application for a permit under this part using an application form as designated by the Department. The following information shall be included in the application package.
>
> 1. A completed application form.
>
> 2. An Animal Facility Management Plan prepared by qualified Natural Resources Conservation Service personnel or a SC registered professional engineer....
>
> ***
>
> 4. The Animal Facility Management Plan shall contain an odor abatement plan for the animal facility, lagoon, treatment system, manure storage pond, and manure utilization areas. For more specific details, see Section 200.150 (Odor Control Requirements).
>
> 5. A Vector Abatement Plan shall be included for the animal facility, lagoon, treatment system or manure storage pond, and manure utilization areas. For more specific details see Section 200.160 (Vector Control Requirements).

> 6. Dead Animal Disposal Plan. The plan shall include written details for handling and disposal of dead animals. Plans should detail method of disposal, any construction specifications necessary, and management practices. See Section 200.130 (Dead Animal Disposal Requirements) for specific requirements on dead animal disposal.

S.C. Reg. 61-43 Part 200.50(B).

Part 200.150(A) requires a site specific odor abatement plan mandating that "[t]he Animal Facility Management Plan *shall* contain an odor abatement plan *for the animal facility*, lagoon, treatment system, manure storage pond, and manure utilization areas...." S.C. Reg. 61-43 Part 200.150(A)(*emphasis added*).

Part 200.160(A) contains vector control requirements for animal feeding operations and requires a permit applicant to submit a site specific vector abatement plan:

> The Vector Abatement Plan *shall at a minimum* consist of the following:
>
> 1. Normal management practices *used at the animal facility*, lagoon, treatment system, manure storage pond, *and manure utilization areas* to ensure there is no accumulation of organic or inorganic materials to the extent and in such a manner as to create a harborage for rodents or other vectors that may be dangerous to public health.
>
> 2. A list of *specific actions to be taken* by the producer if vectors are identified as a problem at the animal facility, lagoon, treatment system, manure storage pond, or any manure utilization area. These actions should be listed for each vector problem, e.g., actions to be taken for fly problems, actions to be taken for rodent problems, etc.

S.C. Reg. 61-43 Part 200.160(A)(*emphasis added*).

The Sumerel Management Plan contains two sections addressing odor and vector abatement. (R. pp. 217, 221). Section 7.2 labeled "Vector Control and Abatement" provides a list of potential actions the Sumerels may take to address certain vector issues. (R. pp. 217-18). While inclusive of specific vector problems, Section 7.2 does not provide site specific plans for the Sumerel facility but rather is a list or guide for some

potential best management practices. (R. p. 129/Tr. pp. 205-06; R. p. 141/Tr. pp. 254-55; R. pp. 151-52/Tr. pp. 295-97). Section 7.6 of the Sumerel Plan is labeled "Site Specific Vector and Odor Abatement Plan." (R. p. 242). Under that heading lies a sub heading of sorts entitled "Odor & Vector Abatement Plan Columbia Farms." (R. p. 242). Section 7.6 states that "Columbia Farms has approved" a litter disinfectant to abate odors and a couple sprays, powder treatment and rodent bait traps for the control of vectors. (R. p. 242).

At trial the Appellants contended that the CNMP was deficient because it failed to provide site specific odor and vector abatement plans for the Sumerel facility. The ALC found that "[b]y providing that the odor plan may consist of certain criteria and that the vector plan shall consist of a list of specific action to be taken, the regulations do not mandate 'site specific' criteria limited in application to only the proposed facility and no other facility. Rather, they require plans that are capable of controlling odor and vectors." (R. pp. 12-13). Thus, the lower court found the Sumerel CNMP's odor and vector abatement sections in compliance with the applicable regulations. (R. pp. 8-13, 25-28).

In direct contravention of the ALC's finding on this issue, the Department's permit reviewer, William Chaplin acknowledged that the vector control requirements in the regulations do in fact require a site specific vector abatement plan. (R. p. 144/Tr. pp. 266-67). It is clear that the purpose of these provisions within a proposed facility plan is to ensure that undesirable odors and vectors, both of which may constitute a nuisance, are appropriately planed for and controlled in the proposed animal facility. *See* S.C. Reg. 61-43 Part 200.10. Chaplin acknowledged that the Vector Control and Abatement

provisions in 7.2 are a list of possible best management practices and not specifics as to what the Sumerels will do at their facility to control for vectors. (R. p. 141/Tr. p. 255:13-22).

