

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas
Robin B. Stilwell, Circuit Court Judge

Case No. 2016-CP-39-100
Appellate Case No. 2016-000762

MRR Pickens, LLC,.....Appellant,

v.

County of Pickens and William Cato,
Weldon Clark, Robert Ballentine, Jo
Johnston, Dennis Reinert, and Bob Young,
Individually and in their capacity as
Appointed members of the Pickens County
Planning Commission,.....Respondents,

**RECORD ON APPEAL
VOLUME II**

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS)

MRR Pickens, LLC,)
)
Plaintiff,)

v.)
)

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

Defendants.)
)

**ANSWER
AND
COUNTERCLAIM**

C.A. No. 2016-CP-39-100

Defendants William Cato, Weldon Clark, Robert Ballentine, Jo Johnston, Dennis Reinert, and Bob Young, individually and in their official capacity as appointed members of the Pickens County Planning Commission (hereinafter referred to collectively as "the individual Planning Commission members"), respond to the separately numbered paragraphs of Plaintiff MRR Pickens, LLC's Complaint as follows:

1. The individual Planning Commission members admit the allegations in paragraph 1 of the Complaint.
2. The individual Planning Commission members admit the allegations in paragraph 2 of the Complaint.
3. The individual Planning Commission members admit the allegations in paragraph 3 of the Complaint.

4. The individual Planning Commission members admit the allegations in paragraph 4 of the Complaint.
5. The individual Planning Commission members admit the allegations in paragraph 5 of the Complaint.
6. The individual Planning Commission members admit the allegations in paragraph 6 of the Complaint.
7. The Development Agreement referenced in paragraph 7 of the Complaint speaks for itself. To the extent the allegations of paragraph 7 are inconsistent with the Development Agreement, they are denied.
8. The individual Planning Commission members admit the allegations of paragraph 7 of the Complaint upon information and belief.
9. The individual Planning Commission members admit the allegations of paragraph 8 of the Complaint upon information and belief.
10. The individual Planning Commission members admit the allegations of paragraph 9 of the Complaint upon information and belief.
11. The permit referenced in paragraph 10 of the Complaint speaks for itself. To the extent the allegations of paragraph 10 are inconsistent with the permit, they are denied.
12. The permit referenced in paragraph 11 of the Complaint speaks for itself. To the extent the allegations of paragraph 11 are inconsistent with the permit, they are denied.
13. The Amended Development Agreement referenced in paragraph 12 of the Complaint speaks for itself. To the extent the allegations of paragraph 12 are

inconsistent with the Amended Development Agreement, they are denied.

14. The Amended Development Agreement referenced in paragraph 12 of the Complaint speaks for itself. To the extent the allegations of paragraph 12 are inconsistent with the Amended Development Agreement, they are denied.

15. The Amended Development Agreement referenced in paragraph 12 of the Complaint speaks for itself. To the extent the allegations of paragraph 12 are inconsistent with the Amended Development Agreement, they are denied.

16. The Amended Development Agreement and Host Agreement referenced in paragraph 15 of the Complaint speak for themselves. To the extent the allegations of paragraph 15 are inconsistent with these agreements, they are denied.

17. The Amended Development Agreement referenced in paragraph 16 of the Complaint speaks for itself. To the extent the allegations of paragraph 16 are inconsistent with the Amended Development Agreement, they are denied.

18. The individual Planning Commission members admit the allegations of paragraph 17 of the Complaint upon information and belief.

19. The individual Planning Commission members admit the allegations of paragraph 18 of the Complaint upon information and belief.

20. The Amended Development Agreement referenced in paragraph 19 of the Complaint speaks for itself. To the extent the allegations of paragraph 19 are inconsistent with the Amended Development Agreement, they are denied.

21. The individual Planning Commission members admit the allegations of paragraph 20 of the Complaint upon information and belief.

22. The individual Planning Commission members lack sufficient information

to admit or deny the allegations of paragraph 21 of the Complaint upon information and belief. Accordingly, they are denied upon information and belief.

23. The individual Planning Commission members deny the allegations of paragraph 22 of the Complaint.

24. The individual Planning Commission members lack sufficient information to admit or deny the allegations of paragraph 23 of the Complaint. Accordingly, they are denied upon information and belief.

25. The individual Planning Commission members lack sufficient information to admit or deny the allegations of paragraph 24 of the Complaint. Accordingly, they are denied upon information and belief.

26. The application referenced in paragraph 25 of the Complaint speaks for itself. To the extent the allegations of paragraph 25 are inconsistent with the application, they are denied.

27. The Letter of Intent referenced in paragraph 26 of the Complaint speaks for itself. To the extent the allegations of paragraph 26 are inconsistent with the Letter of Intent, they are denied.

28. The individual Planning Commission members admit the allegations of paragraph 27 of the Complaint upon information and belief.

29. The Land Use Approval referenced in paragraph 28 of the Complaint speaks for itself. To the extent the allegations of paragraph 28 are inconsistent with the Land Use Approval, they are denied.

30. The Land Use Approval referenced in paragraph 29 of the Complaint speaks for itself. To the extent the allegations of paragraph 29 are inconsistent with

the Land Use Approval, they are denied.

31. The individual Planning Commission members lack sufficient information to admit or deny the allegations of paragraph 30 of the Complaint. Accordingly, they are denied upon information and belief.

32. The individual Planning Commission members lack sufficient information to admit or deny the allegations of paragraph 31 of the Complaint. Accordingly, they are denied upon information and belief.

33. The individual Planning Commission members admit the allegations of paragraph 32 of the Complaint.

34. The agenda referenced in paragraph 33 of the Complaint speaks for itself. To the extent the allegations of paragraph 33 are inconsistent with the agenda, they are denied.

35. The individual Planning Commission members admit so much of the allegations of paragraph 34 of the Complaint as allege the January 11, 2016 letter related to Land Use Approval Case No. LU-15-001 and MRR's violations of such land use permit resulted in its suspension and a cease and desist order pending further explanation to the Planning Commission related to MRR's intention to comply with the 2007 and 2015 land use approvals and a renewal of MRR's permit from the Planning Commission. The individual Planning Commission members deny the remaining allegations of paragraph 34 of the Complaint.

36. The notice referenced in paragraph 35 of the Complaint speaks for itself. To the extent the allegations of paragraph 35 are inconsistent with the notice, they are denied.

37. The individual Planning Commission members deny the allegations of paragraph 36 of the Complaint.

38. The notice referenced in paragraph 37 of the Complaint speaks for itself. To the extent the allegations of paragraph 37 are inconsistent with the notice, they are denied.

39. The individual Planning Commission members deny the allegations of paragraph 38 of the Complaint.

40. The individual Planning Commission members deny the allegations of paragraph 39 of the Complaint.

41. The individual Planning Commission members deny the allegations of paragraph 40 of the Complaint.

42. The individual Planning Commission members deny the allegations of paragraph 41 of the Complaint.

43. The allegations of paragraph 42 of the Complaint contain legal allegations that do not require a response. To the extent a response is required, the allegations of paragraph 42 are denied.

44. The individual Planning Commission members deny the allegations of paragraph 43 of the Complaint.

45. The individual Planning Commission members deny the allegations of paragraph 44 of the Complaint.

46. The individual Planning Commission members deny the allegations of paragraph 45 of the Complaint.

47. The individual Planning Commission members deny the allegations of

paragraph 46 of the Complaint.

48. The individual Planning Commission members deny the allegations of paragraph 47 of the Complaint. The notice referenced in paragraph 47 of the Complaint speaks for itself. To the extent the allegations of paragraph 47 are inconsistent with the notice, they are denied.

49. The minutes referenced in paragraph 48 of the Complaint speaks for itself. To the extent the allegations of paragraph 48 are inconsistent with the minutes, they are denied.

50. The allegations of paragraph 49 of the Complaint contain legal allegations that do not require a response. To the extent a response is required, the allegations of paragraph 49 are denied.

51. The individual Planning Commission members deny the allegations of paragraph 50 of the Complaint.

52. The allegations of paragraph 51 of the Complaint contain legal allegations that do not require a response. To the extent a response is required, the allegations of paragraph 51 are denied.

53. The individual Planning Commission members lack sufficient information to form a belief as to the allegations contained in paragraph 52 of the Complaint. As such, these allegations are denied.

54. The individual Planning Commission members lack sufficient information to form a belief as to the allegations contained in paragraph 53 of the Complaint. As such, these allegations are denied.

55. The individual Planning Commission members lack sufficient information to form a belief as to the allegations contained in paragraph 54 of the Complaint. As such, these allegations are denied.

56. The individual Planning Commission members lack sufficient information to form a belief as to the allegations contained in paragraph 55 of the Complaint. As such, these allegations are denied.

57. The individual Planning Commission members lack sufficient information to form a belief as to the allegations contained in paragraph 56 of the Complaint. As such, these allegations are denied.

58. The individual Planning Commission members lack sufficient information to form a belief as to the allegations contained in paragraph 57 of the Complaint. As such, these allegations are denied.

59. The individual Planning Commission members deny the allegations of paragraph 58 of the Complaint.

60. The individual Planning Commission members deny the allegations of paragraph 59 of the Complaint.

61. The individual Planning Commission members deny the allegations of paragraph 60 of the Complaint.

62. The individual Planning Commission members deny the allegations of paragraph 61 of the Complaint.

63. The individual Planning Commission members deny the allegations of paragraph 62 of the Complaint.

64. The individual Planning Commission members deny the allegations of

paragraph 63 of the Complaint.

65. The individual Planning Commission members deny the allegations of paragraph 64 of the Complaint.

66. The permit and modifications thereto referenced in paragraph 65 of the Complaint speaks for itself. To the extent the allegations of paragraph 65 are inconsistent with the permit and modifications thereto, they are denied.

67. The allegations of paragraph 66 of the Complaint contain legal allegations that do not require a response. To the extent a response is required, the allegations of paragraph 66 are denied.

68. The allegations of paragraph 67 of the Complaint contain legal allegations that do not require a response. To the extent a response is required, the allegations of paragraph 67 are denied.

69. The individual Planning Commission members lack sufficient information to form a belief as to the allegations contained in paragraph 68 of the Complaint. As such, these allegations are denied.

70. Responding to Paragraph 69 of the Complaint, the individual Commission Members incorporate their responses to paragraphs 1 through 68 as if restated verbatim herein.

71. The allegations of paragraph 70 of the Complaint contain legal allegations that do not require a response. To the extent a response is required, the allegations of paragraph 70 are denied.

72. The individual Planning Commission members deny the allegations of paragraph 71 of the Complaint.

73. The individual Planning Commission members admit the allegations of paragraph 72 of the Complaint; however, the January 11, 2016 letter related to Land Use Approval Case No. LU-15-001 and MRR's violations of such land use permit resulting in its suspension and a cease and desist order pending further explanation to the Planning Commission related to MRR's intention to comply with the 2007 and 2015 land use approvals and a renewal of MRR's permit from the Planning Commission was in good faith and necessary to avoid MRR's violations of such land use permit and further harm to Pickens County and its residents.

74. The individual Planning Commission members deny the allegations of paragraph 73 of the Complaint.

75. The individual Planning Commission members deny the allegations of paragraph 74 of the Complaint.

76. The individual Planning Commission members deny the allegations of paragraph 75 of the Complaint.

77. The individual Planning Commission members deny the allegations of paragraph 76 of the Complaint.

78. The allegations of paragraph 77 of the Complaint contain legal allegations that do not require a response. To the extent a response is required, the allegations of paragraph 77 are denied.

79. The allegations of paragraph 78 of the Complaint contain no factual allegations that require a response. To the extent a response is required, the allegations of paragraph 78 are denied.

80. The allegations of paragraph 79 of the Complaint contain no factual allegations that require a response. To the extent a response is required, the allegations of paragraph 79 are denied.

81. Responding to Paragraph 80 of the Complaint, the individual Commission Members incorporate their responses to paragraphs 1 through 79 as if restated verbatim herein.

82. The individual Planning Commission members deny the allegations of paragraph 81 of the Complaint.

83. The individual Planning Commission members deny the allegations of paragraph 82 of the Complaint.

84. The individual Planning Commission members deny the allegations of paragraph 83 of the Complaint.

85. The individual Planning Commission members deny the allegations of paragraph 84 of the Complaint.

86. The allegations of paragraph 85 of the Complaint contain no factual allegations that require a response. To the extent a response is required, the allegations of paragraph 85 are denied.

87. The individual Planning Commission members deny the allegations of paragraph 86 of the Complaint.

88. Responding to Paragraph 87 of the Complaint, the individual Commission Members incorporate their responses to paragraphs 1 through 86 as if restated verbatim herein.

89. The individual Planning Commission members deny the allegations of

paragraph 88 of the Complaint.

90. The allegations of paragraph 89 of the Complaint contain no factual allegations that require a response. To the extent a response is required, the allegations of paragraph 89 are denied.

91. Responding to Paragraph 90 of the Complaint, the individual Commission Members incorporate their responses to paragraphs 1 through 89 as if restated verbatim herein.

92. The individual Planning Commission members admit the allegations of paragraph 91 of the Complaint.

93. The individual Planning Commission members admit the allegations of paragraph 92 of the Complaint upon information and belief.

94. The individual Planning Commission members admit the allegations of paragraph 93 of the Complaint upon information and belief.

95. The individual Planning Commission members admit the allegations of paragraph 94 of the Complaint upon information and belief.

96. The individual Planning Commission members deny the allegations of paragraph 95 of the Complaint.

97. The individual Planning Commission members admit the allegations of paragraph 96 of the Complaint.

98. The individual Planning Commission members deny the allegations of paragraph 97 of the Complaint.

99. Responding to Paragraph 98 of the Complaint, the individual Commission Members incorporate their responses to paragraphs 1 through 97 as if restated

verbatim herein.

100. The individual Planning Commission members lack sufficient information to form a belief as to the allegations contained in paragraph 99 of the Complaint. As such, these allegations are denied.

101. The individual Planning Commission members lack sufficient information to form a belief as to the allegations contained in paragraph 100 of the Complaint. As such, these allegations are denied.

102. The individual Planning Commission members deny the allegations of paragraph 101 of the Complaint.

103. The individual Planning Commission members deny the allegations of paragraph 102 of the Complaint.

104. The individual Planning Commission members deny the allegations of paragraph 103 of the Complaint.

105. The individual Planning Commission members deny the allegations of paragraph 104 of the Complaint.

106. The individual Planning Commission members deny the allegations of paragraph 105 of the Complaint.

107. Responding to Paragraph 106 of the Complaint, the individual Planning Commission Members incorporate their responses to paragraphs 1 through 105 as if restated verbatim herein.

108. The individual Planning Commission members deny the allegations of paragraph 107 of the Complaint.

109. The individual Planning Commission members deny the allegations of

paragraph 108 of the Complaint.

110. The individual Planning Commission members deny the allegations of paragraph 109 of the Complaint.

111. The individual Planning Commission members deny the allegations of paragraph 110 of the Complaint.

112. The individual Planning Commission members deny the allegations of paragraph 103 of the Complaint.

113. Responding to Paragraph 112 of the Complaint, the individual Commission Members incorporate their responses to paragraphs 1 through 111 as if restated verbatim herein.

114. The individual Planning Commission members deny the allegations of paragraph 113 of the Complaint.

115. The individual Planning Commission members deny the allegations of paragraph 114 of the Complaint.

116. The individual Planning Commission members deny the allegations of paragraph 115 of the Complaint.

117. The individual Planning Commission members deny the allegations of paragraph 116 of the Complaint.

118. The individual Planning Commission members deny the allegations of paragraph 117 of the Complaint.

119. The individual Planning Commission members deny the allegations of paragraph 118 of the Complaint.

120. Responding to Paragraph 119 of the Complaint, the individual Planning

Commission Members incorporate their responses to paragraphs 1 through 118 as if restated verbatim herein.

121. The allegations of paragraph 120 of the Complaint contain legal allegations that do not require a response. To the extent a response is required, the allegations of paragraph 120 are denied.

122. The allegations of paragraph 121 of the Complaint contain legal allegations that do not require a response. To the extent a response is required, the allegations of paragraph 121 are denied.

123. The individual Planning Commission members deny the allegations of paragraph 122 of the Complaint.

124. The individual Planning Commission members deny the allegations of paragraph 123 of the Complaint.

125. The individual Planning Commission members deny the allegations of paragraph 124 of the Complaint.

126. The allegations of paragraph 125 of the Complaint contain legal allegations that do not require a response. To the extent a response is required, the allegations of paragraph 125 are denied.

127. The individual Planning Commission members deny the allegations of paragraph 126 of the Complaint.

128. The individual Planning Commission members deny the allegations of paragraph 127 of the Complaint.

129. The individual Planning Commission members deny the allegations of paragraph 128 of the Complaint.

130. The individual Planning Commission members deny the allegations of paragraph 129 of the Complaint.

131. The individual Planning Commission members deny the allegations of paragraph 130 of the Complaint.

132. The individual Planning Commission members deny the allegations of paragraph 131 of the Complaint.

133. The individual Planning Commission members deny the allegations of paragraph 132 of the Complaint.

134. The individual Planning Commission members deny the allegations of paragraph 133 of the Complaint.

135. The individual Planning Commission members deny the allegations of paragraph 134 of the Complaint.

136. The individual Planning Commission members deny the allegations of paragraph 135 of the Complaint.

137. The individual Planning Commission members deny that MRR is entitled to any of the relief requested in its prayer for relief in the Complaint.

138. Defendants deny each and every allegation of the Complaint not hereinabove specifically admitted, modified or explained.

FIRST DEFENSE

139. MRR's Complaint does not state a claim upon which relief can be granted. Therefore, MRR's Complaint should be dismissed pursuant to Rule 12(b)(6), *SCRC*P.

SECOND DEFENSE

140. MRR's Complaint fails to state a cause of action against the individual Planning Commission members upon which relief may be granted to the extent that any action taken by the individual Planning Commission members is foreclosed or limited by the doctrine of governmental immunity, qualified, sovereign, or otherwise.

THIRD DEFENSE

141. The individual Planning Commission members plead the provisions of the South Carolina Tort Claims Act, S.C. Code § 15-78-10 *et seq.*, including all of the immunities (including as to individual liability), limitations (including as to compensatory and punitive damages), and defenses granted by or preserved in the Act.

FOURTH DEFENSE

142. The individual Planning Commission members specifically plead immunity to the extent it operates as a complete bar to any allegations of the Complaint subject to the exceptions to the waiver of sovereign immunity set forth in S.C. Code Ann. § 15-78-60 *et seq.*

FIFTH DEFENSE

143. Pursuant to the South Carolina Tort Claims Act, liability and damages, if any, should be capped pursuant to the statutory caps set forth in S.C. Code Ann. § 15-78-120.

SIXTH DEFENSE

144. To the extent MRR seeks damages for losses not specifically set forth in § 15-78-30(f), such claims are barred by the South Carolina Tort Claims Act.

SEVENTH DEFENSE

145. As to the claim under 42 U.S.C. § 1983, the individual Planning Commission members are protected from suit in their individual capacity under the doctrine of qualified immunity.

EIGHTH DEFENSE

146. MRR's claim under 42 U.S.C. § 1983 fails to state a cause of action against the individual Planning Commission members in their official capacity is simply only another way of pleading an action against Defendant Pickens County and any judgment herein, should be executed against the governmental entity itself.

NINTH DEFENSE

147. MRR's claim under 42 U.S.C. § 1983 fails to state a cause of action against the individual Planning Commission members, who were acting as reasonable officials, would not have known their actions violated any right.

TENTH DEFENSE

148. MRR's claim under 42 U.S.C. § 1983 fails to state a cause of action against the individual Planning Commission members, whose official actions in enforcement of County's ordinances, policies, or practices was not a violation of federal rights.

ELEVENTH DEFENSE

149. MRR's claim under 42 U.S.C. § 1983 fails to state a cause of action against the individual Planning Commission members, because there was no previously established law prohibiting or restricting the conduct in question at the time it occurred; and (2) if the law was clearly established, that a reasonable official under the circumstances would not have known the conduct was illegal.

TWELFTH DEFENSE

150. MRR's claims fail because common law absolute and qualified immunities apply to the individual Planning Commission members.

THIRTEENTH DEFENSE

151. MRR's claims fail because the U.S. Constitution and the Eleventh Amendment provide sovereign immunity to states and municipalities.

FOURTEENTH DEFENSE

152. Any award of damages to MRR should be appropriately limited as a result of any failure by MRR to mitigate its damages.

FIFTEENTH DEFENSE

153. MRR is not entitled to some or all of the relief requested in the Complaint because the individual Planning Commission members' actions were not grossly negligent, malicious, egregious, in bad faith, or in willful or reckless indifference or disregard of any legal rights of MRR.

SIXTEENTH DEFENSE

154. MRR is not entitled to an award of punitive damages against the individual Planning Commission members to the extent that such an award is barred by the Constitution of the United States and the Constitution of the State of South Carolina. Defendants further allege that any award of punitive damages would violate that prohibition against excessive fines found in the Eighth Amendment of the Constitution of the United States as applied to the state by way of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States. Further, any award of punitive damages would violate the guaranty of due process

found in the Fourteenth Amendment to the Constitution of the United States because of the lack of objective guidelines on which a jury might base its award and further that such guidelines to the extent that they exist are arbitrary and void for vagueness.

SEVENTEENTH DEFENSE

155. MRR is not entitled to some or all of the relief requested in the Complaint because the individual Planning Commission members are employees or appointed officials of a public entity that is not subject to an assessment of punitive or exemplary damages.

EIGHTEENTH DEFENSE

156. To the extent MRR seeks double recovery under the various causes of action for any alleged single wrong, it must elect a remedy.

NINETEENTH DEFENSE

157. The individual Planning Commission members reserve the right to assert the after-acquired evidence defense should they discover evidence during the course of this civil action that would otherwise justify any act or omission challenged in this lawsuit.

TWENTIETH DEFENSE

158. Plaintiff's Complaint fails to state a cause of action against the individual Planning Commission members upon which relief may be granted in that their actions were undertaken in good faith execution of their responsibilities as Pickens County Planning Commission members.

TWENTY FIRST DEFENSE

159. Due to MRR's willful and material misrepresentations to Pickens County, MRR is barred by the equitable doctrine of unclean hands.

TWENTY SECOND DEFENSE

160. MRR has failed and refused to exhaust administrative remedies with the Pickens County Planning Commission in failing and refusing to request Review or Appeal to the Planning Commission, and further, in failing and refusing to provide the information requested by Planning Commission in its letter of January 11, 2016.

161. Further, MRR failed and refused to respond to reasonable and relevant questions posed to it by Planning Commission, particularly regarding its intent to deposit coal ash/CCR waste into the landfill, which substantially contributed to Planning Commission's actions.

162. Having failed and refused to pursue available and reasonable administrative remedies with the Planning Commission, MRR is barred from pursuing any Appeal to this Court, and/or any other request for relief from this Court.

TWENTY THIRD DEFENSE

163. By pleading affirmative defenses, the individual Planning Commission members expressly do not undertake any burden of proof ordinarily borne by Plaintiff.

TWENTY FOURTH DEFENSE

164. The individual Planning Commission members hereby give notice that they intend to rely on such other defenses as may become available during discovery in this action and reserve the right to amend this Answer to assert any such defense.

BY WAY OF COUNTERCLAIM
(Abuse of Process)

165. The individual Planning Commission members repeat and restate all prior allegations in the Complaint.

166. The individual Planning Commission members would show that MRR failed to utilize the appropriate processes for permitting with respect to their intended use of the subject property.

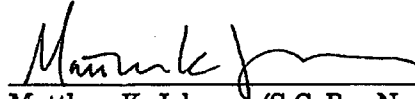
167. Rather, MRR has sought to gain improper advantage and circumvent this process through this action.

168. The individual Planning Commission members and the taxpayers of Pickens County have been and continue to be damaged by MRR's willful abuse of process and are entitled to actual damages and punitive damages sufficient to ensure this type of conduct is not repeated.

WHEREFORE, the individual Planning Commission members pray:

- a. For judgment in their favor and that MRR's Complaint be dismissed with prejudice;
 - b. For the costs and other expenses of litigation be taxed to Plaintiff;
 - c. For an award of reasonable attorneys' fees in defending this matter;
- and/or
- d. For such other and further relief as the Court deems just and proper.

Respectfully submitted,



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

March 2, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
MRR Pickens, LLC,	)	Civil Action No.: 2016-CP-39-100
Plaintiff,	)	
	)	
vs.	)	
	)	
County of Pickens and William Cato,	)	
Weldon Clark, Robert Ballentine, Jo	)	
Johnston, Dennis Reinert, and Bob Young,	)	
individually and in their official capacity as	)	
appointed members of the Pickens County	)	
Planning Commission,	)	THIRD-PARTY COMPLAINT
Defendants.	)	
	)	
and	)	
	)	
County of Pickens,	)	
Defendant and Third-Party Plaintiff,	)	
	)	
vs.	)	
	)	
MRR Southern, LLC,	)	
Third-Party Defendant.	)	
	)	

Third-Party Plaintiff Pickens County, complaining of Third-Party Defendant MRR Southern, LLC, would respectfully show:

GENERAL ALLEGATIONS

1. That Pickens County, Defendant and Third-Party Plaintiff herein, is a duly authorized political subdivision and governmental body, pursuant to the laws of the State of South Carolina, and exists and operates in Pickens County, South Carolina.
2. That upon information and belief, Third Party Defendant MRR Southern, LLC (hereinafter "MRR-S") is a limited liability corporation organized and existing under the laws of the

State of North Carolina, with its principal place of business at 431 Raleigh View Road, Raleigh, North Carolina.