Joy Shealy, the professional engineer and drafter of the Sumerel Management Plan, was questioned in detail on both sections 7.2 and 7.6. Ms. Shealy testified that section 7.2 was not a site-specific plan but rather general best management practices an operator may use in the event a particular issue listed arose. (R. p. 190/Tr. pp. 450-51). During direct examination Ms. Shealy testified that section 7.6 of the Management Plan met the regulation's site specific odor and vector abatement plan requirements. (R. p. 190/Tr. p. 452:4-9). In other words, her initial contention was that 7.6 detailed what the Sumerels were going to do in order to control vectors and odors at their facility. On cross examination Ms. Shealy admitted that Section 7.6 labeled "Site Specific Vector and Odor Plan" was *integrator* rather than *site* specific and would be the same for any facility in which Columbia Farms acted as the integrator. (R. p. 192/Tr. pp. 458-59).

Therefore Section 7.2, while inclusive of specific vector issues, does not provide site specific plans for the Sumerel facility. Rather it is a list or guide for some potential best management practices. Similarly, as the evidence at trial showed, Section 7.6 is integrator and not site specific for the Sumerel facility. Thus, these important provisions of the Sumerel CNMP were lacking and the ALC's determination to the contrary was in err.

V. Conclusion

The ALC's finding that the Sumerel operation is a "small animal feeding operation" subject to the lesser 200 ft. property line setbacks is not based upon the

substantial evidence presented at trial and affected by one or more error of law. First, the preponderance of reliable evidence presented at trial, including the expert testimony of Dr. Parkhurst, established that the proposed operation would yield birds with an average process weight of at least 9 lbs. making it a "large animal feeding operation" subject to 400 ft. property line setbacks. The uniform testimony at trial and evidence before the ALC indisputably established that the land upon which the Sumerels intend to operate cannot accommodate a "large" facility due to the increased setbacks. Therefore, the ALC erred in upholding the Department's decision to issue the Permit.

Second, the ALC's findings concerning average process weight rely upon double hearsay testimony of the professional engineer who signed off on the CNMP, Joy Shealy. Ms. Shealy could not offer any testimony as to the accuracy of the 8.75 lbs. average process weight figure beyond saying she obtained it from her associate who she believed got it from Mr. Sumerel who assumedly got it from Columbia Farms. This patently unreliable evidence should not be sufficient to overcome the scientifically based expert opinion of Dr. Parkhurst on this issue.

Third, the pursuant to the applicable regulatory definitions the Sumerel facility is a "large animal facility" as it has the capacity to house over 500,000 lbs. of normal animal production weight, regardless of whether they birds are taken off before the end of a 63 day growth cycle.

Finally, the ALC erred in finding that DHEC conducted a full and adequate evaluation of the proposed Sumerel operation in compliance with applicable statutes and regulations, including considering the mandated factors in Part 200.70(F). The evidence presented at trial showed the Department failed to undertake all of the mandated

considerations, including runoff prevention and slope of the land. Therefore, DHEC's evaluation was substantially lacking and not in accord with its duties under the law.

For the reasons set forth above, the Administrative Law Court's Order of January 12, 2015 should be reversed.

Respectfully Submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of the Appellants complies with Rule 211(b) SCACR and the Supreme Court Order of August 13, 2007.

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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

The Honorable John D. McLeod, Administrative Law Judge

Case No. 13-ALJ-07-0395-CC
Appellate Case No. 2015-000700

Rick Still, Donice Still, Christine Orr and Terry Orr ..... Appellants,

v.

South Carolina Department of Health and Environmental Control
And Lisa Sumerel and Sumerel Poultry Farm .....Respondents.

PROOF OF SERVICE

I certify that I have served the Final Brief of Appellants on the Respondents Lisa Sumerel and Sumerel Poultry Farm and South Carolina Department of Health and Environmental Control by depositing a copy of it in the United States Mail, postage pre-paid, this 25th day of November, 2015, addressed as follows:

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