3. That Third-Party Defendant MRR-S is authorized to do business in the State of South Carolina, and is doing business in Pickens County, South Carolina, directly and also through its wholly-owned subsidiary, MRR Pickens, LLC.

4. That upon information and belief, MRR-S is the Member of MRR Pickens, LLC, and entirely dominates, controls and directs the actions and operations of MRR Pickens, LLC.

5. That MRR Pickens, LLC filed a Verified Complaint and Petition for Appeal against Pickens County and the individually named Defendants herein (a copy of which is attached hereto as Exhibit A).

6. That Pickens County filed an Answer and Counterclaim against MRR Pickens, LLC (a copy of which is attached hereto as Exhibit B).

7. That Pickens County incorporates herein by reference its Answer and Counterclaim (Exhibit B), as fully as if repeated herein.

8. That, regarding its Counterclaims against MRR Pickens, LLC, particularly in regard to paragraphs 62 through 78 inclusive (Further Allegations), and particularly in regard to paragraphs 79 through 115 inclusive (the various Counterclaims), Pickens County would show that Third-Party Defendant MRR Southern, LLC has acted directly in its own capacity, complicitly with its subsidiary MRR Pickens, LLC, and has acted as the entity dominating, controlling and directing the acts of its subsidiary, MRR Pickens, LLC.

LLC/CORPORATE CONTROL/CORPORATE RELATIONSHIPS

9. That MRR-S is in the business of owning, operating and developing landfills and solid waste facilities, both through its individual actions and through those of its subsidiaries, including MRR Pickens, LLC.

10. Upon information and belief, MRR Pickens, LLC is wholly owned by MRR-S, and is entirely dominated, controlled and managed by MRR-S.

11. That at all times relevant hereto, MRR Pickens, LLC acted as the agent of and for MRR-S.

12. That at all times relevant hereto, the employees, agents and servants of MRR Pickens, LLC were acting in concert with, and as agents and in the interests of, MRR-S.

13. That at all times relevant hereto, various employees, agents, and servants of MRR-S acted in concert with, and in the direction and control of, MRR Pickens, LLC.

14. That on many occasions relevant hereto, MRR-S directly acted in regard to the development of the Highway 93 Landfill in Pickens County, in regard to the obtaining of the 2008 Permit, in regard to obtaining "modifications" of the Permit in 2014 and 2015, and in regard to making representations and misrepresentations to Pickens County and to the Pickens County Planning Commission, including but not limited to, the submission of letters and information, the submission of engineering reports to S.C. DHEC, and the furnishing of its own representatives to meet, discuss, and negotiate with S.C. DHEC, Pickens County and the Pickens County Planning Commission.

15. That in regard to all allegations of Pickens County which form the bases and grounds for the Counterclaims asserted by Pickens County against MRR Pickens, LLC, MRR-S is also

complicit, and liable and responsible to Pickens County, not only for its direct actions but also for and through its direct control, domination and direction of its subsidiary MRR Pickens, LLC.

16. That the acts and delicts of MRR Pickens, LLC were directed, controlled, approved and ratified by MRR-S.

17. That the actions of MRR Pickens, LLC were so dominated, controlled and directed by MRR-S, that at all times relevant hereto:

- (A) MRR Pickens, LLC was acting as the alter ego of MRR-S, and did not function as an independent company. Further, both entities must be held liable for the wrongful acts and omissions of the other.
- (B) MRR Pickens, LLC was acting in a joint enterprise, with united and substantially same interests, with MRR-S, in that (i) they both had a mutual understanding for the common purpose of developing this landfill and obtaining the Permit; (ii) they both had a right to a voice in the direction and control of means used to carry out their common purpose; and (iii) each party in this joint enterprise acted as an agent for the other; (iv) each acted with joint duty; and (v) the acts of one constitute the acts of the other.
- (C) MRR Pickens, LLC and MRR-S were acting under and through an amalgamation of interests.
- (D) That the corporate veil of MRR Pickens, LLC and of MRR-S must be pierced, to avoid injustice and fundamental unfairness.

18. That MRR Pickens, LLC and MRR-S are jointly and severally liable for the acts and delicts complained of by Pickens County.

PICKENS COUNTY'S CLAIMS AGAINST MRR-S

19. Pickens County reaffirms its earlier allegations as fully as if repeated herein, and reaffirms its allegations made in its Answer and Counterclaim (Exhibit B) filed in this case.

20. That MRR Pickens, LLC (hereinafter MRR-P) and MRR-S acted in concert to the extent that their actions could not be distinguished. Hereinafter, said entities are referred to as "MRR-P/S".

21. That on all occasions, and at all meetings and in all discussions between MRR-P/S and Pickens County, from initial discussions in 2006-2007, through the County Planning Commission meeting of January 12, 2015, MRR-P/S and its agents and representatives always represented that this landfill was to be for Construction and Demolition and Land Clearing Debris (C&D/LCD), and not for other categories of wastes. These representations by MRR-P/S and its agents and representatives were material representations. At all times, Pickens County and its officials made it clear that this landfill was to be limited to C&D/LCD.

22. That on November 3, 2008, DHEC issued a Permit to MRR-P/S, to operate the facility named in the Permit as "Highway 93 C&D Landfill." Said Permit appropriately contained the following Special Condition:

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

(County refers this Court to Appendix I of said Regulation, which includes categories of Land Clearing Debris, Construction and Demolition waste, Brown Goods (i.e., used furniture and the like), and Animal Carcasses).

23. That the Special Condition of the November 3, 2008 Permit, as stated above, was appropriate and acceptable to Pickens County.

24. That until the recent present controversy between MRR-P/S and Pickens County arose, Pickens County remained under the understanding and belief that the 2008 Permit remained intact.

25. That, in accord with the Development Agreement of 2007 and the Host Agreement of 2007, Pickens County revised its Solid Waste Management Plan in 2013 (SWMP). MRR-P/S approved the 2013 SWMP.

26. That by statute, any action by MRR-P/S and DHEC in regard to a solid waste facility must be consistent with the local government's SWMP.

27. That the 2013 SWMP prohibits "Special Wastes" (p. 18, SWMP), and as defined by S.C. Code Section 44-96-390. Further, no Class Three Landfill is allowed in Pickens County, nor is such permissible, under current Demonstration of Need Regulations.

28. That, only since the recent controversy between MRR-P/S and Pickens County has arisen, Pickens County has learned that throughout 2014, and throughout much of 2015, MRR-P/S and its agents and representatives, were meeting and engaging in extensive communications, decisions and meetings with S.C. DHEC, in an effort to bring about major modifications and substantial changes to the November 3, 2008 Permit, all secretly, clandestinely and underhandedly, and without any notice to Pickens County or to the public.

29. That Pickens County has very recently learned, that in 2014 and 2015, MRR-P/S and its agents and representatives, filed at least three (3) major engineering reports and plans with DHEC, all without any notice of any kind to Pickens County or to the public, including:

- (A) **Work Plan for Site-Specific Hydrogeologic Investigation** - prepared for MRR by Civil & Environmental Consultants, Inc. (CEC), August 2014. On page 5 of said Report, CEC states:

The permit, issued in November 2008, is for a Construction, Demolition, and Land-Clearing Landfill . . .

Such statement above is an accurate statement. However, the Report states further:

During recent meetings between MRR and DHEC, it was confirmed that the modification of the Class Two Permit to meet the requirements of Regulation R. 61-107.19. Part V. Class Three Landfills would require a minor permit modification. (emphasis added).

- (B) Site-Specific Hydrogeologic Investigation Report - prepared by CEC for MRR, submitted to DHEC December 2014. On page 1 is found the following:

The Permit, issued in November 2008, is for a Construction, Demolition, and Land-Clearing Landfill

Also:

During recent meetings between MRR and DHEC, it was confirmed that a modification of the Class Two Landfill Permit to meet the requirements of Regulation R. 61-107.19. Part V Class Three Landfills would require a minor permit modification, to satisfy the Class Three Landfill

requirements, MRR engaged Civil & Environmental Consultants, Inc. (CEC) to conduct further hydrogeologic evaluation of the proposed landfill to provide additional data for a permit modification.

(C) "Minor Permit Modification"

Prepared for MRR Southern, LLC by CEC, submitted to DHEC March 2015 (updated August 2015). The following found on page 2:

This document consists of a Minor Permit Modification Application to obtain the option to develop cells of the Facility with an Alternate Liner System as opposed to the currently permitted Class 2 System.

Also, on page 51:

The landfill will accept Class 2 and certain special wastes

30. That neither MRR-P/S nor DHEC ever notified Pickens County or the public that MRR-P/S was preparing such reports and making efforts to modify the Permit in any manner, to add an Alternate Liner System, to deposit special wastes, to change the Permit from Class Two to meet the requirements of Class Three Landfills, or any other modifications of the Permit or of the landfill or of wastes to be deposited into the landfill.

31. To the contrary, and in direct contradiction to the above, MRR-P/S and its representatives and agents continued to inform Pickens County that its intent was the same as in 2007, to construct and operate a C&D/LCD landfill.

32. That as a result of the aforesaid secretive, clandestine, underhanded and fraudulent discussions, communications and meetings between MRR-P/S and DHEC, DHEC issued a Major

Modification (as defined by Reg. 61-107.19 Part I, B. 48), although inappropriately and unlawfully characterizing it as a "minor modification," in an effort by MRR-P/S to avoid any notice or disclosure of its untoward actions and intentions to Pickens County or to the public. Said Permit, which was unlawfully and inappropriately obtained, and which should be declared void by this Court, radically and majorly changes and substantially alters the facility, substantially alters its operations, and alters the Class Two design requirements, and potentially would allow "special wastes" such as coal ash and other "special wastes." Said Permit is dated August 10, 2015.

33. That as of the date of the issuance of this pleading, neither DHEC nor MRR-P/S has formally notified Pickens County of the issuance of this unlawfully obtained 2015 Permit, and neither Pickens County nor the public was ever notified or provided any opportunity to comment upon, or be involved in, said substantial, radical and major changes.

34. That despite the aforesaid secretive, clandestine and underhanded meetings, discussions and communications between DHEC and MRR-P/S, MRR-P/S officials, including MRR's present attorney, engineering consultant Scott Brown, MRR's managing member Hector Norbert, Dan Moore (MRR Project Manager), and General Manager Chris Roof, appeared at the January 12, 2015 meeting of the Pickens County Planning Commission and, incredibly, MRR-P/S made the following false and material representations:

- (A) "It's probably also important to note right up front that the land use details and development details for the project are just the same as they were when we got the initial approval on the site back in 2007." (Tr., p. 6).
- (B) "This was previously called and referred to as a construction and demolition debris landfill. This is the same type of facility that the county is operating."

"This is exactly the same type of landfill that the county is operating over on Old Liberty Road" (Tr., p. 8)

(It must be noted that the County's existing facility is for C&D/LCD only).

- (C) "This agreement requires MRR to provide the county with all of our regulatory reports, things such as semiannual groundwater monitoring reports, any compliance issues, notices of violation. We have to -- anything we submit to DHEC has to be submitted to you all at the very same time we submit it to DHEC." (Tr., p. 11).

Note: The above statement accurately describes MRR's duties to notify Pickens County of filings with DHEC; yet, MRR had at that point failed to provide Pickens County with any information related to its ongoing efforts to change the Permit and to change the facility.

- (D) MRR denies the need for liners. (See Tr., p. 14).

Note: MRR incredibly states this to Planning Commission, despite enormous efforts and submission of extensive engineering reports, for the purpose of adding a liner.

35. That in late 2015, MRR-P/S refused to respond to requests for information concerning its intentions to deposit coal ash into this landfill, instead continuing its course of action of fraud and deceit.

36. That at the Planning Commission meeting in January of 2015 MRR-P/S continued to refuse to provide full and appropriate information concerning its intentions to deposit coal ash and/or other wastes into this landfill, which led to the issuance of the January 11, 2016 letter.

AS A FIRST CAUSE OF ACTION

37. County reaffirms its earlier allegations as fully as if repeated herein.
38. That the actions of MRR-P/S constitute Fraud, in that:
- (A) MRR-P/S, its agents and representatives, made numerous representations to Pickens County concerning its intentions to construct and operate a landfill only for C&D/LCD waste, and made further representations, as referenced hereinabove, at the January 12, 2015 Planning Commission meeting.
 - (B) That MRR-P/S's representations were false.
 - (C) That MRR-P/S knew that these representations were false.
 - (D) That Pickens County relied upon MRR-P/S's representations.
 - (E) That said representations were material in all communications and transactions with Pickens County.
 - (F) That Pickens County had a right to rely upon the truth of said representations of MRR-P/S, and such reliance was reasonable.
 - (G) That Pickens County was without knowledge of the falsity of MRR-P/S's representations.
 - (H) That MRR-P/S intended for Pickens County to rely upon these representations and for Pickens County to act based upon these representations.
 - (I) That as a result of the above, Pickens County consequently suffered proximate injury.

39. That Pickens County's damages and injuries include, but are not limited to, the use of extensive County resources, time and personnel in the pursuit of an appropriate C&D/LCD Landfill to be available for its citizens, and all costs and expenses related thereto, as well as the loss of available C&D/LCD disposal for its citizens once the existing County Landfill is full (should MRR-P/S continue to violate its agreements and representations); and in the event that MRR-P/S does deposit wastes, such as coal ash, CCR, other "special wastes," and/or other wastes inappropriate for this C&D/LCD Landfill, then Pickens County and its citizens will suffer additional damages and injuries to persons, property and environment.

AS A SECOND CAUSE OF ACTION

40. County reaffirms its earlier allegations as fully as if repeated herein.

41. That due to the misrepresentations and inappropriate and unlawful actions by MRR-P/S, MRR-P/S has breached its Development Agreement and Host Agreement with Pickens County, has breached the terms and conditions of the November 3, 2008 Permit, and has violated the Pickens County Solid Waste Management Plan of 2013.

42. That as a proximate result, Pickens County has suffered the damages as set forth in paragraph 39 above.

AS A THIRD CAUSE OF ACTION

43. County reaffirms its earlier allegations as fully as if repeated herein.

44. That MRR-P/S willfully and fraudulently induced Pickens County to enter into the relevant agreements and to grant relevant approvals for certain actions of MRR-P/S, through use of misrepresentations and other acts of fraud.

45. That as a proximate result, Pickens County has suffered the damages as set forth in paragraph 39 above.

AS A FOURTH CAUSE OF ACTION

46. County reaffirms its earlier allegations as fully as if repeated herein.

47. That in addition to breaching its contracts and agreements with Pickens County, MRR-P/S has committed Fraudulent Acts accompanying the breaches of contract, including but not limited to:

- (A) Misrepresenting and continuing to misrepresent its intentions and the true nature of its facility and operations, throughout the years from 2007 to the present.
- (B) Misrepresenting and making intentional false statements at the Planning Commission meeting of January 12, 2015.
- (C) Violating its duty to provide Pickens County with its filings and submissions of reports, studies and documents designed to change the 2008 Permit.
- (D) Fraudulently concealing its ongoing meetings, submissions of reports and studies and documents, and communications with DHEC in 2014 and 2015, and perhaps at other times not yet discovered by Pickens County.
- (E) Fraudulently omitting from discussions and representations with Pickens County its efforts to change the 2008 Permit and to change the agreed-upon facility and operations.

48. That as a proximate result, Pickens County suffered the damages as set forth in paragraph 39 above.

AS A FIFTH CAUSE OF ACTION

49. County reaffirms its earlier allegations as fully as if repeated herein.

50. That MRR-P/S fraudulently omitted material information from its representations and communications with Pickens County, including but not limited to, its true intentions to deposit wastes other than C&D/LCD into this landfill, and its intentions and activities to materially change the Permit, the facility and its operations, from what was agreed upon with Pickens County.

51. That as a proximate result, Pickens County suffered the damages as set forth in paragraph 39 above.

AS A SIXTH CAUSE OF ACTION

52. County reaffirms its earlier allegations as fully as if repeated herein.

53. That MRR-P/S fraudulently concealed from Pickens County its true intentions for this landfill, as well as its ongoing activities to substantially change the Permit, the landfill and its operations, and the types of intended wastes, from what was agreed upon with Pickens County, in an ongoing effort to avoid any opposition to such by Pickens and in an ongoing effort to continue receiving approvals from Pickens County.

54. That as a proximate result, Pickens County suffered the damages as set forth in paragraph 39 above.

AS A SEVENTH CAUSE OF ACTION

55. County reaffirms its earlier allegations as fully as if repeated herein.

56. That the misrepresentations of MRR-P/S, its agents and representatives, and its ongoing activities to substantially change the Permit, the landfill, its operations, and the types of intended wastes, from what was agreed upon with Pickens County, in an ongoing effort to prevent

opposition from Pickens County and in an ongoing effort to receive approvals from Pickens County, were done intentionally and willfully and constitute Intentional Acts.

57. That as a proximate result, Pickens County suffered the damages as set forth in paragraph 39 above.

AS A EIGHTH CAUSE OF ACTION

58. County reaffirms its earlier allegations as fully as if repeated herein.

59. That this action by MRR-P/S, together with its Motion for Emergency Temporary Injunction, have been brought by MRR-P/S with and through an ulterior purpose, and constitute willful acts in the use of legal process which are not proper or warranted in the regular conduct of actions and transactions with Pickens County.

60. That the aforesaid actions and filings by MRR-P/S, which has acted with fraud and deceit, and which has unclean hands, are aimed at objectives not legitimate in the use of legal process.

61. That the aforesaid actions and filings by MRR-P/S are an attempt at coercion, to obtain a collateral advantage, and to obtain inappropriate advantage, including the attempts to force upon Pickens County an inappropriate and unwanted landfill operation, with intended inappropriate waste disposal, into Pickens County.

62. That MRR-P/S has acted with fraud and deceit and has unclean hands, and is entitled to none of the relief it seeks in these legal actions it has filed.

63. That MRR-P/S, in the presentation of its Verified Complaint, and in the Affidavits issued in support of its Motion for Emergency Temporary Injunction, has made and continues to make patently false representations to this Court.

64. That as a proximate result, Pickens County suffered the damages as set forth in paragraph 39 above.

AS A NINTH CAUSE OF ACTION

65. County reaffirms its earlier allegations as fully as if repeated herein.

66. That MRR-P/S has engaged in unfair and deceptive acts and practices in the conduct of its trade and the conduct of commerce.

67. That MRR-P/S's unfair and deceptive acts and practices are in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Sections 39-5-10, et seq.

68. That MRR-P/S's unfair and deceptive acts and practices are offensive to public policy and are immoral, unethical and oppressive.

69. That MRR-P/S's unfair and deceptive acts and practices adversely affect the public interest, and have the potential and likelihood for repetition.

70. That Pickens County has been proximately damaged as a result of MRR-P/S's unfair and deceptive acts and practices, and per S.C. Code Section 39-5-140, Pickens County is entitled to treble damages, attorneys fees and costs for this action.

AS A TENTH CAUSE OF ACTION

71. County reaffirms its earlier allegations as fully as if repeated herein.

72. That Pickens County is in need of, and entitled to, an Order and/or Declaratory Judgment and/or Injunction of this Court:

- (A) Preventing MRR-P/S from depositing any coal ash or Coal Combustion Residue (CCR) into this landfill in Pickens County.

- (B) Preventing MRR-P/S from depositing any wastes which meet the definition of "Special Waste," per S.C. Code Section 44-96-390 and per the 2013 Pickens County Solid Waste Management Plan, into this landfill in Pickens County.
- (C) Prohibiting MRR-P/S from depositing into this landfill in Pickens County, any wastes which are not specifically listed on Appendix I to R. 61-107.19.
- (D) Finding that the Permit issued by DHEC on November 3, 2008, is the only valid Permit for this landfill.
- (E) Finding that the Permit/Permit Modification issued August 10, 2015 has no validity, was unlawfully obtained, and is null and void.
- (F) Finding that MRR-P/S must fully comply with, and its actions must be fully consistent with, the 2013 Pickens County Solid Waste Management Plan.

That, for the acts of fraud and/or fraudulent behavior, and for all intentional acts of MRR-P/S as referenced herein, Pickens County is entitled to punitive damages.

WHEREFORE, Pickens County prays:

- (A) That all claims of MRR be denied and dismissed.
- (B) For Judgment against MRR Pickens and MRR Southern for damages related to any and all Counterclaims advanced herein, as actual damages.
- (C) For Punitive Damages, for any and all acts of MRR Pickens and MRR Southern constituting fraud, fraudulent behavior, any form of fraud, and/or intentional acts, in an amount to be determined by this Court.

- (D) For the violations of the Unfair Trade Practices Act, treble damages, plus costs and attorneys fees related to this action.
- (E) For Declaratory Judgment, Injunction and/or Order of this Court, as set forth in paragraphs 113 and 114 herein.
- (F) For such other and further relief as this Court may deem just and proper.

March 11, 2016

Spartanburg, SC



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ATTORNEYS FOR PICKENS COUNTY

STATE OF SOUTH CAROLINA 2016 FEB 1) PM 1:25 IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS CLERK OF COURT THIRTEENTH JUDICIAL CIRCUIT
PICKENS COUNTY
MRR Pickens, LLC, SOUTH CAROLINA CIVIL ACTION No.: 2016-CP-39-100

Plaintiff,

vs.

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

Defendants.

**VERIFIED COMPLAINT AND
PETITION FOR APPEAL**

COMES NOW Plaintiff MRR Pickens, LLC, by and through its undersigned attorneys, and states its Complaint and Petition for Appeal against Defendants County of Pickens, William Cato, Weldon Clark, Robert Ballentine, Jo Johnston, Dennis Reinert, and Bob Young, individually and in their official capacity as members of the Pickens County Planning Commission (collectively referred to as "Defendants") relating to their Land Use termination decision dated January 11, 2016 (attached as Exhibit A hereto) as follows:

PARTIES

1. Plaintiff MRR Pickens, LLC ("MRR Pickens") is a limited liability company organized under the laws of the State of South Carolina and authorized to conduct business in Pickens County, South Carolina.

2. MRR Pickens is the owner of real property located at 2180 Greenville Highway, Liberty, County of Pickens, South Carolina (hereinafter referred to as "the Subject Property") as more fully set forth in the deed and plat attached as Exhibit B.

3. Defendant County of Pickens ("County") is a political subdivision organized and existing under the laws of the State of South Carolina.

4. The Pickens County Planning Commission ("the Planning Commission") is a "local planning commission" pursuant to S.C. Code Ann. § 6-29-310 *et. seq.* and Article III of the Pickens County Code of Ordinances.

5. Defendants William Cato, Weldon Clark, Robert Ballentine, Jo Johnston, Dennis Reinert and Bob Young serve as appointed members of the Planning Commission. They are sued in their individual and official capacities.

6. Jurisdiction and venue is proper in Pickens County.

FACTUAL BACKGROUND

-The Development Agreement and Class Two Permit for a Landfill-

7. On March 8, 2007 the County entered into a Development Agreement for the construction of a landfill owned and operated by MRR Pickens on the Subject Property. The Development Agreement is attached as Exhibit C.

8. At that time, the Subject Property was part of a larger tract of 446.70 acres of land as reflected on Pickens County Tax Map Number 4098-00-82-5916. See Exhibit D to Development Agreement.

9. In November of 2007, MRR Pickens applied to the South Carolina Department of Health and Environmental Control (DHEC) for a permit to operate a Class Two Landfill.

10. On November 3, 2008, DHEC issued a Class Two Landfill Permit to MRR Pickens (the "Class Two Permit") for the Subject Property under Reg. 61-107.19.¹ The Class Two Permit

¹ On May 23, 2008, S.C. Regulation 61-107.19 became effective, repealing and superseding certain solid waste landfill regulations including S.C. Regulation 61-107.11, Solid Waste Management: Construction, Demolition, and Land-Clearing Debris Landfills. These regulations are administered and enforced by the South Carolina Department of Health and Environmental Control ("DHEC"). With the repeal of S.C. Reg. 61.107.11 and the adoption of S.C. Reg. 61-107.19, persons cannot receive permits for Construction, Demolition (C&D) and Land-Clearing Debris (LCD) Landfills in South Carolina. Instead, since May 23, 2008, DHEC issues permits based on certain tiered classes. As relevant to this dispute, a "Class Two Landfill" is capable of accepting C&D/LCD and other

became effective on March 10, 2009 and was modified on August 10, 2015. DHEC Permit No. LF2-00003 is attached hereto as Exhibit D.

11. Section A(2) of MRR Pickens' Class Two Permit specifically allows "disposal of items listed in Appendix I of Reg. 61-107.19 and any other waste approved by [DHEC] for disposal in a Class Two Landfill pursuant to Reg. 61-107.19, Part IV, Section C.2."

12. On April 6, 2015, MRR Pickens and the County amended the Development Agreement ("Amended Development Agreement") to reflect the type of permit actually issued to MRR Pickens by DHEC in 2008 (the "Class Two Permit") and changes to DHEC regulations since the agreement was executed. The Amended Development Agreement is attached as Exhibit E.

13. The Amended Development Agreement deleted all references to "Construction and Demolition (C&D) Debris and Land-Clearing Debris (LCD)" contained in the Development Agreement and exhibits attached thereto, included but not limited to, Exhibits C ("Development Uses Permitted") and I ("Host Agreement"), and replaced them with "Class Two Solid Waste" and "Class Two Solid Waste Landfill", respectively.

14. The Development Agreement generally provides: (1) the Subject Property will be appropriately zoned for the duration of development; (2) the County will cooperate with MRR Pickens in obtaining all necessary local permits and approvals; (3) upon receipt of development and construction permits, MRR Pickens may proceed with the development and construction of the Subject Property; (4) MRR Pickens will be allowed to operate a Class Two Landfill on the Subject Property; and (5) MRR Pickens' rights will be vested for the duration of development.

15. The Host Agreement generally provides the landfill shall be constructed and operated in accordance with DHEC's rules, regulations and statutes, or any superseding regulations. See Exhibit I to Development Agreement. See Exhibit I to Development Agreement.

approved wastes as set forth in Reg. 61-107.19. MRR's original permit for the Subject Property was issued after May 23, 2008, and has always been a Class Two Permit.

16. In the Development Agreement, MRR Pickens contracted to convey approximately 39 acres of platted undeveloped property to the County at a fixed price and with necessary sewer easements at no cost, for development as Pickens County's industrial park expansion. See Exhibits C, Paragraph 1 and Exhibit I, Paragraphs 21-24 of the Development Agreement.

17. The County desired to purchase the 39 acres for future development of its industrial park but did not desire to purchase the larger tract which they were part of prior to MRR Pickens agreement to subdivide and convey the lots to the County.

18. On September 6, 2007, MRR Pickens parceled off the future industrial lots and conveyed the approximately 39 acres to the County as required by the Development Agreement. Attached as Exhibit F is the deed and aerial photograph illustrating the conveyance.

19. Section 8 of the Development Agreement states MRR Pickens will "dedicate and deed to the County an area of approximately 162.2 acres free of charge for use as a County recreational facility ("Park") or other uses deemed appropriate by the County."

20. In consideration, MRR Pickens gifted by deed the approximately 162.2 acre tract to the County. A copy of the deed to the County and plat is attached as Exhibit G.

21. The property that MRR Pickens deeded to the County was appraised for One Million One Hundred Seventy Thousand and 00/100 (\$1,170,000.00) Dollars.

22. Defendants contractually represented and bound itself to grant MRR Pickens all local permits necessary to develop and construct the Class Two Landfill.

**-MRR Pickens' Land Use Approval for Class
Two Landfill Granted by Pickens County-**

23. In the Summer of 2014, MRR Pickens began applying for local permits and approval to develop and construct the Class Two Landfill.

24. On November 20, 2014, MRR Pickens submitted to the County its Letter of Intent, attached as Exhibit H, and Application for Land Use Review Hearing, attached as Exhibit I, for its Class Two Landfill.
25. The Application for Land Use Review Hearing stated the proposed land use of the Subject Property was a "SCDHEC Permitted Class 2 Landfill."
26. The Letter of Intent stated: "[t]he project will include . . . approximately 60 acres of lined landfill disposal area, and various sediment and erosion control structures." (emphasis added).
27. On January 12, 2015, the Planning Commission held a public meeting and unanimously approved MRR Pickens' Land Use Approval request. Attached as Exhibit J are minutes from Planning Commission Meeting of Jan. 12, 2015.
28. On January 13, 2015, the Planning Commission issued its land use approval to MRR Pickens to construct and operate a Class Two Landfill on the Subject Property ("Land Use Approval"). The Land Use Approval is attached as Exhibit K.
29. The Land Use Approval did not place any conditions on the approval, including conditions on the type of Class Two waste that could be disposed of in the landfill. Further, only DHEC, not the County, is vested with the authority to control and enforce the type of waste proper for disposal in the Class Two Landfill.
30. In 2015, MRR Pickens actively began developing its Class Two Landfill.
31. To date, MRR Pickens has spent approximately 3.9 Million Dollars (\$3,900,000.00) for the approved proposed use of the Subject Property as a Class Two Landfill.

**-Defendants' Unlawful Termination
of MRR Pickens' Land Use Approval-**

32. On January 11, 2016, Defendants held the regularly scheduled Pickens County Planning Commission Meeting.

33. The published January 11, 2016, Planning Commission Meeting Agenda did not include any mention of possible action on MRR Pickens' Land Use Approval as an item to be considered at the meeting. The Agenda is attached hereto as Exhibit L.

34. Almost a year after its issuance and at the January 11, 2016 Planning Commission Meeting, the Defendants took away and terminated MRR Pickens' Land Use Approval.

35. Specifically, on January 11, 2016, Defendants executed a letter to MRR Pickens (the "Termination Notice") ordering it to immediately cease and desist any and all activities at the Subject Property based on unsubstantiated "rumors" and "media reports" that it was constructing a *Class Three* landfill. The Termination Notice is attached as Exhibit A.

36. To date, MRR Pickens has not received the original Termination Notice from the Defendants. Rather, MRR Pickens received a copy of the Termination Notice from a local newspaper reporter via electronic mail on January 12, 2016.

37. In the Termination Notice, Defendants threatened MRR Pickens with criminal prosecution if it conducted any activities on the Subject Property, with penalties to include significant fines and jail time.

38. At all relevant times, MRR Pickens has not acted in violation of the Development Agreement, Land Use Approval or its permit for a Class Two Landfill.

39. In issuing the Termination Notice, Defendants took action against MRR Pickens without proper notice or a hearing.

40. Defendants' Termination Notice denied MRR Pickens of its due process rights.

41. Defendants' Termination Notice is overly broad and prohibits MRR Pickens from accepting any waste at the Class Two Landfill.

42. Further, in issuing this Termination Notice, Defendants wrongfully relied on Section 1504(d) of the Unified Development Standards Ordinance (UDSO). The UDSO does not permit the indefinite termination of the Land Use Approval.

43. In the Termination Notice, Defendants falsely accused MRR Pickens of: (a) attempting to construct a Class Three landfill; (b) attempting to accept waste only permitted for disposal in a Class Three landfill; (c) representing that a liner would not be required; and (d) intending for a shorter life span of the facility.

44. The accusations setting forth the basis for Defendants to issue the Termination Notice are factually false, contrary to law, and were exercised in violation of established laws and regulations.

45. MRR Pickens is not attempting to construct or operate a Class Three landfill.

46. MRR Pickens is not accepting, or intending to accept, waste that is not lawfully allowed in its Class Two landfill.

47. MRR Pickens never represented to the Defendants that the landfill, or portion thereof, would be unlined. In fact, the Letter of Intent clearly states the site would have "approximately 60 acres of lined landfill disposal area." (emphasis added).

48. The minutes from the Planning Commission Meeting of January 12, 2015, attached as Exhibit H, do not reflect or contain any statement that the landfill would not contain a liner.

49. MRR Pickens has a right to accept any and all waste that the law and DHEC allow to be placed in its Class Two Landfill.

50. MRR Pickens has a right to accept, subject to DHEC approval, all coal combustion residuals (CCR) and other wastes not listed in Appendix I that demonstrate similar properties to the wastes listed and are approved by DHEC on a case-by-case basis, or waste that test less than ten

(<10) times the maximum contaminant level (MCL) as published in R. 61-58, State Primary Drinking Water Regulation.

51. Defendants are not allowed to usurp the role and responsibilities of DHEC, or dictate what types of Class Two waste MRR Pickens is allowed to accept.

**-The Defendant's Unlawful Termination Will
Cause Irreparable Harm to MRR Pickens-**

52. MRR Pickens has a preliminary agreement with a third-party to accept CCR waste for disposal in its Class Two Landfill.

53. MRR Pickens cannot, and will not, accept CCR waste unless it meets the requirements as an approved waste under its Class Two Permit allowing the "disposal of items listed in Appendix I of R. 61-107-19 and any other waste approved by the Department for disposal in a Class Two landfill pursuant to R. 61-107.19, Part IV, Section C.2."

54. The preliminary agreement recognizes that DHEC must approve the CCR waste after characterization determines it meets the requirements for disposal at the Class Two Landfill.

55. The CCR that MRR Pickens would accept does meet the regulatory requirements for a lined Class Two Landfill under South Carolina law.

56. The deadline for MRR Pickens to submit necessary documentation to accept CCR that meets its Class Two Landfill Permit requirements is in late February 2016.

57. MRR Pickens has been informed by the generator of the CCR that it will be deemed "Non-Responsive" and considered ineligible to receive the CCR Class Two waste as a result of the Defendants' Termination Notice.

58. Defendants' illegal termination of MRR Pickens' 2015 Land Use Approval has caused MRR Pickens to incur actual losses to date in the amount of \$3,900,000.00.

59. Defendants' illegal termination of MRR Pickens' 2015 Land Use Approval has, and will in the future, prevent MRR Pickens from receiving profits in excess of \$25,000,000.00 over the life of the landfill by preventing it from receiving CCR waste allowed under its Class Two Permit.

60. Additionally, the Defendants' illegal termination of MRR Pickens' 2015 Land Use Approval has and will prevent MRR Pickens from receiving other non-CCR Class Two waste, resulting in a loss of millions of dollars in revenue and profits to MRR Pickens.

61. Defendants' illegal termination of MRR Pickens' 2015 Land Use Approval has and will continue to cause MRR Pickens to incur other actual, consequential, and incidental damages in addition to lost profits.

62. The illegal termination of MRR Pickens' 2015 Land Use Approval has, and will in the future, cause MRR Pickens to incur significant attorney's fees and associated litigation costs.

63. The harm is irreparable as MRR Pickens is being denied the ability to conduct any activities on the Subject Property or use it in any manner without being subject to criminal prosecution.

64. Defendants' decision has and will result in injury that threatens the very existence of MRR Pickens' business and will result in loss of goodwill and other losses that are incapable of fully calculating into pecuniary terms.

-DHEC Solid Waste Permitting Regulations-

65. MRR Pickens received its original Class Two Permit and any modifications thereto from DHEC pursuant to Reg. 61-107.19, promulgated under the authority of S.C. Code Ann. §44-96-10 *et. seq* (as amended).

66. S.C. Code Reg. 61-107.19, Part IV.A.1 states: "Applicability. Part IV. Established minimum criteria for all landfills used for the disposal of: waste as outlined in Appendix I of this regulation; other wastes not listed in Appendix I that demonstrate similar properties to the wastes

listed and are approved by [DHEC] on a case-by-case basis; or waste that test less than ten (<10) times the maximum contaminant level (MCL) as published in R. 61-58, State Primary Drinking Water Regulation current at the time of submittal of the permit application. Hereinafter, these landfills will be referred to as Class Two Landfills.”

67. S.C. Code Reg. 61-107.19, Part IV.C.2 states: “The Class Two landfill shall, prior to receipt of any waste materials that are not specifically listed in the permit application, submit for [DHEC] approval a characterization of the waste materials to determine the suitability for disposal in the landfill unless [DHEC] grants an exemption for like materials.”

68. To date, MRR Pickens has not submitted to DHEC a characterization of CCR waste for approval.

FOR A FIRST CAUSE OF ACTION
(Appeal Pursuant to the Local Planning - Land Development Regulations)
(S.C. Code Ann. § 6-29-1150)

69. MRR Pickens re-alleges the allegations above as if fully repeated verbatim herein.

70. Pursuant to S.C. Code Ann. § 6-29-1150(D)(1), MRR Pickens is entitled to appeal the Defendants’ decision to this Court.

71. MRR Pickens is aggrieved by Defendants’ unilateral and unlawful decision to indefinitely terminate its Land Use Approval issued on January 13, 2015.

72. Defendants’ Land Use Approval termination decision was taken without notice or a right to a hearing.

73. Defendants wrongfully concluded with any evidence that MRR Pickens was attempting to construct a Class Three landfill and attempting to accept waste only allowed in a Class Three landfill.

74. Defendants wrongfully concluded the CCR waste that MRR Pickens could accept is a Class Three waste.

75. The Termination Notice is overly broad and prohibits MRR Pickens from conducting any activities on the Subject Property, subject to criminal prosecution.

76. By way of the Termination Notice, Defendants are wrongfully and illegally usurping the role of DHEC, and becoming the *de facto* enforcement agency in Pickens County as to what constitutes Class Two or Class Three waste under South Carolina law.

77. MRR Pickens appeals Defendants' decision and requests this Court reverse the same and lift the termination to allow it to develop and use the Subject Property for a Class Two Landfill pursuant to the Land Use Approval, the Development Agreement and its Class Two Permit.

78. MRR Pickens prays for any and all such further equitable and legal relief as the Court may deem just and proper.

79. Pursuant to S.C. Code Ann. § 15-77-300 and the laws of the State of South Carolina, MRR Pickens further prays for an award of its reasonable attorneys' fees and costs.

FOR A SECOND CAUSE OF ACTION
(Petition for Writ of Mandamus)

80. MRR Pickens re-alleges the allegations above as if fully repeated verbatim herein.

81. Defendants have a duty to allow MRR Pickens to lawfully operate a Class Two landfill on the Subject Property pursuant to the Development Agreement, Class Two Permit, and the Land Use Approval.

82. The decision to grant MRR Pickens approval to use and develop the Subject Property is ministerial in nature based on the agreements and approvals MRR Pickens has already obtained.

83. Defendants' discharge of this duty is necessary to allow MRR Pickens' access to a specific legal right.

84. MRR Pickens lacks any other legal remedy.

85. The Writ of Mandamus shall command the Defendants to: (1) rescind the termination of the Land Use Approval; and (2) direct the Defendants treat the Subject Property as

approved for the use as a Class Two Landfill as permitted by DHEC, and timely issue all applicable development, construction and building approvals and/or permits.

86. Pursuant to Rule 65(f)(2), SCRCP, and S.C. Code Ann. § 15-77-300, MRR Pickens is entitled to an award of all costs and attorneys' fees.

FOR A THIRD CAUSE OF ACTION
(Declaratory Judgment - S.C. Code Ann. § 15-53-10, et seq.)

87. MRR Pickens re-alleges the allegations above as if fully repeated verbatim herein.

88. MRR Pickens is entitled to an order and judgment of this Court declaring the following:

- a. The use contemplated and granted by the Defendants conforms with the USDO and the documents of record, including but not limited to, the Development Agreement, the Amended Development Agreement, the Letter of Intent and the Land Use Approval;
- b. Defendants have no authority to indefinitely terminate the Land Use Approval under these circumstances;
- c. The indefinite termination of the Land Use Approval is invalid and Defendants acted in excess of their lawfully delegated authority;
- d. The decision to impose an indefinite termination of the Land Use Approval violated MRR Pickens' rights to due process both constitutionally and statutorily;
- e. MRR Pickens is entitled to construct and operate the Subject Property as a Class Two Landfill, and to accept Class Two permitted waste as deemed acceptable by DHEC;
- f. Defendants and other Pickens County agencies or appointees must apply the Class Two Landfill use as the appropriate permitted use under the USDO and other development ordinances in evaluating all applications by MRR Pickens in connection with the Subject Property, including but not limited to construction and building permit applications; and
- g. The Defendants have no authority to determine if CCR or any other waste stream is a Class Two waste under DHEC regulations or permitted for disposal on the Subject Property.

89. Pursuant to S.C. Code Ann. § 15-77-300, MRR Pickens prays for an award of reasonable attorney's fees and costs.

FOR A FOURTH CAUSE OF ACTION
(Breach of Contract)

90. MRR Pickens re-alleges the allegations above as if fully repeated verbatim herein.
91. *MRR Pickens and the County entered into lawful and binding contracts regarding the use and development of the Subject Property.*
92. In consideration of the Development Agreement, MRR Pickens conveyed approximately 39 acres to the County to allow further expansion of its future industrial park.
93. In consideration of the Development Agreement, MRR Pickens dedicated and deeded to the County approximately 162.2 acres for use as a County recreational facility or other uses.
94. The County contracted to allow MRR Pickens to develop the Subject Property as a Class Two Landfill.
95. The Defendants materially breached the Development Agreement, Amended Development Agreement, and the Land Use Approval by ordering MRR Pickens to cease and desist any and all activities at the Subject Property as of January 11, 2016.
96. The Defendants further advised MRR Pickens that the alleged violation of the Land Use Approval warrants criminal liability.
97. As a result of the County's breach of the Development Agreement, Amended Development Agreement, and Land Use Approval, the County has directly and proximately caused MRR Pickens to incur irreparable harm, in addition to actual, consequential, and incidental damages and lost profits that exceed Thirty Million and 00/100 dollars (\$30,000,000.00).

FOR A FIFTH CAUSE OF ACTION
(Tortious Interference with Current and Prospective Contractual Relations)

98. MRR Pickens re-alleges the allegations above as if fully repeated verbatim herein.

99. MRR Pickens has entered into contractual relationships related to the operation of its Class Two landfill on the Subject Property.

100. Further, MRR Pickens has an identifiable prospective contract or expectation of a contractual relationship related to waste that it has a right to accept under its Class Two Permit.

101. The Defendants has knowledge of MRR Pickens' contractual relationship and prospective contractual relationships for its Class Two landfill on the Subject Property.

102. By issuing the Termination Notice, Defendants have intentionally caused and procured a breach of MRR Pickens' contractual and prospective contractual relationships for the Subject Property.

103. The Defendants knew, or should have known, the Termination Notice would have a material effect on MRR Pickens' ability to honor its current and prospective contractual relations.

104. The interference into MRR Pickens' contractual relationship and prospective contractual relationships were taken for an improper purpose and/or by improper methods.

105. As a result of Defendants' tortious and intentional interference, MRR Pickens has, and will in the future incur irreparable harm, in addition to actual, consequential, and incidental damages and lost profits that exceed Thirty Million and 00/100 (\$30,000,000.00) dollars.

FOR A SIXTH CAUSE OF ACTION
(Promissory Estoppel)

106. MRR Pickens re-alleges the allegations above as if fully repeated verbatim herein.

107. MRR Pickens was entitled to rely, and did justifiably rely, upon the actions and promises of the County to invest approximately Three Million Nine Hundred Thousand and 00/100 (\$3,900,000.00) dollars into the Subject Property.

108. The promises the County made to MRR Pickens were unambiguous.

109. MRR Pickens' reliance on the County's promises was expected and foreseeable.

110. MRR Pickens has sustained injuries and damages by relying to its detriment on the County's confirmation and ratification of the above described agreements, by trusting the commitment made by the County within the public record by virtue of the Development Agreement and by relying on the County's established course of dealing maintained before and for approximately 8 years after execution of the Development Agreement, until the County's abrupt and inexplicable reversal of position.

111. MRR Pickens is entitled to injunctive relief and an award of damages for the significant losses and damages it has and continues to suffer.

FOR A SEVENTH CAUSE OF ACTION
(Regulatory Taking)

112. MRR Pickens re-alleges the allegations above as if fully repeated verbatim herein.

113. MRR Pickens has been deprived of the economically viable use of the Subject Property resulting from the Defendants' unreasonable and illegal regulatory action.

114. Defendants' unreasonable and illegal actions constitute an overly broad and unconstitutional taking of MRR Pickens' developable land without just compensation.

115. As a result of the Defendants' overly broad and unconstitutional taking, the Defendants have interfered with MRR Pickens' distinct and reasonable investment.

116. Defendants' actions have interfered and destroyed MRR Pickens' distinct investment-backed expectations to the Subject Property.

117. Defendants' actions have and will result in economic losses that threaten the very existence of MMR Pickens' business and will result in loss of goodwill and other losses that cannot be easily calculated into pecuniary terms.

118. MRR Pickens is entitled to injunctive relief and judgment against the Defendants for their unconstitutional taking of the Subject Property for damages.

FOR AN EIGHTH CAUSE OF ACTION
(Violation of 42 U.S.C. § 1983)

119. MRR Pickens re-alleges the allegations above as if fully repeated verbatim herein.

120. The United States Constitution provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const., Amend. XIV

121. The United States Constitution provides: "[N]or shall private property be taken for public use, without just compensation." U.S. Const., Amend. V.

122. As a result of Defendants' actions, MRR Pickens has suffered a deprivation of rights and privileges secured by the Constitution and laws of the United States.

123. Defendants' termination of the Land Use Approval was an act causing MRR Pickens' deprivation and was committed by a person acting under the color of law.

124. The actions of the Defendants were procedurally invalid, overly broad, and constitute a wrongful denial of MRR Pickens' rights to procedural due process.

125. The Termination Notice was not handled in accordance with the procedural requirements of the S.C. Code of Laws and consistent local ordinances of the County.

126. Defendants issued the Termination Notice based on false accusations and wrongful interpretation of the law without reasonable notice and an opportunity to be heard at a meaningful time and in a meaningful manner.

127. Defendants' decision to issue the Termination Notice has no foundation in reason and is a mere arbitrary and irrational exercise of power.

128. The Termination Notice has no substantial relation to the public health or public welfare as MRR Pickens has been authorized to operate pursuant to its Class Two Permit, and to accept waste deemed acceptable by DHEC under it permit.

129. Defendants have substantively deprived MRR Pickens of its cognizable property interest.

130. Defendants have taken the Subject Property without just compensation.

131. Defendants William Cato, Weldon Clark, Robert Ballentine, Jo Johnston, Dennis Reinert and Bob Young were not acting within the scope of discretionary authority when they decided to indefinitely terminate MRR Pickens from any use of the Subject Property, and threatened criminal prosecution against MRR Pickens, its owners and employees.

132. Defendants William Cato, Weldon Clark, Robert Ballentine, Jo Johnston, Dennis Reinert and Bob Young's conduct was motivated by wrongful motives or intent, or otherwise involved by reckless or callous indifference to the federally protected rights of MRR Pickens.

133. MRR Pickens is entitled to judgment, including injunctive relief, against the Defendants for its violation of Section 1983 of the Civil Rights Act of 1971, 42 U.S.C § 1983, in an amount of actual and compensatory damages to be proven at trial.

134. MRR Pickens is entitled to an award of punitive damages against Defendants William Cato, Weldon Clark, Robert Ballentine, Jo Johnston, Dennis Reinert and Bob Young.

135. MRR Pickens is also entitled to an award of all costs and attorney's fees associated with bringing this action, pursuant to 42. U.S.C. § 1983 and S.C. Code Ann. § 15-77-300.

WHEREFORE, MRR Pickens respectfully requests this Honorable Court issue judgment against the Defendants, jointly and severally, and to be awarded the following:

- 1) Appellate relief pursuant to S.C. Code Ann. § 6-29-1150;
- 2) Issuance of a Writ of Mandamus;
- 3) Declaratory Judgment;
- 4) For actual, incidental, and consequential damages;
- 5) Preliminary and permanent injunctive relief;
- 6) For an award of the attorney's fees and costs;
- 7) Prejudgment interest; and

8) For other and further relief as this Court may deem just and proper.

Dated this 30th day of January 2016.

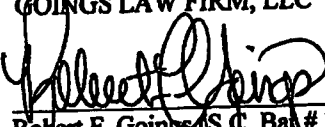
Respectfully Submitted,

WILLIAMS MULLEN



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ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	THIRTEENTH JUDICIAL CIRCUIT
MRR Pickens, LLC,	)	Civil Action No.: 2016-CP-39-100
	)	
Plaintiff,	)	
	)	ANSWER AND COUNTERCLAIM
vs.	)	OF PICKENS COUNTY
	)	
County of Pickens and William Cato,	)	
Weldon Clark, Robert Ballentine, Jo	)	
Johnston, Dennis Reinert, and Bob Young,	)	
individually and in their official capacity as	)	
appointed members of the Pickens County	)	
Planning Commission,	)	
	)	
Defendants.	)	

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CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

County of Pickens hereby, responding to the Verified Complaint and Petition for Appeal in this case, does hereby Answer and Counterclaim as follows:

AS A FIRST DEFENSE

1. That all allegations of the Complaint and Petition for Appeal not hereafter admitted or qualified are hereby denied.
2. Upon information and belief, admits paragraphs 1 and 2 of the Complaint.
3. Admits paragraphs 3 and 4 of the Complaint.
4. Admits so much of paragraph 5 as would indicate that the named Defendants are members of the Planning Commission, and denies the remainder. County would show that Plaintiff has violated the S.C. Tort Claims Act in naming these individuals as Defendants.
5. Admits paragraph 6 of the Complaint.
6. Admits paragraphs 7 and 8 of the Complaint.

7. Regarding paragraph 9, admits that MRR applied for a Permit to S.C. DHEC, but denies the remainder of said paragraph and would show that MRR agreed with Pickens County to apply for a Permit to operate a Construction and Demolition/Land Clearing Debris (C&D/LCD) Landfill, and to operate a C&D/LCD Landfill. County would further show that in the 2007 Development Agreement, MRR agreed to apply for and operate "a construction and demolition and land clearing debris landfill." The term "Construction and Demolition Landfill" is utilized in said Development Agreement on page 2 and page 3, and on Exhibit B, Exhibit C and Exhibit D of said Agreement.

8. Regarding paragraph 10, admits that DHEC issued a Permit for a Construction and Demolition/Land Clearing Debris (C&D/LCD) Landfill, to Highway 93 C&D Landfill, on November 3, 2008, which C&D Landfill was owned by Plaintiff. County denies the remainder of said paragraph, and denies Plaintiff's legal conclusions stated in Footnote 1 (craving reference instead to the relevant regulations). County denies that the November 3, 2008 Permit was legally modified thereafter, and would show that Plaintiff's attempts to obtain modification were unlawful, in violation of state regulations, and in violation of agreements with Pickens County.

9. Denies paragraph 11 and would show that the only valid Permit is the Permit issued November 3, 2008, which allows for wastes listed on Appendix I of Regulation 61-107.19, and which states, "All other wastes, including animal carcasses, are prohibited from disposal at this landfill." The subsequent Permit is unlawful, having been obtained unlawfully, fraudulently and secretly by Plaintiff.

10. Admits only so much of paragraph 12 as would indicate the existence of the 2015 amendment to the Development Agreement. Denies the remainder, and would show that Plaintiff's actions were fraudulent and fraught with misrepresentations.

11. Admits only so much of paragraph 13 as is reflected by the specific language of said amendment. Denies the remainder, and would show that Plaintiff's actions were fraudulent and fraught with misrepresentations. Further, the only valid agreement was to operate a C&D/LCD Landfill, in strict accordance with the Permit issued November 3, 2008.

12. Admits only so much of paragraph 14 as would indicate actual language of the document, and denies the remainder. Craves reference to the entire Development Agreement.

13. Admits only so much of paragraphs 15 and 16 as would reflect the entire language of the Host Agreement and Development Agreement. Denies the remainder of said paragraph, and craves reference to the language of the entire documents.

14. Regarding paragraphs 17, 18, 19 and 20, admits so much as is reflected by the Deeds in question, and denies the remainder. County emphasizes MRR's multiple violations of other portions of the agreements, MRR's major and material misrepresentations, and its unlawful actions.

15. Upon information and belief admits so much of paragraph 21 as would indicate that MRR obtained an appraisal at said amount. Denies the remainder and demands strict proof thereof.

16. Admits so much of paragraph 22 as would indicate the language of the agreements, and denies the remainder. County references again MRR's misrepresentations, fraudulent acts and unlawful actions. County agreed for MRR to operate a C&D/LCD landfill.

17. Regarding paragraphs 23, 24, 25 and 26, admits so much as is stated in the relevant documents, and denies the remainder.

18. Regarding paragraph 27, admits so much as indicates the approval by Planning Commission, and denies the remainder. However, County would show that representatives of MRR made willful, intentional, and knowing material misrepresentations to the Planning Commission, and further, that MRR made fraudulent omissions of material information to the Planning Commission. Any actions of Planning Commission were made in reliance upon MRR's misrepresentations, fraud and fraudulent omissions. Reference is craved to the Transcript of the January 12, 2015 Planning Commission meeting.

19. Admits so much of paragraphs 28 and 29 as would reflect the actual language of the letter of January 13, 2015, and denies the remainder. County emphasizes its reliance upon MRR's willful misrepresentations, and MRR's fraudulent acts and fraudulent omissions.

20. Regarding paragraphs 30 and 31, does not have sufficient knowledge upon which to base a response, and therefore denies same and demands strict proof thereof. Further County would show that County continues to allow MRR to operate a C&D/LCD landfill, in accord with the agreements and representations by MRR, and in strict compliance with the Permit issued by DHEC on November 3, 2008, which includes Special Condition No. 2.

21. Regarding paragraphs 32, 33, 34, 35 and 36, admits so much as is reflected by the Agenda and the letter of January 11, 2016, and denies the remainder of said paragraphs. Further, County would show that the Planning Commission letter of January 11, 2016 instructed MRR to present "sufficient information to the Commission of your intention to strictly comply with our 2007 and 2015 land use approval and receive a renewal of your permit from the Commission." Rather than comply with the instruction to provide information of intent to comply with the relevant agreements, MRR failed and refused to comply with the instruction, and failed and refused to request

an Appeal or Review to Planning Commission, and instead filed this lawsuit. County further references MRR's misrepresentations and fraudulent and unlawful actions.

22. Denies paragraph 37, and craves reference to the specific language of the letter of January 11, 2016.

23. Denies paragraph 38 entirely, and would show that MRR has intentionally made material misrepresentations and has acted fraudulently and unlawfully.

24. Denies paragraphs 39, 40, 41 and 42. County again emphasizes that MRR failed and refused to provide the information requested by the Planning Commission in its letter of January 11, 2016, failed to seek Review or Appeal to Planning Commission. County further emphasizes MRR's willful material misrepresentations and its fraudulent and unlawful actions.

25. Denies paragraphs 43, 44, 45, 46 and 47, and would show that MRR's allegations in this Verified Complaint are willfully false, misleading and fraudulent, such that this Court should appropriately sanction MRR for knowingly misrepresenting to this Court, as well as misrepresenting to County.

26. Regarding paragraph 48, craves reference to the minutes of the meeting, and denies the remainder. However, County refers this Court to the actual Transcript of said Planning Commission meeting of January 12, 2015, which reveals willful and fraudulent material misrepresentations by MRR.

27. Denies paragraphs 49, 50 and 51, and would show that County agrees that MRR may operate a C&D/LCD landfill, in accord with agreements and representations by MRR, and as provided strictly in the Permit issued November 3, 2008, which includes Special Condition No. 2. County recognizes the appropriate role of DHEC, but would show that MRR must not act

fraudulently or unlawfully. Further, any actions by MRR and DHEC must be consistent with the Pickens County Solid Waste Management Plan of 2013, which disallows "Special Waste" and disallows a Class Three Landfill and any Class Three solid waste.

28. Regarding paragraphs 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63 and 64, County has insufficient knowledge of any attempts by MRR to contract with any entity to bring coal ash or CCR waste into Pickens County, and therefore denies same and demands strict proof thereof. Denies the remainder of said paragraphs, and would show that the attempts by MRR to place coal ash and/or CCR waste into this landfill in Pickens County are unlawful, are in violation of the Pickens County Solid Waste Management Plan, and are in direct contradiction of the multiple representations made by MRR and its agents and representatives, and constitute fraudulent activity. Further, Pickens County continues to agree for MRR to operate a C&D/LCD Landfill, in accord with relevant agreements and representations by MRR, and in strict accord with the Permit issued on November 3, 2008.

29. Regarding paragraphs 65, 66 and 67, denies that MRR lawfully obtained any modifications to the Permit issued by DHEC on November 3, 2008, and would show that any modifications thereafter were obtained unlawfully and through misrepresentations and fraudulent acts, and without any notice to Pickens County. County recognizes the full language of the relevant regulations and statutes. County would show that MRR's actions violated both statutes and regulations.

30. Regarding paragraph 68, County has insufficient information upon which to base a response and therefore denies same. County would show that deposit of CCR into this landfill

would violate statutes and regulations and would contravene agreements and representations by MRR, and would violate the Pickens County Solid Waste Management Plan of 2013.

31. Denies paragraph 69 of the Complaint.

32. Admits so much of paragraph 70 as reflects the existence of said statute, but would show that Plaintiff failed and refused to provide the information requested by Planning Commission in its letter of January 11, 2016, and has failed and refused to request Review or Appeal to Planning Commission, and has therefore failed to exhaust administrative remedies, and therefore is not entitled to bring this Appeal to this Court.

33. Denies paragraphs 71, 72, 73, 74, 75, 76, 77, 78 and 79, and would show that MRR's actions are fraught with misrepresentations to Pickens County, misrepresentations to this Court and fraudulent and unlawful behavior, such that MRR is entitled to no relief of any kind, but instead should be sanctioned by this Court.

34. Denies paragraphs 80, 81, 82, 83, 84, 85 and 86, and would show that MRR's actions are fraught with misrepresentations to Pickens County, misrepresentations to this Court, and fraudulent and unlawful behavior, such that MRR is entitled to no relief of any kind, but instead should be sanctioned by this Court.

35. Denies paragraphs 87, 88 and 89, and would show that MRR's actions are fraught with misrepresentations to Pickens County, misrepresentations to this Court, and fraudulent and unlawful behavior, such that MRR is entitled to no relief of any kind, but instead should be sanctioned by this Court.

36. Denies paragraphs 90, 91, 92, 93, 94, 95, 96 and 97, other than recognition of the actual language of the documents referenced, and would show that MRR's actions are fraught with

misrepresentations to Pickens County, misrepresentations to this Court, and fraudulent and unlawful behavior, such that MRR is entitled to no relief of any kind, but instead should be sanctioned by this Court.

37. Denies paragraphs 98, 99, 100, 101, 102, 103, 104 and 105, and would show that MRR's actions are fraught with misrepresentations to Pickens County, misrepresentations to this Court, and fraudulent and unlawful behavior, such that MRR is entitled to no relief of any kind, but instead should be sanctioned by this Court.

38. Denies paragraphs 106, 107, 108, 109, 110 and 111, and would show that MRR's actions are fraught with misrepresentations to Pickens County, misrepresentations to this Court, and fraudulent and unlawful behavior, such that MRR is entitled to no relief of any kind, but instead should be sanctioned by this Court.

39. Denies paragraphs 112, 113, 114, 115, 116, 117 and 118, and would show that MRR's actions are fraught with misrepresentations to Pickens County, misrepresentations to this Court, and fraudulent and unlawful behavior, such that MRR is entitled to no relief of any kind, but instead should be sanctioned by this Court.

40. Denies paragraphs 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134 and 135, other than recognition of the specific language of referenced statutes, and would show that MRR's actions are fraught with misrepresentations to Pickens County, misrepresentations to this Court, and fraudulent and unlawful behavior, such that MRR is entitled to no relief of any kind, but instead should be sanctioned by this Court.

AS A SECOND DEFENSE
FAILURE TO STATE VIABLE CLAIM

41. County reaffirms its earlier allegations as fully as if repeated herein.
42. Plaintiff has failed to state viable claims and/or legitimate basis for any viable claims, and its eight Causes of Action must be denied and dismissed.

AS A THIRD DEFENSE
SOUTH CAROLINA TORT CLAIMS ACT

43. County reaffirms its earlier allegations as fully as if repeated herein.
44. To the extent that any or all of Plaintiff's claims constitute a Tort, or allege tortious conduct, such claims and/or allegations are subject to the South Carolina Tort Claims Act, S.C. Code Sections 15-78-10, et seq., and therefore must fail, as being prohibited by the statutory exemptions to the waiver of immunity, as set forth in Sec. 15-78-120, and is proscribed from requesting or receiving any punitive damages.

AS A FOURTH DEFENSE
UNCLEAN HANDS

45. County reaffirms its earlier allegations as fully as if repeated herein.
46. Due to the willful and material misrepresentations to County, the willful and material misrepresentations to this Court, and the fraudulent and unlawful actions and fraudulent omissions of Plaintiff, Plaintiff has unclean hands, and is entitled to no relief of any kind, but instead should be sanctioned by this Court for its conduct.

AS A FIFTH DEFENSE
UNJUST ENRICHMENT

47. County reaffirms its earlier allegations as fully as if repeated herein.

48. Due to the willful and material misrepresentations to County, the willful and material misrepresentations to this Court, and the fraudulent and unlawful actions and fraudulent omissions of Plaintiff, Plaintiff would be unjustly enriched were it to obtain any monetary award or relief from Pickens County. Instead, Plaintiff should be sanctioned by this Court for its conduct.

AS A SIXTH DEFENSE
INTENTIONAL ACTS AND INTENTIONAL CONDUCT OF PLAINTIFF

49. County reaffirms its earlier allegations as fully as if repeated herein.

50. Due to the Intentional Acts and Intentional Conduct of Plaintiff, which precipitated any controversy between these parties, and which includes willful and material misrepresentations to Pickens County, willful and material misrepresentations to this Court, and the fraudulent and unlawful actions and fraudulent omissions of Plaintiff, Plaintiff is entitled to no relief, but instead should be sanctioned by this Court.

AS A SEVENTH DEFENSE
FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES

51. County reaffirms its earlier allegations as fully as if repeated herein.

52. Plaintiff has failed and refused to exhaust administrative remedies with the Pickens County Planning Commission, in failing and refusing to request Review or Appeal to Planning Commission, and further, in failing and refusing to provide the information requested by Planning Commission in its letter of January 11, 2016.

53. Further, Plaintiff failed and refused to respond to reasonable and relevant questions posed to it by Planning Commission, particularly regarding its intent to deposit coal ash/CCR waste into the landfill, which substantially contributed to Planning Commission's actions.

54. Having failed and refused to pursue available and reasonable administrative remedies with Planning Commission, Plaintiff is barred from pursuing any Appeal to this Court, and/or any other request for relief from this Court.

AS AN EIGHTH DEFENSE
FRAUDULENT ACTS BY PLAINTIFF

55. County reaffirms its earlier allegations as fully as if repeated herein.

56. Due to the Fraud, Fraudulent Acts, Fraud in the Inducement and Fraudulent Omissions by Plaintiff (as are more fully stated hereinbelow, for which County craves reference), Plaintiff is entitled to no relief whatsoever, but instead should be sanctioned by this Court.

AS A NINTH DEFENSE
ILLEGALITY OF ACTIONS

57. County reaffirms its earlier allegations as fully as if repeated herein.

58. Plaintiff has committed a number of unlawful and/or illegal actions relevant to the issues in this case, including but not limited to:

- (A) Efforts to place coal ash/CCR waste into the landfill as permitted November 3, 2008, which would violate Federal and South Carolina Statutes and Regulations, and which would violate the "Special Waste" provisions of the Pickens County Solid Waste Management Plan of 2013 (and as defined in S.C. Code Sec. 44-96-390), and which would violate agreements with Pickens County and which contravene MRR's representations to Pickens County.
- (B) Efforts to change the Permit Conditions of the Permit issued November 3, 2008, including major modifications of the Permit, without any notice to

Pickens County, secretly, clandestinely and with specific intent to obtain major changes, without notice to Pickens County or to the public, in violation of the South Carolina Solid Waste Management Act, Sec. 44-96-10, et seq., and Regulations, including but not limited to R. 61-107.19, Part I, A. 48. (defining "major modification" and "minor modification," R. 61-107.19, Part IV, I. 2 (requiring public review and public comment for major modifications)).

- (C) Other material misrepresentations and acts of fraudulent conduct in its conduct with Pickens County officials, to procure and in its efforts to obtain inappropriate major modifications to its Permit, clandestinely, secretly and without notice to Pickens County or to the public.

AS A TENTH DEFENSE
UNCONSCIONABILITY

59. County reaffirms its earlier allegations as fully as if repeated herein.

60. Due to the material and willful misrepresentations by Plaintiff, and the fraudulent conduct by Plaintiff, any relief to Plaintiff would be unconscionable and must be denied.

61. That Plaintiff's material and willful misrepresentations, and its fraudulent conduct, are unconscionable, and any relief to Plaintiff must be denied, and instead, this Court should sanction Plaintiff for such conduct.

AS AN ELEVENTH DEFENSE
FURTHER ALLEGATIONS IN SUPPORT OF PICKENS COUNTY'S
DEFENSES AND COUNTERCLAIMS

62. County reaffirms its earlier allegations as fully as if repeated herein.

63. That on all occasions, and at all meetings and in all discussions between Plaintiff and Pickens County, from initial discussions in 2006-2007, through the County Planning Commission meeting of January 12, 2015, MRR and its agents and representatives always represented that this landfill was to be for Construction and Demolition and Land Clearing Debris (C&D/LCD), and not for other categories of wastes. These representations by MRR and its agents and representatives were material representations. At all times, Pickens County and its officials made it clear that this landfill was to be limited to C&D/LCD.

64. That on November 3, 2008, DHEC issued a Permit to Plaintiff, to operate the facility named in the Permit as "Highway 93 C&D Landfill." Said Permit appropriately contained the following Special Condition:

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

(County refers this Court to Appendix I of said Regulation, which includes categories of Land Clearing Debris, Construction and Demolition waste, Brown Goods (i.e., used furniture and the like), and Animal Carcasses).

65. That the Special Condition of the November 3, 2008 Permit, as stated above, was appropriate and acceptable to Pickens County.

66. That until the recent present controversy between Plaintiff and Pickens County arose, Pickens County remained under the understanding and belief that the 2008 Permit remained intact.

67. That, in accord with the Development Agreement of 2007 and the Host Agreement of 2007, Pickens County revised its Solid Waste Management Plan in 2013 (SWMP). Plaintiff approved the 2013 SWMP.

68. That by statute, any action by Plaintiff and DHEC in regard to a solid waste facility must be consistent with the local government's SWMP.

69. That the 2013 SWMP prohibits "Special Wastes" (p. 18, SWMP), and as defined by S.C. Code Section 44-96-390. Further, no Class Three Landfill is allowed in Pickens County, nor is such permittable, under current Demonstration of Need Regulations.

70. That, only since the recent controversy between Plaintiff and Pickens County has arisen, Pickens County has learned that throughout 2014, and throughout much of 2015, MRR and its agents and representatives, were meeting and engaging in extensive communications, decisions and meetings with S.C. DHEC, in an effort to bring about major modifications and substantial changes to the November 3, 2008 Permit, all secretly, clandestinely and underhandedly, and without any notice to Pickens County or to the public.

71. That Pickens County has very recently learned, that in 2014 and 2015, MRR and its agents and representatives, filed at least three (3) major engineering reports and plans with DHEC, all without any notice of any kind to Pickens County or to the public, including:

- (A) Work Plan for Site-Specific Hydrogeologic Investigation - prepared for MRR by Civil & Environmental Consultants, Inc. (CEC), August 2014. On page 5 of said Report, CEC states:

The permit, issued in November 2008, is for a Construction, Demolition, and Land-Clearing Landfill . . .

Such statement above is an accurate statement. However, the Report states further:

During recent meetings between MRR and DHEC, it was confirmed that the modification of the Class Two Permit to meet the requirements of Regulation R. 61-107.19. Part V. Class Three Landfills would require a minor permit modification. (emphasis added).

- (B) Site-Specific Hydrogeologic Investigation Report - prepared by CEC for MRR, submitted to DHEC December 2014. On page 1 is found the following:

The Permit, issued in November 2008, is for a Construction, Demolition, and Land-Clearing Landfill

Also:

During recent meetings between MRR and DHEC, it was confirmed that a modification of the Class Two Landfill Permit to meet the requirements of Regulation R. 61-107.19. Part V Class Three Landfills would require a minor permit modification, to satisfy the Class Three Landfill requirements, MRR engaged Civil & Environmental Consultants, Inc. (CEC) to conduct further hydrogeologic evaluation of the proposed landfill to provide additional data for a permit modification.

- (C) "Minor Permit Modification"

Prepared for MRR Southern, LLC by CEC, submitted to DHEC March 2015 (updated August 2015). The following found on page 2:

This document consists of a Minor Permit Modification Application to obtain the option to develop cells of the Facility with an Alternate Liner System as opposed to the currently permitted Class 2 System.

Also, on page 51:

The landfill will accept Class 2 and certain special wastes

72. That neither MRR nor DHEC ever notified Pickens County or the public that MRR was preparing such reports and making efforts to modify the Permit in any manner, to add an Alternate Liner System, to deposit special wastes, to change the Permit from Class Two to meet the requirements of Class Three Landfills, or any other modifications of the Permit or of the landfill or of wastes to be deposited into the landfill.

73. To the contrary, and in direct contradiction to the above, MRR and its representatives and agents continued to inform Pickens County that its intent was the same as in 2007, to construct and operate a C&D/LCD landfill.

74. That as a result of the aforesaid secretive, clandestine, underhanded and fraudulent discussions, communications and meetings between MRR and DHEC, DHEC issued a Major Modification (as defined by Reg. 61-107.19 Part I, B. 48), although inappropriately and unlawfully characterizing it as a "minor modification," in an effort by MRR to avoid any notice or disclosure of its untoward actions and intentions to Pickens County or to the public. Said Permit, which was unlawfully and inappropriately obtained, and which should be declared void by this Court, radically and majorly changes and substantially alters the facility, substantially alters its operations, and alters

the Class Two design requirements, and potentially would allow "special wastes" such as coal ash and other "special wastes." Said Permit is dated August 10, 2015.

75. That as of the date of the issuance of this pleading, neither DHEC nor MRR has formally notified Pickens County of the issuance of this unlawfully obtained 2015 Permit, and neither Pickens County nor the public was ever notified or provided any opportunity to comment upon, or be involved in, said substantial, radical and major changes.

76. That despite the aforesaid secretive, clandestine and underhanded meetings, discussions and communications between DHEC and MRR, MRR officials, including MRR's present attorney, engineering consultant Scott Brown, MRR's managing member Hector Norbert, Dan Moore (MRR Project Manager), and General Manager Chris Roof, appeared at the January 12, 2015 meeting of the Pickens County Planning Commission and, incredibly, MRR made the following false and material representations:

- (A) "It's probably also important to note right up front that the land use details and development details for the project are just the same as they were when we got the initial approval on the site back in 2007." (Tr., p. 6).
- (B) "This was previously called and referred to as a construction and demolition debris landfill. This is the same type of facility that the county is operating."
"This is exactly the same type of landfill that the county is operating over on Old Liberty Road" (Tr., p. 8)
(It must be noted that the County's existing facility is for C&D/LCD only).
- (C) "This agreement requires MRR to provide the county with all of our regulatory reports, things such as semiannual groundwater monitoring

reports, any compliance issues, notices of violation. We have to -- anything we submit to DHEC has to be submitted to you all at the very same time we submit it to DHEC." (Tr., p. 11).

Note: The above statement accurately describes MRR's duties to notify Pickens County of filings with DHEC; yet, MRR had at that point failed to provide Pickens County with any information related to its ongoing efforts to change the Permit and to change the facility.

(D) MRR denies the need for liners. (See Tr., p. 14).

Note: MRR incredibly states this to Planning Commission, despite enormous efforts and submission of extensive engineering reports, for the purpose of adding a liner.

77. That in late 2015, MRR refused to respond to requests for information concerning its intentions to deposit coal ash into this landfill, instead continuing its course of action of fraud and deceit.

78. That at the Planning Commission meeting in January of 2015 MRR continued to refuse to provide full and appropriate information concerning its intentions to deposit coal ash and/or other wastes into this landfill, which led to the issuance of the January 11, 2016 letter.

AS A TWELFTH DEFENSE AND BY WAY OF COUNTERCLAIM
FRAUD

79. County reaffirms its earlier allegations as fully as if repeated herein.

80. That the actions of MRR constitute Fraud, in that:

(A) MRR, its agents and representatives, made numerous representations to Pickens County concerning its intentions to construct and operate

a landfill only for C&D/LCD waste, and made further representations, as referenced hereinabove, at the January 12, 2015 Planning Commission meeting.

- (B) That MRR's representations were false.
- (C) That MRR knew that these representations were false.
- (D) That Pickens County relied upon MRR's representations.
- (E) That said representations were material in all communications and transactions with Pickens County.
- (F) That Pickens County had a right to rely upon the truth of said representations of MRR, and such reliance was reasonable.
- (G) That Pickens County was without knowledge of the falsity of MRR's representations.
- (H) That MRR intended for Pickens County to rely upon these representations and for Pickens County to act based upon these representations.
- (I) That as a result of the above, Pickens County consequently suffered proximate injury.

81. That Pickens County's damages and injuries include, but are not limited to, the use of extensive County resources, time and personnel in the pursuit of an appropriate C&D/LCD Landfill to be available for its citizens, and all costs and expenses related thereto, as well as the loss of available C&D/LCD disposal for its citizens once the existing County Landfill is full (should MRR continue to violate its agreements and representations); and in the event that MRR does

deposit wastes, such as coal ash, CCR, other "special wastes," and/or other wastes inappropriate for this C&D/LCD Landfill, then Pickens County and its citizens will suffer additional damages and injuries to persons, property and environment.

AS A THIRTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
BREACH OF CONTRACT

82. County reaffirms its earlier allegations as fully as if repeated herein.

83. That due to the misrepresentations and inappropriate and unlawful actions by MRR, MRR has breached its Development Agreement and Host Agreement with Pickens County, has breached the terms and conditions of the November 3, 2008 Permit, and has violated the Pickens County Solid Waste Management Plan of 2013.

84. That as a proximate result, Pickens County has suffered the damages as set forth in paragraph 81 above.

AS A FOURTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
FRAUD IN THE INDUCEMENT

85. County reaffirms its earlier allegations as fully as if repeated herein.

86. That MRR willfully and fraudulently induced Pickens County to enter into the relevant agreements and to grant relevant approvals for certain actions of MRR, through use of misrepresentations and other acts of fraud.

87. That as a proximate result, Pickens County has suffered the damages as set forth in paragraph 81 above.

AS A FIFTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
FRAUDULENT ACTS ACCOMPANYING THE BREACH

88. County reaffirms its earlier allegations as fully as if repeated herein.

89. That in addition to breaching its contracts and agreements with Pickens County, MRR has committed Fraudulent Acts accompanying the breaches of contract, including but not limited to:

- (A) Misrepresenting and continuing to misrepresent its intentions and the true nature of its facility and operations, throughout the years from 2007 to the present.
- (B) Misrepresenting and making intentional false statements at the Planning Commission meeting of January 12, 2015.
- (C) Violating its duty to provide Pickens County with its filings and submissions of reports, studies and documents designed to change the 2008 Permit.
- (D) Fraudulently concealing its ongoing meetings, submissions of reports and studies and documents, and communications with DHEC in 2014 and 2015, and perhaps at other times not yet discovered by Pickens County.
- (E) Fraudulently omitting from discussions and representations with Pickens County its efforts to change the 2008 Permit and to change the agreed-upon facility and operations.

90. That as a proximate result, Pickens County suffered the damages as set forth in paragraph 81 above.

AS A SIXTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
FRAUDULENT OMISSIONS

- 91. County reaffirms its earlier allegations as fully as if repeated herein.
- 92. That MRR fraudulently omitted material information from its representations and communications with Pickens County, including but not limited to, its true intentions to deposit

wastes other than C&D/LCD into this landfill, and its intentions and activities to materially change the Permit, the facility and its operations, from what was agreed upon with Pickens County.

93. That as a proximate result, Pickens County suffered the damages as set forth in paragraph 81 above.

AS A SEVENTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
FRAUDULENT CONCEALMENT

94. County reaffirms its earlier allegations as fully as if repeated herein.

95. That MRR fraudulently concealed from Pickens County its true intentions for this landfill, as well as its ongoing activities to substantially change the Permit, the landfill and its operations, and the types of intended wastes, from what was agreed upon with Pickens County, in an ongoing effort to avoid any opposition to such by Pickens and in an ongoing effort to continue receiving approvals from Pickens County.

96. That as a proximate result, Pickens County suffered the damages as set forth in paragraph 81 above.

AS A EIGHTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
INTENTIONAL ACTS

97. County reaffirms its earlier allegations as fully as if repeated herein.

98. That the misrepresentations of MRR, its agents and representatives, and its ongoing activities to substantially change the Permit, the landfill, its operations, and the types of intended wastes, from what was agreed upon with Pickens County, in an ongoing effort to prevent opposition from Pickens County and in an ongoing effort to receive approvals from Pickens County, were done intentionally and willfully and constitute Intentional Acts.

99. That as a proximate result, Pickens County suffered the damages as set forth in paragraph 81 above.

AS A NINETEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
ABUSE OF PROCESS

100. County reaffirms its earlier allegations as fully as if repeated herein.

101. That this action by MRR, together with its Motion for Emergency Temporary Injunction, have been brought by MRR with and through an ulterior purpose, and constitute willful acts in the use of legal process which are not proper or warranted in the regular conduct of actions and transactions with Pickens County.

102. That the aforesaid actions and filings by MRR, which has acted with fraud and deceit, and which has unclean hands, are aimed at objectives not legitimate in the use of legal process.

103. That the aforesaid actions and filings by MRR are an attempt at coercion, to obtain a collateral advantage, and to obtain inappropriate advantage, including the attempts to force upon Pickens County an inappropriate and unwanted landfill operation, with intended inappropriate waste disposal, into Pickens County.

104. That MRR has acted with fraud and deceit and has unclean hands, and is entitled to none of the relief it seeks in these legal actions it has filed.

105. That MRR, in the presentation of its Verified Complaint, and in the Affidavits issued in support of its Motion for Emergency Temporary Injunction, has made and continues to make patently false representations to this Court.

106. That as a proximate result, Pickens County suffered the damages as set forth in paragraph 81 above.

AS A TWENTIETH DEFENSE AND BY WAY OF COUNTERCLAIM
UNFAIR TRADE PRACTICES ACT

107. County reaffirms its earlier allegations as fully as if repeated herein.
108. That MRR has engaged in unfair and deceptive acts and practices in the conduct of its trade and the conduct of commerce.
109. That MRR's unfair and deceptive acts and practices are in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Sections 39-5-10, et seq.
110. That MRR's unfair and deceptive acts and practices are offensive to public policy and are immoral, unethical and oppressive.
111. That MRR's unfair and deceptive acts and practices adversely affect the public interest, and have the potential and likelihood for repetition.
112. That Pickens County has been proximately damaged as a result of MRR's unfair and deceptive acts and practices, and per S.C. Code Section 39-5-140, Pickens County is entitled to treble damages, attorneys fees and costs for this action.

AS A TWENTY-FIRST DEFENSE AND BY WAY OF COUNTERCLAIM
DECLARATORY JUDGMENT AND INJUNCTION

113. County reaffirms its earlier allegations as fully as if repeated herein.
114. That Pickens County is in need of, and entitled to, an Order and/or Declaratory Judgment and/or Injunction of this Court:
 - (A) Preventing MRR from depositing any coal ash or Coal Combustion Residue (CCR) into this landfill in Pickens County.

- (B) Preventing MRR from depositing any wastes which meet the definition of "Special Waste," per S.C. Code Section 44-96-390 and per the 2013 Pickens County Solid Waste Management Plan, into this landfill in Pickens County.
- (C) Prohibiting MRR from depositing into this landfill in Pickens County, any wastes which are not specifically listed on Appendix I to R. 61-107.19.
- (D) Finding that the Permit issued by DHEC on November 3, 2008, is the only valid Permit for this landfill.
- (E) Finding that the Permit/Permit Modification issued August 10, 2015 has no validity, was unlawfully obtained, and is null and void.
- (F) Finding that MRR must fully comply with, and its actions must be fully consistent with, the 2013 Pickens County Solid Waste Management Plan.

115. That, for the acts of fraud and/or fraudulent behavior, and for all intentional acts of MRR as referenced herein, Pickens County is entitled to punitive damages.

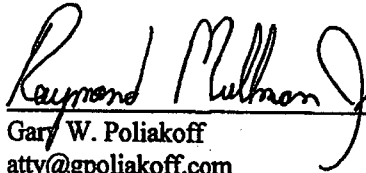
WHEREFORE, Pickens County prays:

- (A) That all claims of MRR be denied and dismissed.
- (B) For Judgment against MRR for damages related to any and all Counterclaims advanced herein, as actual damages.
- (C) For Punitive Damages, for any and all acts of MRR constituting fraud, fraudulent behavior, any form of fraud, and/or intentional acts, in an amount to be determined by this Court.
- (D) For the violations of the Unfair Trade Practices Act, treble damages, plus costs and attorneys fees related to this action.

- (E) For Declaratory Judgment, Injunction and/or Order of this Court, as set forth in paragraphs 113 and 114 herein.
- (F) For such other and further relief as this Court may deem just and proper.

March 2, 2016

Spartanburg, SC



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ATTORNEYS FOR PICKENS COUNTY

2016 MAR 28 PM 2 27

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
CLERK OF COURT	)	
COUNTY OF PICKENS	)	THIRTEENTH JUDICIAL CIRCUIT
PICKENS COUNTY	)	
SOUTH CAROLINA	)	CIVIL ACTION No.: 2016-CP-39-100
MRR Pickens, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
County of Pickens and William Cato, Weldon	)	PLAINTIFF MRR PICKENS, LLC'S
Clark, Robert Ballentine, Jo Johnston, Dennis	)	MOTION <i>PURSUANT TO RULE 60</i> FOR
Reinert, and Bob Young, individually and in	)	RELIEF BASED ON DEPOSITION
their official capacity as appointed members of	)	TESTIMONY OF SCDHEC
the Pickens County Planning Commission,	)	REPRESENTATIVE, KENT COLEMAN
	)	
Defendants.	)	

Pursuant to Rule 60 of the South Carolina Rules of Civil Procedure (SCRCP), Plaintiff MRR Pickens, LLC ("MRR Pickens" or "Plaintiff") respectfully moves for a hearing to alter, amend, and/or reconsider the Order of the Honorable Robin B. Stilwell on February 22, 2016 ("Order") on Plaintiff's Motion for Preliminary Injunction based on the deposition testimony of Kent Coleman ("Coleman"), the Director of the Division of Mining and Solid Waste Management for South Carolina Department of Health and Environmental Control (SCDHEC). Excerpts from Coleman's deposition taken on March 8, 2016 are attached hereto as *Exhibit 1*. As set forth in the Affidavit of Robert F. Goings, attached hereto as *Exhibit 2*, the testimony from Coleman was not capable of being obtained prior to the hearing set for February 18, 2016, or prior to Plaintiff's Motion for Reconsideration under Rule 59, SCRCP.

In its Order, this Court found that Plaintiff's Class Two Landfill Permit No. LF2-00003 ("Class Two Permit") as issued in 2008 "specifically proscribed [the Plaintiff] from dumping any coal ash at the subject dump site during the pendency of this action." Moreover, the Court held that Plaintiff conceded to "operate under the constraints and allowances of the subject permit

issued November 3, 2008, during the pendency of this action” with the incorrect conclusion that the 2008 permit prohibits coal ash. Plaintiff’s counsel never concede the 2008 permit prohibited the Plaintiff from accepting Coal Combustion Residuals (CCR) or coal ash. Instead, Plaintiff’s counsel represented that it was capable of accepting coal ash under the applicable regulations, and the regulatory process, that govern its Permit. As of result of this Court’s ruling, Plaintiff is deprived of the lawful administrative process through SCDHEC, who must determine what is acceptable Class Two waste, and deprived of the lawful administrative procedure of a permit contest through SCDHEC.

The factual and legal conclusion that Plaintiff seeks to have removed from the present Order is supported by the sworn testimony from SCDHEC. The testimony of Coleman confirms that SCDHEC considers coal combustion residuals (CCR) or coal ash an acceptable waste stream under the Plaintiff’s Initial Class Two Permit from 2008 and an acceptable waste stream under its modified Class Two Permit. Coleman deposition testimony also confirmed that, under S.C. Code Reg. 61-107.19, Appendix I, other waste streams, such as CCR or coal ash, that demonstrate similar properties to the wastes listed in Appendix I and are approved by SCDHEC on a case-by-case basis, or waste that test less than ten (<10) times the maximum contaminant level (MCL) as published in R. 61-58, State Primary Drinking Water Regulation, may be deposited in a Class Two Landfill.

Mr. Coleman was asked: “Would MRR’s 2008 permit allow them to accept coal combustion residuals if [the waste] met the threshold...” He answered: “Yes.” (Coleman Depo. p. 70). Further, he was asked “If MRR submitted a waste characterization for coal ash, showing it less that ten times the MCL, would DHEC potentially allow it to dispose of coal ash in the Pickens 2 landfill.” Again, he answered “Yes.” (p. 77). However, based on the

Order, Plaintiff is precluded from pursuing acceptable Class Two Waste for its Class Two Landfill and cannot comply with its existing Class Two Permit validly issued through this State's established regulatory process and procedure.

In addition, Coleman's testimony clarified significant misstatements of law and fact that Pickens' County stated and relied upon in written submissions to this Court and advocated in oral arguments during the hearing. Specifically, Coleman testified as follows:

1. Under the old regulation, S.C. Code R. 61-107.11, it was proper for a Class Two Landfill to request to add a waste stream not listed in Appendix I. (p. 25-27, 29, 32-34);
2. Under the old regulation and current regulation, S.C. Code R. 61-107.19, a facility can accept waste other than those listed in Appendix I. (p. 32);
3. A commercial Class Two Landfill may accept waste from whoever wants to pay them. (p. 40, 42);
4. A Class Two Landfill is allowed to accept CCR. (p. 50, 60-61, 65);
5. CCR is "not a hazardous waste." (p. 54, 61);
6. SCDHEC has an established regulatory procedure to determine whether CCR meets the requirements for disposal in an existing Class Two Landfill. (p. 61, 68);
7. It is "very common" for a landfill permit holder to add a waste stream, such as CCR, to an existing permit. (p. 30, 61);
8. SCDHEC is the sole authority to determine if CCR meets the regulatory criteria to be placed in a Class Two Landfill. (p. 57-58; 61-62);
9. Changes in Federal Regulations created an emerging and mandatory demand for companies to relocate CCR, which was previously placed into the ground or waterways, to be transported and stored in a lined landfill. (p. 50-53; 207); and
10. By lining a Class Two Landfill, the landfill is not converted to a Class Three Landfill. (p. 55-56, 64).

As previously argued, only SCDHEC can determine what types of waste are acceptable under its permit through the administrative process. SCDHEC has the sole authority to determine whether CCR meets regulatory criteria for allowance in a Class Two Landfill, and it serves as the gatekeeper for waste streams of a permittee. South Carolina statutory law states that DHEC has sole authority to issue, deny, revoke, or modify permits. See *Greeneagle, Inc. v. S.C. Dep't of Health & Evtl. Control*, 399 S.C. 91, 730 S.E.2d 869 (S.C. App. 2012) (holding that DHEC has sole authority to issue, deny, revoke, or modify permits); S.C. Code Ann. §§ 44-96-260(1) & (2)(2015).

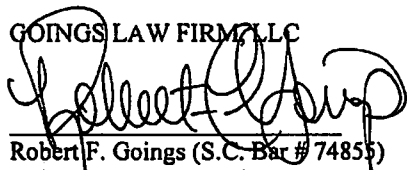
Based on Coleman's testimony, the Order's finding that Plaintiff is "specifically proscribed from dumping any coal ash at the subject dump site during the pendency of this action" should be removed or vacated and a new order issued by this Court that deletes this factual and legal conclusion. Moreover, the Court's mandate that Plaintiff "shall operate under the constraints and allowances of the subject permit issued November 3, 2008" that the Court construed to prohibit coal ash should be removed or vacated and a new order issued because such a finding is not supported by law or facts. Plaintiff modified its Class Two Permit in accordance with applicable solid waste regulations as prescribed by SCDHEC. To date, no appeal or challenge of the Class Two Permit modification has been filed through SCDHEC or the Administrative Law Court. Respectfully, Plaintiff should be allowed to continue with its lawful right to operate under its validly issued and modified Class Two Permit and accept all waste streams allowable for a Class Two Landfill through the authority of SCDHEC.

WHEREFORE, Plaintiff respectfully requests a new hearing, and an order that alters, amends, and/or modifies the Order that "specifically proscribed [the Plaintiff] from dumping any coal ash at the subject dump site during the pendency of this action." Plaintiff also respectfully

requests a new hearing, and an order that alters, amends, and/or modifies the Order that Plaintiff "shall operate under the constraints and allowances of the subject permit issued November 3, 2008." A new order should be issued that expressly reserves the determination of whether Plaintiff may accept certain waste streams, including CCR, to SCDHEC, the agency with the authority to issue, deny, revoke, modify, and construe permits under South Carolina law. Further, Plaintiff requests a preliminary injunction be entered as set forth in its Motion for Preliminary Injunction, Motion for Reconsideration, and as further articulated in the present motion pursuant to Rule 60, SCRCP.

Respectfully Submitted,

GOINGS LAW FIRM, LLC



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ATTORNEYS FOR PLAINTIFF
MRR PICKENS, LLC

Columbia, South Carolina
March 14, 2016

2016 MAR 28 PM 2 27

CERTIFICATE OF SERVICE

PICKENS COUNTY

The undersigned does hereby certify that the following named individual(s) were served with a copy of the following indicated below by placing the same in the United States mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

INDIVIDUALS SERVED:

The Honorable Robin B. Stilwell
305 E. North Street
Greenville, SC 29601

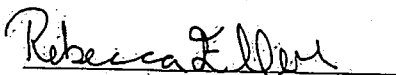
Gary W. Poliakoff, Esquire
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Amy M. Snyder, Esquire
Clarkson, Walsh, Terrell, & Coulter, P.A.
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Greenville, SC 29606

Matthew K. Johnson, Esquire
Ogletree, Deakins, Nash, Smoak, & Stewart, P.C.
300 North Main Street
Greenville, SC 29601

PLEADINGS/DOCUMENTS:

- PLAINTIFF MRR PICKENS, LLC'S MOTION PURSUANT TO RULE 60 FOR RELIEF BASED ON DEPOSITION TESTIMONY OF SCDHEC REPRESENTATIVE, KENT COLEMAN


Columbia, South Carolina
March 14, 2016

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

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

MRR PICKENS, LLC,

PLAINTIFF,

vs.

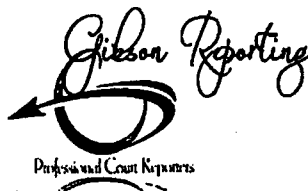
DEPOSITION TRANSCRIPT

KENT M. COLEMAN

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

MARCH 8, 2016

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



EXHIBIT

1

1 A. I was a project manager in the Solid Waste
2 Program at DHEC from '92 to -- when I started there,
3 until about, let's see, probably middle of '94 or so,
4 maybe '95, right in there, where I then became a program
5 manager for the CERCLA Program, where I dealt with
6 primarily groundwater issues related to CERCLA, but also
7 brown fields, dry cleaning, and some Department of Energy
8 sites as well.

9 And then I went -- I was -- then I became
10 director, I think it was about '93 -- I think, around -- I
11 mean, not '93, '03 -- 2003, director of the underground
12 storage tank program at DHEC. And then in the end of 2007
13 is when I started in my current position as the director
14 of mining and solid waste management at DHEC.

15 Q. Okay. And what are your job duties as the
16 Director of Mining and Solid Waste Management?

17 A. Well, I oversee the permitting programs for
18 both mining and solid waste in terms of any types of mine
19 activity in the state or solid waste management
20 facilities. Also, I also oversee the Office of Solid
21 Waste Reduction and Recycling. It resides in my
22 division, as well as the planning -- Solid Waste Planning
23 and Regulation Development and the solid waste grants for
24 the state.

25 And then also the Solid Waste Groundwater

1 section that oversees groundwater activities for both
2 mining and solid waste permits. And also financial
3 assurance requirements for mines and solid waste
4 facilities.

5 Q. And when you --

6 A. I think that kind of covers most of it.

7 Q. Okay. Sorry. Didn't mean to interrupt.

8 A. That's all right.

9 Q. When you say solid waste facilities or solid
10 waste managed facilities, would that include landfills?
11 Solid waste landfills?

12 A. Yes. It would include landfills, yes.

13 Q. But not hazardous waste landfills?

14 A. That's correct.

15 Q. Okay. And do you manage individuals in that
16 position?

17 A. Yes.

18 Q. How many employees do you manage?

19 A. I'm direct supervisor for four program
20 managers. And then there's 37 employees within the
21 division that are under my chain of command, I would say.

22 Q. Okay. And is it true that you are -- you have
23 resigned or retired from DHEC?

24 A. I've -- I have submitted a letter of, I guess
25 you would call it resignation, notifying my -- my

1 supervisor that I plan on retiring from the agency.

2 Q. And when is your last day?

3 A. Friday. This week.

4 Q. Congratulations.

5 A. Uh-huh. Thank you.

6 Q. We're going to move on and talk about -- I'd
7 like to ask you some questions about the solid waste
8 permitting in South Carolina and changes in that. So
9 since you've been in your position since 2007, that was
10 probably a busy time in solid waste permitting
11 regulations. So can we talk a little bit about how those
12 regulations were changing in '07 and '08?

13 A. Uh-huh.

14 Q. Can you just give us a little background of --
15 on that?

16 A. Well, when I -- when I first started in
17 December of '07 in the program, the solid waste -- what
18 we call the Landfill Regulation, which is 61-107.19, it
19 was in the process of being revised.

20 It was, you know, well on its way and pretty
21 close to final draft form, at that point, when I began.
22 And it was submitted to -- through the DHEC Board to the
23 legislature for approval that following winter and
24 spring in that legislative session in '08.

25 And it became effective -- it was approved and

1 became effective in -- I believe it was early June,
2 perhaps, or somewhere around there. It could have been
3 the end of May, early June. Right in that time frame.

4 Q. Of which year?

5 A. Of '08.

6 Q. Okay. And prior to what you call the Landfill
7 Regulation, 107.19 -- 67-107.19, was there a regulation
8 in effect for siting and design --

9 A. Yes.

10 Q. -- and operation of solid waste management?

11 A. Yeah, there were a number of different regs
12 that covered different types of landfills -- industrial,
13 non-commercial, commercial, C&D --

14 Q. Okay.

15 A. -- MSW, municipal solid waste. They all had
16 sort of their separate regulations.

17 Q. Okay.

18 A. All of those were consolidated into one -- you
19 know, one comprehensive landfill regulation. That was
20 the change in '08 --

21 Q. Okay.

22 A. -- that happened.

23 Q. Okay. And for -- you mentioned C&D.

24 A. Uh-huh.

25 Q. What was the regulation that governed C&D

1 before 61-107.19 consolidated?

2 A. Right. Yeah, I don't recall the numbering on
3 that one.

4 Q. Okay.

5 A. But it was -- it was its own separate
6 regulation that just -- that just, you know, laid out the
7 requirements for construction and demolition type waste.

8 Q. Okay. I'm going to hand you my first exhibit,
9 Exhibit 1, which is a copy of Regulation 61-107.11. Is
10 that the plan for regulation you were referring to for
11 C&D that was in existence prior to the --

12 A. Yes.

13 (PLAINTIFF'S EXHIBIT NO. 1; MARKED FOR IDENTIFICATION)

14 Q. -- current --

15 A. Yes.

16 Q. Okay. And so this no longer governs landfills
17 that take C&D waste. Is that correct?

18 A. That's correct.

19 Q. Okay. And that was effective sometime in the
20 spring of 2008?

21 A. Yes.

22 Q. The change -- can you tell me, with the change,
23 what change -- what's the difference with respect to how
24 a landfill that was permitted under 61-107.11, the
25 previous --

1 A. Uh-huh.

2 Q. -- regulation and one today, which I think is
3 called -- is it a Class Two landfill?

4 A. Yes.

5 Q. What's the difference in those regulations, as
6 far as did it change anything for how they operate?

7 A. Well, it did -- it did certainly make some
8 changes. We added, like, groundwater monitoring and
9 financial assurance requirements that were beyond what
10 we had previously. But I think one of the biggest
11 differences was that we started looking at landfill
12 classes 1, 2 and 3 versus land clearing debris, C&D.

13 And then Municipal Solid Waste used to be -- it
14 was the -- the landfills were designed and the
15 determination of what kind of waste could go there was
16 kind of more on -- based on source of the waste, like if
17 it was from a construction or demolition site, you know,
18 that type of thing.

19 Whereas, under the new reg it goes more into
20 the character of the waste. In other words, if you -- if
21 the waste is a certain character or has a certain
22 analytical testing result, then that would be more of how
23 -- what kind of landfill it has to go to is determined, as
24 opposed to the source.

25 Q. Okay.

1 A. I think that was probably the most significant
2 -- one of the most significant changes that was made.

3 Q. Okay. If you look at 61-107.11 --

4 A. Uh-huh.

5 Q. -- and on Page 26 you have Appendix I.

6 A. Yes.

7 Q. And Appendix I is entitled, Acceptable Waste
8 for Construction, Demolition and Land Clearing Debris
9 Landfills. And that lists certain waste. Is that
10 correct?

11 A. Yes.

12 Q. Now those wastes are -- is it -- is it true
13 those wastes are acceptable for any -- at that time,
14 those wastes were acceptable for any C&D landfill without
15 having prior approval from DHEC?

16 A. That was -- yeah, that's the way it worked.
17 Uh-huh.

18 Q. Okay. If you'll look at Page 18, there's a
19 section that's Part IV, A-6. I'm sorry. That's --
20 that's a different one. I'm sorry. Let's do the next, on
21 Page 20. I'm sorry, B -- B-2(p). I think it's B-2(p).
22 B-2(2)(p) is what it is. But there's a "P" on Page 20.
23 Would you read what that says aloud?

24 A. Okay. I'm reading P --

25 Q. P.

1 A. -- on Page 20.

2 "A list of items that are not listed in
3 Appendix I of this regulation that the owner/operator
4 wishes to place in the landfill, the anticipated quantity
5 and source of the waste."

6 That didn't sound right the way I read it,
7 but anyway --

8 Q. Well, read the next sentence.

9 A. "Upon Department review, items other than
10 those listed in Appendix I that are not -- that are
11 approved for land filling, shall be listed on the permit
12 for that facility. After issuance of the permit, other
13 items may be approved for disposal at the landfill by
14 modification of the permit by the Department. Only items
15 that will cause no environmental harm as determined by
16 the Department will be approved for disposal."

17 Q. So prior to 2008 -- and I understand that you
18 had started your job around that time frame --

19 A. Uh-huh.

20 Q. -- so if you're not familiar, that's fine if
21 you say --

22 A. Right.

23 Q. -- I'm not sure how that worked.

24 A. Uh-huh.

25 Q. Would it have been proper for a permittee with a

1 C&D landfill permit to submit to the Department, after
2 they've been in operation for a while, a request to add a
3 waste stream that's not listed on Appendix I?

4 A. That would be -- that would have been possible
5 under this regulation. They could have requested that.

6 Q. Okay.

7 A. And then it would have been up to the
8 Department to determine whether that was appropriate.

9 Q. Okay. Let's move on to 61-107.19 since that's
10 the regulation in effect today.

11 A. Uh-huh.

12 Q. I'm going to hand you a copy of that, which
13 would be Plaintiff's Exhibit 2.

14 (PLAINTIFF'S EXHIBIT NO. 2; MARKED FOR IDENTIFICATION)

15 A. You mean this one? Okay.

16 Q. So this is the current regulation. You were
17 just discussing some changes --

18 A. Uh-huh.

19 Q. -- that were made by this regulation.

20 A. Right.

21 Q. And you mentioned that it's not -- it changed
22 whether where a waste stream went was dependent on the
23 source or the characterization of the waste stream. What
24 -- if you read on Page 46, that's where Part IV, Class Two
25 Landfills begins.

1 A. Uh-huh.

2 Q. So these are the landfills, correct, that
3 replaced what was previously called a C&D LCD landfill?
4 Is that correct?

5 A. Yes, or C&D landfill.

6 Q. Or C&D?

7 A. Uh-huh.

8 Q. Okay. So Class Two landfills, from 2008
9 forward, they were called Class Two landfills?

10 A. They currently are referred to as Class Two,
11 yes.

12 Q. Okay. And that began in 2008?

13 A. Yes.

14 Q. Part IV, A.1 says that, "Part IV. establishes
15 minimum criteria for all landfills used for the disposal
16 of: waste as outlined in Appendix I of this regulation;"

17 A. Uh-huh.

18 Q. "Other waste not listed in Appendix I that
19 demonstrate similar properties to the waste listed and
20 are approved by the department on a case-by-case basis;
21 or, waste that tests less than ten times the maximum
22 contaminant level, as published in Regulation 61-58
23 State Primary Drinking Water Regulation current at the
24 time of the submittal of the permit application."

25 And then it goes on to talk about the testing

1 criteria. So is this what you were referring to when you
2 said that it has -- that the waste stream is dependent on
3 its characterization and not its source?

4 A. Right. I mean, in Section -- Part I.C., I
5 think specifically talks about that a little bit more
6 than this section, but yes.

7 Q. Part I.C. Okay.

8 A. Yeah, the Waste Characterization Section.

9 Q. Okay. So Part I.C. of this regulation.

10 A. Uh-huh.

11 Q. Let's look at that. So Page 15 is Part I, C.3,
12 and it says, "Waste Characterization Report for Class Two
13 Landfills". Is that what -- partly what you're referring
14 to?

15 A. Yes. Uh-huh.

16 Q. On Page 15. And it says that, "Class Two
17 landfills shall, prior to permit issuance, submit a waste
18 characterization report that contains at a minimum the
19 following:" and it lists certain things. And then 3.b
20 says Class Two landfills that accept only those wastes
21 specifically listed in Appendix I are exempt from all
22 these characterization report requirements.

23 A. Right.

24 Q. So a permittee, someone applying for a Class
25 Two permit, could, at the beginning, in their

1 application, propose waste not in Appendix I that they
2 would like to accept at their landfill. Is that correct?

3 A. Yes.

4 Q. Okay. And that would --

5 A. Appendix -- not in Appendix I. Is that what
6 you said?

7 Q. If it's not, yes. I'm sorry. If it's not in
8 Appendix I. And there is -- again, in this -- in this
9 regulation, on Page 109, there is an Appendix I similar
10 to the one that was in the old regulation. Is that
11 correct?

12 A. Yeah, I don't --

13 Q. You can --

14 A. I'll look at it. I don't know what page it's
15 on, but --

16 Q. It's on 109, if --

17 A. -- yes, there is.

18 Q. -- you'd like to look at it.

19 A. Okay.

20 Q. We can wait.

21 A. Yes, Appendix I, "Acceptable Waste for Class
22 Two Landfills."

23 Q. So both under the old regulation and the new
24 current regulation --

25 A. Uh-huh.

1 Q. -- a facility could take waste other than those
2 listed in Appendix I. Is that correct?

3 A. Yes.

4 Q. And what -- what was different in the way that
5 would be done now and the way that was done in the old
6 regulation?

7 A. Well, the old regulation didn't have the
8 specific less than ten times the drinking water standard
9 in it. Also, the waste characterization procedures are
10 laid out in much more detail in the newer regulation.

11 Q. Okay. So in the previous regulation, it would
12 have been done on a case-by-case basis?

13 A. Just basically at our discretion.

14 Q. Okay.

15 A. That it would not be environmentally harmful?
16 I think that was the -- roughly, the wording.

17 Q. Under the new regulation, if it's below the ten
18 -- if the waste stream that is requested to be approved
19 is under ten times the MCL, under the State Drinking
20 Water Standard, is there any discretion for DHEC as far
21 as granting or denying that request?

22 A. If it's less than ten times? Well, I mean, I
23 think there's always some discretion. It just depends if
24 the character of the waste were such that there would be
25 other dangers --

1 Q. Okay.

2 A. -- related to it, or it's not -- or that the
3 leaching process would not determine some of the issues
4 that might be relevant; such as if it were, you know,
5 radioactive material, that may not be the appropriate way
6 to look at it.

7 Q. Okay.

8 A. Yeah. And if it were -- some materials tend to
9 heat up and cause fires once they're buried. So those --
10 like some different kinds of aluminum sludges and such
11 that you wouldn't want to probably dispose of in that way
12 with wood and other debris that would be flammable, you
13 know. So there would be certain other considerations,
14 besides just the ten times, with perhaps fire hazards,
15 radioactivity, that would not necessarily be picked up in
16 a leaching test.

17 Q. Okay.

18 A. That type of thing.

19 Q. So you -- you still will make a determination
20 on each case on a case-by-case basis?

21 A. Yes, depending on the type of waste and the --
22 and the results of the waste characterization.

23 Q. Okay. What is -- so let's look -- if you look
24 at Page 64 of the regulation -- of the new regulation -- I
25 call it new. It's not new anymore. The third full

1 paragraph down; it's an L. And that is actually, just
2 for the record, Part IV, H.b7(1). And this section is
3 under, on the previous page, Operating Plan; and it says
4 your plan shall at a minimum address the following.

5 A. So what page are we on?

6 Q. Well, 63 and 64.

7 A. Okay.

8 Q. And I'm just giving some reference, that this
9 is under an operating plan as required for a --

10 A. Okay.

11 Q. -- Class Two landfill.

12 A. Uh-huh.

13 Q. And it gives you things that must be in the
14 operating plan. On 64, (1), it states, "A list of items
15 that are not listed in Appendix I, but are similar in
16 nature to Appendix I of this regulation that the permittee
17 wishes to place in a landfill, the quantity and the
18 source of the waste.

19 Upon department review, items other than
20 those listed in Appendix I, that are approved for
21 landfilling, shall be listed on the permit for that
22 facility. After the issuance of the permit, other items
23 may be approved for disposal at the" facility -- I mean,
24 "at the landfill by modification of the permit by the
25 department. Only items that will cause no environmental

1 harm as determined by this department shall be approved
2 for disposal."

3 So I assume this is what -- the process that
4 you were just describing?

5 A. Yes. If someone has a permit and they would
6 like to add a waste stream that's not listed, or is not
7 also either on Appendix I or listed in the permit, it
8 would require a modification of the permit. We would go
9 through the waste characterization process to determine
10 if it was an appropriate waste.

11 Q. Have you done this for facilities around the
12 state?

13 A. Yes.

14 Q. So this is not uncommon?

15 A. Right.

16 Q. When you do that -- when you add a waste stream
17 -- let's say that someone submits a waste
18 characterization; you all look at it; you determine that
19 it is proper for a Class Two landfill --

20 A. Right.

21 Q. -- and that there will be no environmental
22 harm. What is the process? What is the next step that
23 DHEC takes to add it to the permit?

24 A. Well, we would have to, at some point through
25 that process, try to decide whether we're going to

1 consider that a major or a minor permit modification.
2 Sometimes we approve modifications that we consider
3 minor just by issuing a letter to the facility, once they
4 have met all the requirements for that waste stream and
5 demonstrated that it's appropriate.

6 If it's something that doesn't really
7 significantly alter the operation, and it's similar to
8 what the permit was already issued for, we may do it that
9 way. And that would be considered a minor mod, minor
10 modification. If it's a major modification, and those
11 definitions are in this reg --

12 Q. Right.

13 A. -- that you have to read --

14 Q. We're going to go there.

15 A. -- to kind of get to that. But if it's a major
16 modification, then it's a more expensive process. More
17 similar to a new application almost.

18 Q. Okay. But either way it is -- whether it's
19 minor or major, it is a modification to the permit?

20 A. Yes.

21 Q. Okay. If you'll go back to 109 of 61-107.19,

22 Appendix I --

23 A. Page 109?

24 Q. Yes.

25 A. Okay.

1 Q. That's where Appendix I begins.

2 The introductory paragraph says, "The
3 following types of waste have been determined by the
4 department to be environmentally safe and may be accepted
5 at Class Two landfills unless specifically prohibited by
6 the department. Acceptable waste may be generated by
7 construction, demolition, land clearing, industrial,
8 and/or manufacturing activities, and are obtained from
9 segregated commercial waste."

10 So do Class Two -- based on that sentence --

11 A. Uh-huh.

12 Q. -- are Class Two landfills in South Carolina,
13 under 61-107.19, allowed to take waste from industrial
14 manufacturing or commercial activity?

15 A. Yes, if it meets the criteria.

16 Q. If it meets the criteria?

17 A. Right.

18 Q. So it's dependent on the waste
19 characterization?

20 A. Correct.

21 Q. Is that correct?

22 A. That's correct.

23 Q. You gave, before, some examples of waste that
24 DHEC may not want to go into a Class Two landfill --

25 A. Uh-huh.

1 Q. -- because of certain characteristics.

2 A. Right.

3 Q. And I think your examples were radioactive or -
4 - what was the other example?

5 A. That it would cause spontaneous combustion of
6 other materials.

7 Q. What would be a waste that does that?

8 A. Aluminum sludge.

9 Q. Aluminum sludge, that's what you said?

10 A. Yeah.

11 Q. Okay. What -- we're talking about Class Two
12 landfills right now. Under this regulation, obviously,
13 there's other types of landfills because this is a
14 consolidated regulation that deals with all the
15 different types of solid waste landfills. Correct?

16 A. Yes.

17 Q. So what are the other two types you mentioned?

18 A. Well, there's Class One, which is just land
19 clearing debris. And then there's Class Three, which is,
20 you know, municipal solid waste and other materials that,
21 say -- they may leach above the ten times drinking water
22 standard, so they would not be appropriate for a Class
23 Two landfill --

24 Q. Okay.

25 A. -- but they are not hazardous waste --

1 Q. Okay.

2 A. -- under the RCRA rules, then they could go
3 into a Class Three.

4 Q. So a Class Three landfill takes the waste that
5 you just described?

6 A. Uh-huh.

7 Q. Do they take municipal solid waste?

8 A. Yes.

9 Q. Okay. So those are Class Three landfills?

10 A. Yes.

11 Q. And they have different operating criteria and
12 *closure, and all that, than a Class Two landfill?

13 A. Correct.

14 Q. Okay. Appendix II on Page 111 --

15 A. Uh-huh.

16 Q. -- lists wastes that are unacceptable for
17 Class Two landfills. Is that correct?

18 A. Yes.

19 Q. So under no circumstances those wastes are
20 allowed in a Class Two landfill? Is that correct?

21 A. That's correct.

22 Q. Okay. You just mentioned minor and major
23 modifications in terms of adding a waste stream, and that
24 it was sort of a case-by-case determination.

25 A. Right.

1 Q. Let's look at that part of the regulation. I
2 have it. It's on Page 8 and 9. There are definitions in
3 Part I, beginning on Page 8, Number 48 says
4 "Modification." This is Regulation 61-107.19.

5 And it says, "Modification" means changes to a
6 solid waste landfill as follows: (a) Minor modification
7 means a change that keeps the permit current with routine
8 changes to the facility or its operations or an
9 administrative change; and (b) Major modification means
10 a change that substantially alters the facility or its
11 operations."

12 And it gives examples, such as a tonnage
13 increase above 25 percent, volumetric capacity increase
14 and alternate designs that vary from the design
15 prescribed in this regulation.

16 So I assume that you all are tasked on a
17 regular basis with deciding -- when I say you all, I mean
18 DHEC.

19 A. Yes.

20 Q. With deciding how to treat changes to a
21 facility's permit.

22 A. Correct. We have some discretion.

23 Q. Okay. Well, I guess that's my question. Is
24 that -- based on that definition --

25 A. Uh-huh.

1 Q. -- does DHEC -- how does it approach to make
2 that decision? How does it decide whether it's minor or
3 major?

4 A. Right. Well, we certainly look very closely at
5 the words that are in those, you know, each word that's
6 in there, as we think about the proposal that's in front
7 of us. And so, for example, minor, if it's -- you know,
8 it uses words like routine and administrative, and so
9 things that aren't really substantive to the operations
10 of the landfill, but may be keeping it current with,
11 maybe new requirements or if some administrative change
12 like a -- maybe a transfer of ownership or something like
13 that, we would generally consider minor.

14 Q. Uh-huh.

15 A. As far as major goes, it gets a little more
16 difficult. Because minor is defined, but then major uses
17 words like substantially alters the facility and things
18 like that. So you have to think, well, if it's something
19 that -- it may not be administrative, but it really
20 doesn't alter substantially what the facility is doing, I
21 think you have some discretion to decide there.

22 And then there's some specific examples of
23 what would constitute --

24 Q. So if you're making your landfill bigger, or at
25 least --

1 A. Yeah.

2 Q. -- 25 percent --

3 A. If you're taking 25 percent more waste in on a
4 yearly basis or actually increasing the total volume that
5 the facility can accept, those things are clearly spelled
6 out.

7 Q. Okay.

8 A. That's major.

9 Q. And is DHEC the only -- and when I say DHEC, I
10 mean the Department of Health and Environmental Control.
11 Is that the only agency with discretion, or the only
12 party with discretion over those decisions?

13 A. In terms of the department's permits, yes.

14 Q. You were discussing before, when an entity is
15 wanting to add a waste stream, and you're -- and if you
16 don't know, please tell me, I don't recall.

17 A. Uh-huh.

18 Q. But if you do know, has DHEC treated any of
19 those requests to add a waste stream as a minor
20 modification?

21 A. Yes.

22 Q. Okay. Has DHEC treated any of those requests
23 for a new waste stream as a major modification?

24 A. Yes.

25 Q. So again, it's on a case-by-case basis?

1 A. Correct.

2 Q. Are you familiar with the term special waste
3 and the term -- in the context of South Carolina solid-
4 waste permitting?

5 A. I'm sorry. Ask that again.

6 Q. Yeah, I will. Are you familiar with the term
7 special waste, as it applies in the solid waste
8 permitting scheme in South Carolina?

9 A. Yes, I am familiar. I may need to read the reg
10 again, if you ask me real specific questions about it,
11 but --

12 Q. Okay. What is your understanding of what is a
13 special waste?

14 A. I think of it more in the context of Class
15 Three landfills really, because it's, you know, in terms
16 of their -- their way of managing waste is different.
17 The Class Three landfills have what is called a solid
18 waste or a special waste analysis and implementation plan
19 that is a part of their operations, and really, in
20 essence, a part of their permit.

21 Where we -- the department doesn't necessarily
22 approve on a case-by-case basis every single different
23 waste stream that they take. What we approve is a plan on
24 how they would evaluate whether that waste is acceptable.
25 So they have to follow -- they -- we -- we approve their

1 procedures, and they have to follow those procedures; as
2 opposed to a Class Two, where we would normally approve
3 each waste -- each different waste stream, you know, as
4 opposed to them having that kind of a plan.

5 Q. Okay. So for a Class Two, it has to be pre-
6 approved. And for a Class Three, if their procedures are
7 approved, DHEC doesn't need to know every specific waste
8 stream?

9 A. That's correct.

10 MR. POLIAKOFF: I object to the form.

11 It's leading.

12 Q. You can answer.

13 A. Correct.

14 Q. So when you are mentioning special waste and
15 Class Three landfills, is it your opinion that special
16 waste is not disposed of in a Class Two landfill?

17 A. I'm not sure. I -- I -- I'd normally think of
18 special waste in the context of Class Three.

19 Q. Okay.

20 A. But I don't know that I could say absolutely
21 that there's no mention of that term, as it relates to
22 Class Two --

23 Q. Okay.

24 A. -- without looking.

25 Q. That's fair. Are Class Two landfills required

1 to have special waste analysis in the implementation
2 plan?

3 A. No, not normally. There may be a case where we
4 have a non-commercial situation --

5 Q. Okay.

6 A. -- where there's a Class Two in non-
7 commercial, related to a specific industry. And we may
8 have some rules established with them that are similar
9 to, you know, that type of a plan.

10 Q. Well let's talk about that. You mentioned non-
11 commercial. Can you explain the difference between a
12 commercial and a non-commercial Class Two landfill?

13 A. A non-commercial Class Two landfill is -- if
14 it's the landfill facility that has -- that is under the
15 ownership or control of a facility which generates some
16 type of waste that would be appropriate for Class Two
17 disposal, and that landfill is owned and controlled --
18 or, owned or controlled by that industry, the only waste
19 that can be disposed there is waste generated by that
20 particular industry.

21 It's not open to other, you know, just -- it's
22 not a commercial business where they take in waste from
23 whomever wants to pay them. It's their own -- it's for
24 their own purposes of that industry.

25 Q. Okay. And are there non-commercial Class Two

1 landfills permitted in South Carolina?

2 A. Yes.

3 Q. Do you know how many, currently?

4 A. No, not exactly.

5 Q. Okay. Fair enough. I'm going to hand you --

6 A. You have a list.

7 Q. I have a list. And I'm going to hand this --

8 I'm going to hand you a document which is on the DHEC

9 website, and it's the smallest print I have ever seen.

10 But it's from DHEC's website and that will be Plaintiff's

11 Exhibit 3. Oh, I'm sorry. Yeah. See how small it is?

12 This is, as I said, there's a link on DHEC's solid waste

13 permitting website for a listing of landfills. And you

14 can do it by class --

15 (PLAINTIFF'S EXHIBIT NO. 3; MARKED FOR IDENTIFICATION)

16 A. Uh-huh.

17 Q. -- or by I think, location.

18 A. Uh-huh.

19 Q. And so I printed this from -- from the website,

20 and it goes -- as I said, you can do it by class, which is

21 how I printed it.

22 A. Right.

23 Q. And it goes through a bunch of Class Ones and

24 then -- I have to take my glasses off to see it. It

25 changes about halfway down. And actually, the facility

1 name goes to all caps when it turns to Class Two, which is
2 helpful.

3 A. Uh-huh.

4 Q. And it lists a bunch of Class Two landfills on
5 Page 1.

6 A. Right.

7 Q. And then -- and this is double-sided on the
8 back of Page 1. It continues down about -- again, about
9 halfway. And I can read the names better than the rest.

10 A. Uh-huh.

11 Q. But there are numerous -- this does not -- this
12 just says Class Two landfill. Can you tell -- and you can
13 tell me if you just can't decipher it. But can you
14 decipher from this, are these listed Class Two landfills
15 both commercial and non-commercial?

16 A. Yes.

17 Q. Okay. So some of these would be the type, as
18 you said, that --

19 A. Right.

20 Q. -- are generated -- they're disposing of waste
21 that they generate. And then there are those that are
22 commercial and take waste from multiple industries for
23 profit. Correct?

24 A. Yes. That's correct. There are both. There
25 are both of those types on this list

1 Q. Okay.

2 A. -- of Class Two, yes.

3 Q. So they don't make a distinction?

4 A. No. I can tell by -- I can tell most of them
5 just by the name --

6 Q. You can?

7 A. -- in the far left column.

8 Q. Okay. Well, can you tell me a few that would
9 be Class Two, non-commercial --

10 A. Non-commercial, okay.

11 Q. -- landfills.

12 A. Let's see. The first one that I can recall,
13 there's Owens Corning.

14 Q. Okay.

15 A. And then there's one at -- there's another --
16 there's another Owens Corning actually in Anderson. And
17 then there's Santee Cooper (Cross) --

18 Q. Right.

19 A. -- Kapstone, DAK Amerikas, Sonoco Products,
20 Rock-Tenn Paper Company, IP Georgetown. I'm going to the
21 next page.

22 Q. Okay.

23 A. General Electric, SCE&G - McMeekin, Domtar
24 Paper, IP - Union.

25 Q. Uh-huh.

1 A. Intertape Polymer, Kohler Company, Martek.
2 Duke Power, I'm not sure about that one. Resolute, I
3 don't recall that one. I think it's non-commercial, but
4 -- the SRS Facilities are --

5 Q. Uh-huh.

6 A. -- for their own use. SCE&G, Santee Cooper
7 again. That's -- I'm into Class Three now.

8 Q. Oh, yeah.

9 A. So Class Two --

10 Q. Yeah, the last --

11 A. Roseburg Forest.

12 Q. Yeah, that's the last --

13 A. That's also non-commercial.

14 Q. Okay. Let's talk about Santee Cooper, as one
15 of the examples you mentioned.

16 A. Class Two?

17 Q. Santee Cooper (Cross).

18 A. Okay. Well they have --

19 Q. Listed as a Class Two.

20 A. Right. Okay. Uh-huh.

21 Q. Are you familiar with their operations and
22 their facility?

23 A. Yes. Uh-huh.

24 Q. Okay. And one of the issues in this case is
25 coal combustion residuals. So I'd like to talk a minute

1 about that with you.

2 A. Okay.

3 Q. Santee Cooper, do they dispose of coal
4 combustion residuals at their Class Two landfill?

5 A. Currently, they -- they may be finishing out
6 some final grades on that Class Two.

7 Q. Okay.

8 A. They're almost finished with it.

9 Q. But have they in the past done that?

10 A. Yes.

11 (PLAINTIFF'S EXHIBIT NO. 4; MARKED FOR IDENTIFICATION)

12 Q. Okay. I'm going to hand you Plaintiff's
13 Exhibit 4. It's a coal combustion residual Class Two and
14 Class Three landfill inspection for Cross Generating
15 Station, Santee Cooper. Is that the Class Two landfill
16 that is listed on this printout that we were just looking
17 at?

18 A. It's at Cross Generating Station, yes.

19 Q. Okay. And it says Class Two and Class Three
20 landfill inspection. And it is dated January 2016.

21 A. Okay.

22 Q. If you look at Page 3 --

23 A. Okay.

24 Q. -- in the executive summary, it states, "This
25 assessment of the stability and functionality of the

1 Cross Generating Station coal combustion residual, Class
2 Two and Class Three landfill is based on a review of
3 available documents and on-site assessment conducted by
4 Santee Cooper engineering staff on November 16, 2015."

5 So can you explain -- and if you don't know,
6 please state that. Santee Cooper has both a Class Two
7 and a Class Three non-commercial facility; is that
8 correct?

9 A. Yes.

10 Q. It's non-commercial?

11 A. That's correct.

12 Q. Okay. And up until recently, they have been
13 placing coal combustion residuals in their Class Two
14 landfill?

15 A. Correct. I don't know what recently exactly
16 means, but --

17 Q. Okay. Is their Class Two landfill lined?

18 A. No.

19 Q. Is it in closure?

20 A. Yes. It's in the process of being closed.

21 Q. And do you know how -- what -- what is going to
22 be required by DHEC for its closure?

23 A. Well, it would have to have a final capping; a
24 final cover of soil and grass, as far as I remember.

25 Q. Okay. And it states on Page 8, under 2.3.2,

1 that "Santee Cooper is currently constructing a new Class
2 Three CCR landfill adjacent to the existing Class Two
3 landfill."

4 So is it correct that they are not -- at least
5 at the time of this report, they were not prepared to put
6 their CCR in their Class Three landfill?

7 A. Well, it certainly seems to say that. I don't
8 recall the specific, you know, dates of where they are
9 with -- I believe they finalized -- I think we finalized
10 that Class Three construction currently, but I'm not a
11 100 percent certain.

12 Q. Okay. Why are they closing out their Class Two
13 landfill?

14 A. Because a combination of things happened in
15 the last several years that required that change. The
16 first thing that happened back in -- and I don't know
17 exact dates, but somewhere around '06, I believe it was,
18 the arsenic MCL changed. The drinking water standard for
19 arsenic dropped to -- I think it was 50 parts per
20 billion, and it dropped to 10 parts per billion.

21 And so at that time, some of the coal
22 combustion residual landfills, if you want to call them
23 that, in the state started having some difficulties
24 meeting the less than ten times the MCL rule for -- that
25 came into effect in the new '08 regulation. So really it

1 started becoming an issue when the new '08 reg passed.

2 But it was in part due to the MCL change in
3 arsenic and also the fact that when they installed new
4 pollution control equipment -- air pollution control
5 equipment, it was more efficient in capturing metals and
6 some contaminants out of the air. And so those
7 contaminants went from the air to the residuals -- to the
8 combustion residual waste stream.

9 And so a combination of those things kind of
10 came together and -- and some of the waste
11 characterizations started being very, very close to the
12 limit and some even failed by a small margin, and so we
13 started talking to the companies about transitioning.

14 And this was around probably 2010, in that
15 ballpark or so, when we first started having those
16 conversations when we realized these characterizations
17 were becoming a problem. We started having conversations
18 with mostly the coal-fired utilities, being the ones who
19 generate most of the ash and being the ones that had the
20 most advanced air pollution control equipment.

21 And so we started having those conversations
22 with them about transitioning into Class Three. And so
23 over the course of a couple of years' time, we had
24 basically -- most of the coal-fired utilities had entered
25 into consent agreements with the department that laid out

1 time frames and procedures for transitioning from Class
2 Two to Class Three.

3 And then sort of on the tail end of all of that, the
4 new federal CCR rule came into effect, which, you know,
5 we fortunately, because we had already started to deal
6 with the issue for other reasons, we were kind of ahead
7 of the curve with the power utilities on that and we
8 already had them all transitioning, you know.

9 By the time the CCR rule came out, they were
10 all either constructing a Class Three or in the
11 permitting process for a Class Three, so we kind of had -
12 - you know, were fortunately down that road pretty far by
13 the time the federal rule came out.

14 But what was the original question? How did we get
15 there? I'm sorry.

16 Q. No, I think you -- I think you answered it.
17 But I guess I want to follow up on that, which is -- so I
18 asked you what -- why we were closing out some Class Two
19 landfills --

20 A. Uh-huh, right.

21 Q. -- in these non-commercial facilities,
22 primarily utilities, as you said.

23 A. Uh-huh.

24 Q. So, if coal ash or coal combustion residuals or
25 fly ash, whatever you want to call it --

1 A. Uh-huh.

2 Q. -- does not exhibit arsenic --

3 A. Uh-huh.

4 Q. -- above -- at limits, you know, above the
5 limit for the new drinking water standard --

6 A. Right.

7 Q. -- would it be required to go into a Class
8 Three landfill?

9 A. Well, I mean, arsenic is only one contaminant
10 that we --

11 Q. Right.

12 A. -- would be concerned about. But if it did not
13 fail the ten times the MCL test for any contaminant, then
14 it could potentially go into a 3 -- I mean a Class Two
15 landfill. I mean we have -- that, you know, that tends to
16 be the case with other types of industrial facilities
17 that, you know, they burn -- they may not burn coal
18 exclusively. They may have biomass wood, coal, tire
19 chips.

20 I mean, they burn a lot of things. And some of
21 those boys burn all of those things together, mixed
22 together, or they switch from time to time. And they
23 also are covered under a different air standard. They're
24 under the boiler -- what's called the Boiler MACT Air
25 Standard as opposed to the higher standards that the

1 utilities are under.

2 So they don't have the pollution control
3 equipment on their boilers like the power utilities do.
4 So they don't pull as much out of the air as, say, a power
5 utility situation. So they are -- in other words,
6 the paper companies and some of these other companies
7 that do generate some amount of coal ash, their ash is
8 much less likely to fail the ten times rule as opposed to
9 say a, you know, utilities were having those issues.

10 Q. So you're saying some coal ash can meet the
11 standards for a Class Two landfill and then be accepted
12 at a Class Two landfill?

13 A. Correct.

14 Q. You mentioned the federal CCR rule, and you
15 implied -- you said, "Well, we're ahead of the game
16 because of the arsenic issue by the time the federal -- "

17 A. Right.

18 Q. Do you -- are you familiar with when the
19 federal rule came into effect for CCR?

20 A. It was in 2015, I believe. It was very
21 recently.

22 Q. Okay.

23 A. Toward the end of 2015, I think.

24 Q. And does the federal rule -- the federal rule
25 was an EPA rule. Is that correct?

1 A. Yes.

2 Q. And does it -- does it make coal combustion
3 residual a hazardous waste --

4 A. No.

5 Q. -- or a solid waste?

6 A. It's not a hazardous waste.

7 Q. It's not a hazardous waste. Okay.

8 Is it a solid waste?

9 A. Yes.

10 Q. Okay. And does it require that CCR go into a -
11 - what we call in South Carolina, a Class Three landfill?

12 A. Essentially. I mean, if it's -- if it's -- if
13 it's coal combustion residuals that are generated by a
14 power utility -- and there's some specific wording in
15 that sentence that I don't have in front of me. But if
16 it's essentially a power utility that's generating that
17 material, then it would need to be in a lined facility.

18 Q. A lined facility?

19 A. A lined facility. Something that meets the
20 specific -- there are specific design standards in the
21 coal combustion residuals rule --

22 Q. Okay.

23 A. -- the federal rule that it would have to meet.

24 Q. So let me just make sure I understand. If it
25 needs to be in a lined and other design to meet the

1 federal standard, in South Carolina, does it have to be
2 in a Class Three landfill? Or can it be in a Class Two
3 landfill that meets those design criteria?

4 A. Well, it just needs to meet the -- if it -- if
5 it -- at the state level, it has to meet the less-than-
6 ten-times rule.

7 Q. Okay.

8 A. If it meets that, then it could potentially go
9 into a lined landfill that is not necessarily a Class
10 Three.

11 Q. Well, and this brings me sort of back to what
12 we were talking about before because I'm trying to
13 understand. By lining a landfill, does that convert it
14 from a Class Two to a Class Three landfill?

15 A. No.

16 Q. Okay. And by lining a Class Two landfill --
17 let's talk just about a Class Two landfill -- if we were
18 to line a Class Two landfill with a liner similar to that
19 in a Class Three landfill --

20 A. Uh-huh.

21 Q. -- would that enable the Class Two landfill to
22 take waste streams that don't meet the waste
23 characterization requirements in the Class Two part of
24 the regulation?

25 A. No.

1 Q. No?

2 A. No.

3 Q. So basically it's a two-part analysis that
4 DHEC would make, which is does the waste stream meet the
5 Class Two waste characterization requirements?

6 A. Correct.

7 Q. And does -- if it's coal ash, does it meet the
8 federal design requirement?

9 A. Yes.

10 Q. Okay. Okay. Well, then let's talk about if a
11 Class Two landfill like MRR Pickens, for example, wanted
12 to take coal combustion residuals --

13 A. Uh-huh.

14 Q. -- what would the process be for it to request
15 that of DHEC?

16 A. Well, I mean there's a -- there is a new state
17 law that just passed like in the beginning of March that
18 kind of changes -- I think changes some of those answers
19 to those questions. I don't -- I'm not sure, we haven't
20 really had, you know --

21 Q. Okay.

22 A. -- this happen since the new law.

23 Q. Okay.

24 A. But --

25 Q. Are you speaking of the law that just passed in

1 the last month?

2 A. Yes.

3 Q. Okay.

4 A. March 2nd.

5 Q. March 2nd? Okay. We're going to talk about
6 that in a little bit.

7 Can -- let's assume for the sake of the next
8 few questions that that law hasn't -- doesn't change
9 anything. And I understand that that's not your
10 position.

11 A. Okay.

12 Q. Just for the sake of my question.

13 A. Okay. Can we just assume that, you know, we're
14 talking about prior to that law?

15 Q. Yes.

16 A. Is that fair?

17 Q. Yes.

18 A. Okay.

19 Q. So notwithstanding the brand new South
20 Carolina law that governs disposal of coal combustion
21 residuals --

22 A. Okay.

23 Q. -- that passed in March of this year, what
24 would be the process for a Class Two landfill to add coal
25 combustion residuals to its permit?

1 A. Okay. And are we answering this question in
2 the sense that both the state regulations that are
3 currently in place and the federal CCR rule are in place?

4 Q. Yes.

5 A. Okay. Well, if a -- so if a Class Two landfill
6 requests to take coal combustion residuals under this
7 scenario, then the first thing that we would look at
8 would be whether it meets the waste characterization;
9 because if it doesn't, then we don't need to go any
10 further with that analysis.

11 So if it meets -- if that particular waste
12 meets the less than ten times MCL limit for Class Two,
13 and if it comes from a power-generating utility, then we
14 would also ask that they comply with the federal rule;
15 which would require their, you know, specific design
16 standards for those coal combustion residuals. Which
17 means it has to be lined with leachate collection and,
18 you know, essentially the same design as we would have in
19 a Class Three here.

20 And then we would -- assuming all those -- you
21 know, I guess the application would have to come in to
22 modify -- you know, their permit would need to be
23 upgraded or modified to take that line -- to add that
24 liner. And then we would, you know, modify the permit
25 appropriately for the liner and the new waste stream.

1 Q. Okay. Other than the requirements in the
2 federal CCR rule, would the process be similar as adding
3 other waste streams to a Class Two permit that are not
4 currently in Appendix I?

5 A. Yes. I mean, at the state level it doesn't
6 really matter. When somebody requests a new waste
7 stream, it doesn't necessarily matter where it comes from
8 or what type of waste it is, as long as it meets the
9 criteria.

10 Q. Okay. I'm going to move on and ask you
11 questions about MRR Pickens' permit in particular, but
12 why don't we take a quick break before then.

13 A. Okay.

14 MS. KING: Is that all right?

15 VIDEOGRAPHER: We're off the record at 11

16 --

17 MR. POLIAKOFF: May I just state one thing
18 before we go off the record? The rules
19 for South Carolina Civil Procedure state
20 that while the deposition is going on you
21 may conduct conversations not involving
22 this case or the testimony. In other
23 words, you can talk to people about
24 sports, weather, et cetera. But the
25 rule is to not discuss with anybody here,

1 any of the lawyers present, even your own
2 attorney, either the case or the
3 substance of the deposition testimony.
4 Just wanted to state that. Thank you.

5 THE WITNESS: Yes, sir.

6 MS. KING: Thanks, Gary.

7 THE WITNESS: Thank you.

8 VIDEOGRAPHER: We're off the record at
9 11:21.

10 (OFF THE RECORD | BREAK FROM 11:21 AM - 11:43 AM)

11 VIDEOGRAPHER: This is Video No. 2. We're
12 on the record at 11:43.

13 CONTINUATION OF DIRECT EXAMINATION

14 BY MS. KING:

15 Q. I'll just -- quickly just recap a couple things
16 that we talked about, just to make sure I understand what
17 you said.

18 A. Okay.

19 Q. Is it a fair statement that a Class Two permit
20 -- permitted landfill in South Carolina -- and this is
21 notwithstanding the March 2nd legislation, the new coal
22 ash legislation.

23 A. Okay.

24 Q. A Class Two permitted landfill in South
25 Carolina is allowed to accept coal ash if the coal ash

1 meets the waste characterization requirements and the
2 federal design criteria.

3 A. Yes.

4 Q. Is it -- is it true that you said coal ash is
5 not a hazardous waste under the federal rule?

6 A. That's correct.

7 Q. Is DHEC the sole agency that has the authority
8 to determine if coal ash meets the environmental
9 thresholds to be placed in a Class Two landfill?

10 MR. POLIAKOFF: Object to form, leading.

11 MS. LINEN: You can answer.

12 THE WITNESS: (To Ms. King) Would you
13 repeat that?

14 MR. POLIAKOFF: So as not to interrupt,
15 let me just state my objection for the
16 record, and I won't interrupt you.

17 MS. KING: Okay.

18 THE REPORTER: Ma'am, is she the one that
19 said that he could answer?

20 MS. KING: Yeah. She's his attorney.

21 THE REPORTER: I just want to make sure.

22 Okay.

23 BY MS. KING:

24 Q. Is DHEC the agency that has the authority to
25 determine if coal ash or CCR meets the environmental

1 threshold to be placed in a Class Two landfill?

2 A. Yeah, I mean as far as the South Carolina
3 regulations that govern Class Two landfills. Yes, DHEC
4 is the agency with that authority.

5 Q. Okay. Is DHEC the agency that has the
6 authority to determine if a modification to a solid waste
7 permit issued by DHEC is a major or minor modification?

8 MR. POLIAKOFF: Object to form, leading.

9 A. Yes.

10 Q. I handed you this January 2016 Santee Cooper
11 coal combustion residual inspection report.

12 A. Uh-huh.

13 Q. I think it was Exhibit -- Plaintiff's Exhibit
14 4.

15 A. Yes.

16 Q. Let's look at that. On Page 8, under section
17 2.3.1, could you read that first sentence? Well, the
18 first two sentences in 2.3.1 on Page 8?

19 A. 2.3.1, the first few sentences?

20 Q. The first two, please.

21 A. The first two.

22 "The CGS Class Two landfill is regulated under
23 South Carolina, or SC DHEC's solid waste management
24 regulations. It was originally permitted in 1982 and
25 began receiving CCRs in 1984. The original permit

1 allowed placement of material up to elevation of 120
2 feet, which is approximately 38 feet above grade."

3 Q. And you can read the next sentence.

4 A. "A consent agreement in 2011, allowed Santee
5 Cooper to continue placement of material above this
6 elevation with a maximum top elevation of 210 feet."

7 Q. So reading this, do you interpret that to mean
8 that since 1984, Santee Cooper has been placing CCR in
9 its Class Two landfill in South Carolina?

10 A. Yes.

11 Q. And it, it mentions a consent agreement
12 entered into in 2011.

13 A. Correct.

14 Q. And based on that last sentence in that
15 paragraph that you just read, DHEC -- in 2011, DHEC
16 agreed to allow it to continue to place CCR in its Class
17 Two landfill after 2011?

18 A. Yes. That was related to the transition that I
19 mentioned earlier, where there was a consent agreement to
20 lay out the sort of the finishing of the Class Two and
21 transition into a Class Three.

22 Q. But the arsenic standard changed in 2008. Is
23 that correct?

24 A. I think it was before that. But the reg with
25 the ten times rule came in '08, yes.

1 Q. But there was not a huge rush to transition to
2 a Class Three, since that -- it is now --

3 A. Right.

4 Q. -- 2016. And it appears from this that Santee
5 Cooper has been disposing of CCR in its Class Two
6 landfills up until last year.

7 A. Right. That's correct. I don't -- I don't
8 recall the specifics of this case with Santee Cooper.
9 But what I recall is that a lot of the characterizations
10 that we were doing at that time were either very close to
11 exceeding the standards, or maybe just slightly
12 exceeding.

13 Q. Okay.

14 A. And so we were working with all the utilities
15 to transition at that point.

16 Q. Were you allowing utilities to use up any
17 remaining space in their Class Two landfills before
18 transitioning to a Class Three landfill?

19 A. Within reason.

20 Q. Within reason?

21 A. Yes.

22 Q. So yes, in some circumstances.

23 A. Yes.

24 Q. Adding a liner to a Class two landfill, did you
25 say that that does not turn it into a Class Three

1 landfill?

2 MR. POLIAKOFF: Object to form, leading.

3 A. That's what I said, yes.

4 Q. Okay. Is it not -- is it uncommon for a permit
5 holder to add a new waste stream, a Class Two permit
6 holder to add a new waste stream to its permit after it's
7 been initially permitted?

8 A. No. It's not. It's not uncommon.

9 Q. So that's standard in the industry?

10 A. It's very common.

11 Q. Okay. Notwithstanding the new state
12 legislation regarding disposal of CCR, coal combustion
13 residuals in South Carolina, was it your statement that a
14 Class Two landfill can accept coal combustion residuals
15 from certain circumstances?

16 A. If they meet the criteria for Class Two.

17 Q. Let's move on to MRR Pickens, LLC's permit.

18 A. Okay.

19 (PLAINTIFF'S EXHIBIT NO. 5; MARKED FOR IDENTIFICATION)

20 Q. I'm going to hand you -- I'm sorry. I'm going
21 to hand you a document that will be marked as Plaintiff's
22 Exhibit 5. And this document is titled Class Two Solid
23 Waste Landfill Permit for Highway 93, C&D Landfill. And
24 it's dated November 3, 2008. Could you read the first
25 paragraph of the cover letter to Mr. Gilkerson(ph)?

1 A. "Enclosed is a Class Two Solid Waste Landfill
2 Permit for the Highway 93 construction and demolition
3 landfill in Laurens County. This permit is issued under
4 Regulation 61-107.19, solid waste management, solid
5 waste landfills and structural fill." Should I keep
6 going?

7 Q. No. You can stop there. So that -- first of
8 all, let's clarify. It says Highway 93 in Laurens
9 County. Is that a typographical error since -- regarding
10 section, and the permit itself says Pickens County?

11 A. Oh yeah, someone must have just left that in
12 from a previous letter or something.

13 Q. So just to be clear, it's not in Laurens
14 County. Is that correct?

15 A. That's correct.

16 Q. Okay. And this permit was issued -- based on
17 that statement and the date, this permit was issued under
18 the current regulation 107.19. Is that correct?

19 A. Yes.

20 Q. So it is a Class Two permit?

21 A. Correct.

22 Q. Okay. Is that your signature on that cover
23 letter, the second page of this document, and on the
24 first page of the permit itself?

25 A. Yes.

1 Q. So is that your -- in your position as manager,
2 is that your job to sign off on all permits that are
3 issued to solid waste management facilities in South
4 Carolina?

5 A. Yes. Most permits, I do sign, yes.

6 Q. And you did sign this particular permit?

7 A. Yes.

8 Q. Okay. Let's look at Page 2 of 4 of the permit
9 itself. And it says at the bottom, Page 2 of 4.

10 A. Uh-huh.

11 Q. That would be excluding the cover letter. And
12 section A special conditions.

13 A. Uh-huh.

14 Q. Paragraph 2 states this permit is limited
15 solely to the disposal of items listed in Appendix I of
16 Regulation 61-107.19. All other wastes, including
17 animal carcasses are prohibited from disposal in this
18 landfill. That particular sentence -- if a permit
19 applicant had not listed any other waste streams than
20 those listed in Appendix I on its application, is this
21 the standard language that would be included in a permit?

22 A. Yes.

23 Q. When it --

24 A. The standard language probably has evolved
25 over time, but yeah, that was the standard.

1 Q. In 2008?

2 A. At the time, yes.

3 Q. Okay. And when it says that all other wastes
4 are prohibited from disposal in this landfill, does that
5 mean that the permittee cannot request to add any
6 additional waste streams to its permit in the future?

7 A. No.

8 Q. Okay. And if we look back at 61-107.19, which
9 we were talking about earlier, the current regulation,
10 and the regulation that this permit was issued under, we
11 talked about process, the process to add a waste stream,
12 correct?

13 A. Right, yes.

14 Q. Okay. And correct me if I'm wrong. Part of
15 that process would be to submit a waste characterization
16 for a particular waste stream.

17 A. Correct.

18 Q. And DHEC would determine whether that waste
19 stream is acceptable in a Class Two landfill in South
20 Carolina.

21 MR. POLIAKOFF: Objection, leading.

22 Objection to form.

23 BY MS. KING:

24 Q. Is that correct?

25 A. Yes.

1 Q. Okay. If you look at Appendix I to the
2 regulation, I don't think it's attached to this permit
3 itself -- but Appendix I to 107.19.

4 MR. POLIAKOFF: I have it, if you need it.

5 MS. KING: Thank you. Mine is all tabbed.

6 BY MS. KING:

7 Q. It lists specific wastes. And I had you read
8 earlier that acceptable waste may be generated by C&D,
9 construction, demolition, land clearing, industrial,
10 and/or manufacturing activities and are obtained from
11 segregated commercial waste.

12 So based on the Regulation 61-107.19, if a
13 waste stream is not listed herein, in Appendix I, does
14 Appendix I allow additional waste to be added to the
15 permit, or does it restrict?

16 A. Well, the regulation allows for the addition
17 of wastes, other than Appendix I.

18 Q. Okay. And under MRR's 2008 permit, would it be
19 prohibited from accepting other waste than those listed
20 in Appendix I, if they meet the waste characterization
21 requirements in Regulation 61-107.19?

22 MR. POLIAKOFF: Object to form.

23 A. They could be -- they could add an additional
24 waste stream that is not included on Appendix I, if it
25 met the waste characterization requirements and the

1 permit were modified to include it.

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

8 A. Right.

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

12 A. Yes.

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

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

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

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

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

1 county --

2 A. Uh-huh.

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

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

7 Q. Do you hold public hearings on permits?

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

10 Q. Okay.

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

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

15 A. No. I don't recall.

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

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

24 A. Yes.

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

1 the first page of the permit?

2 A. Yes.

3 Q. What is this document?

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

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

8 A. That's correct.

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

10 A. Yes.

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

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

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

19 A. Yes.

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

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

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

5 A. Uh-huh.

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

8 A. No.

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

10 A. That's correct.

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

14 A. Yes.

15 Q. And what type of liner is this?

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

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

21 A. Yes.

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

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

25 Q. But not required in a Class Two?

1 A. Correct.

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

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

6 Q. An unlined landfill.

7 A. Yes, certainly.

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

10 A. Class Two?

11 Q. Yeah.

12 A. No.

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

16 A. Uh-huh.

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

19 MR. POLIAKOFF: Objection, form.

20 Leading.

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

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

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

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

5 A. Okay.

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

8 MR. POLIAKOFF: Five.

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

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

23 So the language is a little different.

24 Correct?

25 A. Yes.

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

5 A. Does the -- which permit?

6 Q. Does the new --

7 A. 2015?

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

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

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

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

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

20 MR. POLIAKOFF: Objection, form. Leading.

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

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

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

3 A. Uh-huh.

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

7 A. Yes.

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

9 A. Uh-huh.

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

16 A. Yes.

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

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

23 Q. Okay. Can you tell me why?

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

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

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

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

13 --

14 A. Uh-huh.

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

18 A. Correct.

19 MR. POLIAKOFF: Object to form, leading.

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

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

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

1 A. Uh-huh.

2 Q. -- would it be allowed to take wastes only
3 acceptable for Class Three landfills in South Carolina
4 under the regulations?

5 A. No. It couldn't take Class Three. It could
6 not take waste that would be only acceptable for Class
7 Three. It would have to still take Class Two waste.

8 Q. Okay. So the liner -- so again, the liner does
9 not change it from a Class Two to a Class Three landfill;
10 is that correct?

11 A. That's correct.

12 MR. POLIAKOFF: Object to form, leading.

13 Q. You just said that the liner in the
14 modifications listed, that we just discussed in the 2015
15 modification, did not change the waste stream. So I
16 think that leads -- is a good segue to talk about a letter
17 sent to you in October of 2015. This is Plaintiff's
18 Exhibit 7. It's just one page. This, again, it's dated
19 October 16, 2015. It's a letter addressed to you from
20 Christopher Roof of MRR Southern.

21 Do you recall this letter?

22 (PLAINTIFF'S EXHIBIT NO. 7; MARKED FOR IDENTIFICATION)

23 A. Yes.

24 Q. Okay. And it says it's a large Class Two waste
25 disposal project. It states -- let, let me read a little

1 bit, and then I'm going to ask you a question about it.

2 It states that pursuant to Regulation
3 61-107.17(D) (3) (d) (2), MRR Pickens requests DHEC grant
4 MRR Pickens a temporary variance to the permanent annual
5 disposal rate, and DHEC permit LF2-00003.

6 And it states that the large project agreement
7 relates to immediate need for disposal of coal combustion
8 residuals which meet Class Two specifications.

9 Do you recall the provisions in 61-107.17
10 (D) (3) (d) (2)?

11 A. Yes.

12 Q. And have you ever received a request for a
13 variance under that provision before at DHEC?

14 A. Prior to this letter?

15 Q. Yes.

16 A. No.

17 Q. What is the status of this request?

18 A. We, we responded to this letter by asking MRR
19 for some additional information --

20 Q. Okay.

21 A. -- about the project that they were
22 requesting. That's, that is -- the current status is we
23 have not received a reply, that I recall, to those
24 details.

25 (PLAINTIFF'S EXHIBIT NO. 8; MARKED FOR IDENTIFICATION)

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

4 A. Uh-huh.

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

7 A. Yes.

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

10 A. Not, not that I know of.

11 Q. -- to your knowledge?

12 A. Uh-uh.

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

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

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

21 A. Not to my knowledge.

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

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

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

1 residuals --

2 A. Uh-huh.

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

6 A. Yes.

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

9 A. Yes.

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

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

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

17 A. Yes.

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

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

24 Q. Well, I guess --

25 A. Any?

1 the coal to create electricity?

2 A. Yes.

3 Q. And so as far as any need around South Carolina
4 -- is there any need around South Carolina for coal ash
5 to go into a Class Two landfill at this point in time?

6 MR. GOINGS: Object to the form of the
7 quesiton.

8 A. I'm not specifically familiar with the needs
9 and the volumes of -- of CCR that are being produced
10 currently and what has been produced in the past that
11 needs to be relocated. I know that there is a pretty
12 large demand at the current time for CCR disposal in
13 lined landfills because of the deadlines in the federal
14 rule for cleaning out lagoons, the old waste water type
15 disposal areas.

16 Q. Right.

17 A. And so there's a lot of waste -- a lot of CCR
18 waste out there that needs to be relocated into a lined
19 facility that was produced in the past, and that -- I
20 mean, that -- that immediate need far exceeds anything
21 that's really being produced currently.

22 So there's really two -- two -- I guess two
23 components of the need. One is what is being produced
24 currently, and one is what has been produced in the past
25 and by federal rule has to be relocated into a lined

2016 MAR 28 PM 2 27

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

MRR Pickens, LLC,

Plaintiff,

vs.

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

Defendants.

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

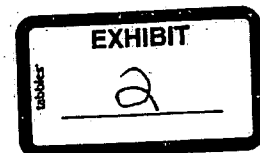
THIRTEENTH JUDICIAL CIRCUIT

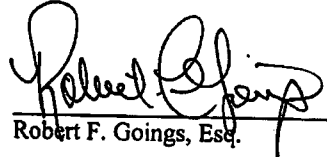
CIVIL ACTION No.: 2016-CP-39-100

AFFIDAVIT OF ROBERT F. GOINGS

PERSONALLY APPEARED BEFORE ME, Robert F. Goings, who upon being duly sworn deposes and states as follows:

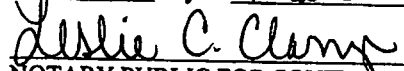
1. I am counsel of record for Plaintiff. This affidavit is based on personal knowledge and information that I believe to be true to the best of my recollection and belief.
2. From the date the present action was filed, my co-counsel and I have attempted with due diligence to obtain testimony from a third-party, Mr. Kent M. Coleman, the Director of the Division of Mining and Solid Waste Management for South Carolina Department of Health and Environmental Control (SCDHEC). Upon information and belief, Mr. Coleman is the individual most knowledge as SCDHEC as to the Plaintiff's permit for a Class 2 Landfill in Pickens County and South Carolina laws and regulations governing solid waste.
3. Despite our diligent attempts to obtain compelled testimony from Mr. Coleman prior to this court's hearing on February 18, 2016 and after receipt of this Court's Order dated February 22, 2016, Mr. Coleman was unavailable of being deposed until March 7, 2016, which was rescheduled for the next day, March 8, 2016. Counsel for Pickens County objected to Mr. Coleman's deposition and filed a Motion for a Protective Order. I participated in a telephone conference with Judge Robin Stilwell on March 4, 2016 for purposes of Pickens County's Motion for Protective Order. Judge Stilwell instructed that Mr. Coleman's deposition would proceed on March 8, 2016 as noticed and the deposition would remain open for further discovery.
4. The testimony of Mr. Coleman, a third party to this litigation, was not in the Plaintiff's possession and simply could not be obtained prior to this court's hearing on February 18, 2016 and the first available opportunity after receipt of this Court's Order was March 8, 2016.




Robert F. Goings, Esq.

SWORN TO AND SUBSCRIBED BEFORE ME

this 14th day of March, 2016.

 (L.S.)

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 9-8-2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
MRR Pickens, LLC,	)	Civil Action No.: 2016-CP-39-100
	)	
Plaintiff,	)	
	)	
vs.	)	RESPONSE BY PICKENS COUNTY TO
	)	PLAINTIFF MRR PICKENS, LLC'S MOTION
	)	PURSUANT TO RULE 60 FOR RELIEF
County of Pickens and William Cato,	)	BASED ON DEPOSITION TESTIMONY OF
Weldon Clark, Robert Ballentine, Jo	)	SCDHEC REPRESENTATIVE,
Johnston, Dennis Reinert, and Bob Young,	)	KENT COLEMAN AND REQUEST FOR
individually and in their official capacity as	)	ATTORNEY FEES AND COSTS BY
appointed members of the Pickens County	)	PICKENS COUNTY
Planning Commission,	)	
	)	
Defendants.	)	

INTRODUCTION:

Plaintiff MRR Pickens, LLC (MRR) brought this action against Pickens County and the individually named members of the Pickens County Planning Commission, seeking an appeal of certain actions by the Planning Commission and seeking damages against all Defendants. Further, MRR filed a Motion for Emergency Temporary Injunction. A hearing was held before this Court on February 18, 2016, resulting in an Order of this Court of February 22, 2016, denying MRR's Motion.

Thereafter, MRR filed a Motion to Reconsider, resulting in a second Order, dated March 8, 2016, again denying MRR's Motion.

MRR now brings it Motion Pursuant to Rule 60, yet again asking this Court to alter, amend, and/or reconsider this Court's Order of February 22, 2016.

This is the third Motion by MRR on the same issue, and the second Motion asking to reconsider the initial ruling.

Pickens County opposes this Motion by MRR on the following grounds:

- (1) The issue has been carefully reviewed twice by this Court, and appropriately, this Court has denied MRR's Motion twice.
- (2) The purported basis for this third Motion, that a deposition was taken, does not meet with any provision of Rule 60, and therefore is inappropriately filed.
- (3) The portions of the Coleman deposition omitted by MRR in its submission actually disprove, and contradict, MRR's stated positions.

ARGUMENT:

MRR's Third Motion does not Comport with Rule 60

MRR's third Motion is filed pursuant to Rule 60, SCRPC, which is titled "Relief from Judgment or Order." Rule 60(a) provides for relief for Clerical Mistakes, which have not been alleged.

Rule 60(b) provides for relief "from a Final judgment, order, or proceeding," for various reasons. (emphasis added). The prior Orders of this Court, dated February 22, 2016 and March 8, 2016, are rulings upon MRR's Motion for Emergency Temporary Injunction, and as such, are not "final" orders in the context of Rule 60. Thus, MRR's third and current Motion does not comport with Rule 60, and is without legal basis, and must be denied.

Further, Rule 60(b) provides for relief from: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of

an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged. . . .

The claimed basis for this Motion filed pursuant to Rule 60 is that MRR has now taken a deposition of a DHEC official, Kent Coleman. As indicated in Mr. Coleman's deposition, and as presented at the hearing on February 18, 2016,¹ Mr. Coleman is a DHEC official who communicated with, and worked with, MRR, for years regarding the landfill Permit in question. There is nothing about the deposition of Mr. Coleman that MRR did not or could not have presented at the hearing on February 18, 2016. Certainly, nothing in the Coleman deposition qualifies as meeting any of the five categories stated in Rule 60(b).

As a matter of law, MRR's Motion Pursuant to Rule 60 does not comport with Rule 60, and must be denied.

The Portions of the Kent Coleman Deposition Omitted by MRR Disprove MRR's Position

MRR attaches as Exhibit 1 to its present Motion pages 17-82 and page 207 of the Kent Coleman deposition. But the omitted portions disprove MRR's position and show the illegality of DHEC's actions approving the purported Permit Modification of August 10, 2015. Further, and significantly, the omitted portions contradict many of the statements and positions advanced by MRR in this third Motion.

Pickens County attaches the entire deposition of Kent Coleman taken on March 8, 2016,² pages 1-213. (Ex. 1).

¹ Pickens County craves reference to its Memorandum in Opposition to MRR's Motion, with Exhibits, presented at the hearing of February 18, 2016, and incorporates said Memorandum and Exhibits herein by reference.

² Pursuant to the ruling by this Court, the deposition of Mr. Coleman will be reconvened and completed after the parties have received documents from DHEC requested by Subpoena of Pickens County.

Kent Coleman Acknowledges the Illegality of DHEC's Approval of the purported Permit Modification of August 10, 2015

From the portions of Mr. Coleman's deposition omitted by MRR, we find the following:

- (A) Coleman admits that the Department must follow the language of relevant statutes and regulations. (Ex. 1, p. 95, l. 6-15).
- (B) Coleman admits that the definition of "major modification," in the relevant regulation, includes "alternate designs." (Ex. 1, p. 96, l. 4-17).
- (C) Coleman admits that in the definition of "minor modifications," there is no inclusion of "alternate designs." (Ex. 1, p. 96, l. 17-20).
- (D) Coleman admits that he previously, in a letter signed by him on August 10, 2015, accompanying the purported Permit Modification, characterized the modification as an "alternate liner design"³ and as a "design change." (Ex. 1, p. 97, l. 8 - p. 98, l. 11).
- (E) Coleman admits that the purported Permit Modification was a "design change." (Ex. 1, p. 98, l. 15-24).
- (F) Coleman admits that "design change" falls under the definition of "major modification," and is not included in the definition of "minor modification," per the relevant regulation. (Ex. 1, p. 98, l. 25 - p. 99, l. 4).
- (G) Coleman admits that a "major modification" requires notice to affected persons. (Ex. 1, p. 99, l. 11-14).

³ Exhibit 1 is a rough draft of the Kent Coleman deposition, and on page 97 inaccurately states "alternate ladder design." See Exhibit 2, the letter of Kent Coleman, which states "alternate liner design." Also see the continuing testimony of Mr. Coleman, pp. 98-99.

- (H) Coleman admits that, per relevant statute, the term "affected persons" includes local governments and host local governments. (Ex. 1, p. 99, l. 15-19).
- (I) Coleman admits that when the Department determines a proposed change that is determined to be a "major modification," that "... we would have followed our normal process, which would include [notice to] adjacent owners, concerned parties, local governments." (Ex. 1, p. 99, l. 20 - p. 100, l. 4).
- (J) Coleman admits that, for the 2015 Permit change, there was no Notice provided to Pickens County or to the public. (Ex. 1, p. 100, l. 5-10).
- (K) Coleman admits that if there is a "major modification," the public is supposed to receive Notice. (Ex.1, p. 100, l. 11-25).⁴

Despite the above testimony, Mr. Coleman, incredibly, states that "... we determined that it was a minor modification." (Ex. 1, p. 102, l. 2-3). That determination, which produced the purported Permit Modification of 2015, was in violation of the relevant statutes and regulations, and in direct contravention thereof, and cannot be sustained.

Q. Clearly, you made a determination, or you and MRR made a determination that this was going to be a "minor modification." But if it's determined that in fact the design change puts it into the category of a "major modification" then the law required there to be public notice, didn't there? And notice to the host local government?

A. I mean we determined that it was a minor modification. ... (Ex. 1, p. 101, l. 21 - p. 102, l. 3).

The purported Permit Modification of 2015 was a "design change" and met the definition of "major modification" per R. 61-107.19 Part I, B. 48. The Department's characterization of the

⁴ "Affected persons" is defined in S.C. Code § 44-1-60(E).

modification as "minor" was illegal, and in direct contravention of the regulation, and effectively prevented any Notice and opportunity to be heard to Pickens County and to the public.

MRR asks this Court to grant relief based on an illegal and unlawful series of events, obviously of its own design.

Mr. Coleman goes on to acknowledge that this modification (approved in secrecy and without knowledge of Pickens County or the public, who were entitled by law to notice), was a "new design for the landfill," a "new design," and "essentially the same design as a Class Three." (Ex. 1, p. 103, l. 3-13). Mr. Coleman also admits that, as a result of said modification, "The design became very similar to a Class Three." (Ex. 1, p. 103, l. 19-25). He again acknowledges that, if the change "substantially alters the facility or the operations," then it is a "major modification." (Ex. 1, p. 104, l. 5-9).

Mr. Coleman also acknowledges that the purported Permit Modification of 2015 removed from the 2008 Permit the Special Condition as follows:

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

(Ex. 1, p. 107, l. 7 - p. 109, l. 17).

Mr. Coleman then admits that the secretively obtained 2015 modification replaced the "prohibited waste" language with "Any other waste approved by the Department." (Ex. 1, p. 107, l. 16 - p. 108, l. 19).

Mr. Coleman also testified that during the process of approving the 2015 Permit Modification, that MRR informed him that MRR was discussing the proposed changes to the Permit with Pickens County. (Ex. 1, p. 122, l. 11 - p. 123, l. 6). Pickens County refers this Court to the

Affidavits of Chris Brink (County Planning Director) and Gerald Wilson (Solid Waste Director) which were attached to Pickens County's Memorandum in Opposition to MRR's Motion for Injunction, presented at the February 18, 2016 hearing. Further, it is the adamant position of Pickens County that it received no Notice of any kind regarding the August 10, 2015 Permit Modification, from MRR or DHEC or anyone (until December of 2015, when this controversy arose, and a Pickens County staff person made a FOIA Request to DHEC for the landfill file). If Mr. Coleman's testimony on this point is correct, then it appears that MRR misrepresented to him that it was notifying and discussing the proposed changes with Pickens County.

As to the issue of this 2015 Modification adding Class Three features to the Class Two Permitted Landfill, and rendering it "essentially the same as a Class Three," Mr. Coleman admitted that the S.C. Regulations regarding Demonstration of Need (DON) do not allow a Class Three commercial landfill to be located in Pickens County. (Ex. 1, p. 134, l. 21 - p. 137, l. 2). (Despite the clear change, of placing Class Three design features onto a Class Two Landfill Permit, Mr. Coleman denies that this was an attempt to circumvent the regulation.) (Ex. 1, p. 137, l. 15 - p. 138, l. 21). Mr. Coleman also acknowledged that the Report of MRR's consultant C.E.C. states:

During recent meetings between MRR and DHEC, it was confirmed that the **modification of the Class Two Permit to meet the requirements of Regulation R. 61-107.19 Part V, Class Three Landfills** would require a minor permit modification.

(Ex. 1, p. 139, l. 1-7).

(Despite what was obviously occurring, and despite the description of events by MRR's own consulting firm, Mr. Coleman states that he disagrees with the characterization).

Mr. Coleman further acknowledged that the Report of MRR's engineering consultant C.E.C., submitted to DHEC, dated March 2015, updated August 2015, states, "The landfill will accept Class

Two and certain special wastes as may be specified in the permit or otherwise specifically approved in writing by S.C. DHEC.” (emphasis added). (Ex. 1, p. 150, l. 4-13). Mr. Coleman acknowledges that the term “special waste” is defined by statute, S.C. Code Section 44-96-390, and by Regulation (61-107.19 Part I, B. 77). (Ex. 1, p. 150, l. 19 - p. 151, l. 4). He further acknowledges that the statutory definition of “special wastes” includes “industrial process waste” and “waste from a pollution control process.” He agrees that “special waste” is supposed to go into a Class Three Landfill. (Ex. 1, p. 153, l. 1 - p. 154, l. 3). Coleman acknowledges that MRR’s own engineering consultant characterizes the Permit Modification to include “certain special waste,” and he admits that placing special waste into this Class Two Landfill in Pickens County would be illegal. (Ex. 1, p. 154, l. 4-11). While Mr. Coleman attempts to explain this away, by referencing “toxic levels less than 10 times the EPA mcl’s,” he agrees that neither the statute or the regulation defining “special waste” has any provision or reference to “toxic levels” of any kind. (Ex. 1, p. 154, l. 20 - p. 155, l. 13). He does agree that any waste that meets the definition of “special waste” cannot legally be placed into a Class Two Landfill. (Ex. 1, p. 155, l. 24 - p. 157, l. 22). (Pickens County refers this Court to the Expert Affidavits of Dr. Avner Vengosh and Shelley M. Robbins, attached to Memorandum of Pickens County in Opposition to MRR’s Motion for Injunction, presented at the February 18, 2016 hearing, which states that coal ash or CCR meets the South Carolina definition of “special waste,” which would also require deposit into a Class Three Landfill). Further, Pickens County notes that MRR entirely ignores Act 138 of the S.C. Legislature, signed by the Governor on March 2, 2016, now known as Section 58-27-255, which requires coal combustion residuals (coal ash) to be deposited into a Class Three commercial landfill.

Mr. Coleman also agrees that coal combustion residuals are an "industrial process waste," and would also qualify as "waste from a pollution control process." (Ex. 1, p. 159, l. 11-24). (Pickens County again references S.C. Code Section 44-96-390 which defines "special waste" as including "industrial process waste" and "waste from a pollution control process.").

Mr. Coleman also acknowledges the Pickens County Solid Waste Management Plan, and acknowledges that, by law, any actions by the Department and any actions by the Permittee must be "consistent" with the Solid Waste Management Plan (SWMP). (Ex. 1, p. 177, l. 3-9). (Pickens County references this Court to the Pickens County Solid Waste Management Plan, a portion of which was attached as an Exhibit to Memorandum of Pickens County in Opposition to MRR's Motion for Injunction, presented at the February 18, 2016 hearing. Said SWMP prohibits "special waste" from being deposited into any landfill in Pickens County).

As to the intent to place a Class Three liner onto a commercial Class Two Landfill, Mr. Coleman acknowledges that this would be the first time in South Carolina history for such to occur. (Ex. 1, p. 192, l. 13 - p. 193, l. 1).

Mr. Coleman was also asked to reflect back to the Permit as issued in 2008, which provided for disposal of wastes listed on Appendix I to R. 61-107.19, "Acceptable Wastes for Class Two Landfills." Mr. Coleman acknowledges that Appendix I did not include coal ash or coal combustion residuals. (Ex. 1, p. 199, l. 9 - p. 201, l. 19). He again acknowledged the Special Condition to the 2008 Permit which prohibited "All other wastes." (Ex. 1, p. 202, l. 1-14).

Q. So under the terms of the 2008 Permit, coal combustion residuals, also known as coal ash, would not be allowed under this 2008 Permit, would it?

A. That permit - yeah that permit would have to be modified to allow coal ash.

- Q. All right. Coal ash was not permissible or acceptable under the November 3, 2008 permit; is that correct?
- A. Correct.

(Ex. 1, p. 202, l. 15 - p. 203, l. 1).

Regarding the new law, Act 138 of 2016, signed March 2, 2016, Mr. Coleman acknowledges that he was involved in making suggestions and recommendations regarding the proposal. (Ex. 1, p. 204, l. 1-25). When asked his understanding about whether coal combustion residuals can be placed into a Class Two Landfill in South Carolina, following Act 138 of 2016, Mr. Coleman testified:

It is my understanding that coal combustion residuals can no longer be placed in a commercial Class Two Landfill in South Carolina.

(Ex. 1, p. 207, l. 23 - p. 208, l. 6).

Mr. Coleman also acknowledge that this landfill in Pickens County may not accept coal ash:

- Q. As far as this Class Two Landfill, the Highway 93 Class Two Landfill - calle it C&D or whatever - in Pickens County, is it your understanding that coal ash would be prohibited under this new law in the Highway 93 Landfill in Pickens County?
- A. Yes.
- Q. All right. Yes, meaning that coal ash would be prohibited under this new bill?
- A. From any commercial - commercial Class Two Landfill -
- Q. All right.
- A. - including Pickens.

(Ex. 1, p. 208, l. 12 - p. 209, l. 2).

MRR's Third Motion (per Rule 60) Disingenuously Mischaracterizes Kent Coleman's Substantive Testimony

Pickens County references this Court to the allegations of MRR, particularly those contained in pages 2 and 3 of MRR's Rule 60 Motion. When Mr. Coleman's testimony is taken as a whole, MRR's allegations amount to an attempt to mislead this Court, and, as before, an attempt to confuse the issues.

MRR's omission of pages 83-206 of Mr. Coleman's deposition would appear to be an attempt to misdirect the Court's attention. Certainly, attorneys typically do not burden courts with unnecessary or irrelevant pages of depositions. Yet here, the omitted pages actually contradict the allegations advanced by MRR in its current Motion.

This Court's Prior Rulings are Appropriate and Sound and Should not be Disturbed

Rather than creating any feigned reason to alter or amend the prior Orders of this Court, as MRR would aver, the Coleman deposition, read as a whole, provides additional and substantial support for the appropriateness of the prior Orders.

Pickens County Requests Attorneys Fees and Costs from MRR for the Defense of this Frivolous Motion

On March 18, 2016, after reviewing MRR's current Rule 60 Motion, the undersigned emailed counsel for MRR (Ex. 4, Email of Gary W. Poliakoff). The email included the following:

On behalf of Pickens County, I respectfully request that you reconsider such Motion, and further respectfully request that you withdraw it.

Our Request is based upon (1) Judge Stilwell's Order dated March 8 and filed March 11, 2016; (2) the remaining portions of Kent Coleman's deposition starting at page 95, wherein he admits that his decisions and actions were in contravention of State Regulations; (3) Coal Ash and Special Waste being a violation of the Pickens county SWMP, which by statute must be followed; (4) Failure to obtain a Letter of Consistency from Pickens County, as to the 2015 Permit Modification; and (5) all other grounds advanced in our response to MRR's original Motion.

The email went on to request that this Rule 60 Motion be withdrawn by March 23, 2016. The email further stated that we viewed this Motion as frivolous and groundless, and in violation of the South

Carolina Frivolous Civil Proceedings Sanctions Act, Secs. 15-36-10, et seq., and further, an abuse of process.

Pickens County respectfully requests that this Court issue a finding that MRR's Rule 60 Motion is frivolous and groundless, and in violation of the South Carolina Frivolous Civil Proceedings Sanctions Act. Further, Pickens County requests that this Court order MRR to pay its attorneys fees and costs related to the defense of this frivolous and groundless Motion. (Should the Court approve this request, the undersigned proposes to file an Affidavit of attorney fees and costs related to the defense of this Motion).

The History of this Permit and of these Proceedings

When considering Pickens County's request for fees and costs, Pickens County respectfully requests that this Court again review the Memorandum of Pickens County in Opposition to MRR's Motion for Injunction, and attached Exhibits, presented at the hearing on February 18, 2016. Pickens County also requests that this Court consider the entire history of the development of this Permit, including but not limited to the following:

1. In 2007 and 2008, MRR and Pickens County officials discussed a plan for MRR to construct and operate a Construction and Demolition (C&D) and Land Clearing Debris (LCD) Landfill.
2. By 2008 MRR and Pickens County entered into a Development Agreement and a Host Agreement, for development of this C&D Landfill. In both Agreements, the waste is referred to only as Construction and Demolition (C&D) and Land Clearing Debris (LCD).

3. On November 3, 2008, DHEC issued a Permit for the Highway 93 C&D Landfill. The Permit allowed only waste listed on Appendix I of Reg. 61-107.19, Part I, "Acceptable Wastes for Class Two Landfills." (Being C&D and LCD, and not including any coal ash, CCR, nor any kind of "special wastes.") The Permit, appropriately, and as agreed between MRR and Pickens County, contained the Special Condition that "All other wastes, including animal carcasses, are prohibited from disposal in this landfill."
4. For the years 2009-2013, the economy was in recession. The existing Pickens County Landfill (owned and operated by Pickens County, and accepting only C&D and LCD) had a reduced intake, and MRR chose not to begin construction of its new landfill. MRR received successive extensions from DHEC on the time to commence construction.
5. Unbeknownst to Pickens County, and in total secrecy, MRR conducted a series of clandestine meetings with DHEC in 2014, wherein MRR proposed to add Class Three Landfill features, altering the design, and adding a liner and other Class Three features. No Notice of any kind was provided to Pickens County or to the public. Per the engineering reports of MRR's consulting firm, CEC, "During recent meetings between MRR and DHEC, it was confirmed that a modification of the Class Two Landfill Permit to meet the requirements of . . . Class Three Landfills would require a minor permit modification. To satisfy the Class Three Landfill requirements, MRR engaged Civil and Environmental Consultants, Inc. (CEC) . . ."

6. The meetings between MRR and DHEC resulted in a “confirmation” to characterize the modifications as “minor,” despite the clear qualifications of these modifications as “major,” per R. 61-107.19, Part I, B. 48. The purpose was no unintended error. The purpose was to deprive Pickens County and the public of any information, any notice, and any opportunity to be heard.
7. Throughout 2014 and 2015, despite the aforesaid meetings between MRR and DHEC, and despite MRR’s submission of a series of lengthy and expensive engineering reports to DHEC (all unbeknownst to Pickens County), MRR’s representatives continued to inform Pickens County officials that the plan remained for C&D/LCD waste only. These were material, intentional, serious and utterly false misrepresentations.
8. At the Planning Commission meeting of January 12, 2015, members of the Commission asked MRR whether it would need any liner, and whether there were any changes to the plan as presented in 2007. The MRR officials falsely stated:
 - (A) That no liner was necessary (despite MRR’s having already submitted engineering plans for a liner, as we have subsequently learned).
 - (B) That there would be no changes from the 2007 plan (despite the secret meetings between MRR and DHEC, to make significant changes).
 - (C) That this plan was for the exact same type of landfill that the County was currently operating (which County Landfill only accepts C&D/LCD; and, despite the extensive ongoing efforts by MRR to add Class Three features and additional kinds of wastes).

The above misrepresentations by MRR were intentional, material, serious and absolutely false.

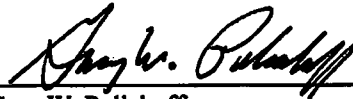
9. Throughout late 2014 and most of 2015, MRR continued to collude, and to meet secretly and clandestinely with DHEC, discussing not only these serious modifications, but also the agreement to characterize the modifications as "minor," rather than "major," despite clearly meeting the definition of "major modification" provided in the regulations. The purpose for this characterization was to prevent and avoid any notice to Pickens County or to the public.
10. The actions of DHEC, in characterizing the modifications as "minor," were unlawful and in violation of the State Regulations. MRR colluded with DHEC in bringing this about, as is evident from the Reports of MRR's own consulting engineers, CEC.
11. By December of 2015, some county officials were hearing bits and pieces of information, concerning MRR's intentions of depositing coal ash into this landfill. County officials, and the County Planning Commission, requested specific information from MRR about its intentions. MRR refused to provide the requested information.
12. The County Planning Commission, after refusal by MRR to provide the requested information, suspended the land use approval, directing MRR to provide the requested information about its intentions.
13. Rather than provide the requested information, MRR sued Pickens County and the individually named members of the Planning Commission.

14. In its initial Motion for Emergency Temporary Injunction, MRR attached Affidavits, swearing under oath that MRR had not stated to the Planning Commission that a liner was not needed, that the landfill intake would be limited to C&D/LCD, or that there were no changes. Fortunately, the Planning Commission tape recorded the meeting of January 12, 2015. The transcript demonstrates that not only did MRR misrepresent to County officials, but MRR also misrepresented in sworn Affidavits to this Court.
15. Thus far this Court has appropriately denied the Motion for Injunction by MRR, and appropriately denied its Motion for Reconsideration.

CONCLUSION:

MRR's Rule 60 Motion must be denied. Further, this Motion is frivolous and groundless to the extent that it violates the South Carolina Frivolous Civil Proceedings Sanctions Act. Appropriate fees and costs should be awarded to Pickens county.

Respectfully submitted,



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ATTORNEY FOR PICKENS COUNTY

April 6, 2016
Spartanburg, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
MRR Pickens, LLC,	)	Civil Action No.: 2016-CP-39-100
	)	
Plaintiff,	)	
	)	RESPONSE BY PICKENS COUNTY TO
vs.	)	PLAINTIFF MRR PICKENS, LLC'S MOTION
	)	PURSUANT TO RULE 60 FOR RELIEF
County of Pickens and William Cato,	)	BASED ON DEPOSITION TESTIMONY OF
Weldon Clark, Robert Ballentine, Jo	)	SCDHEC REPRESENTATIVE,
Johnston, Dennis Reinert, and Bob Young,	)	KENT COLEMAN AND REQUEST FOR
individually and in their official capacity as	)	ATTORNEY FEES AND COSTS BY
appointed members of the Pickens County	)	PICKENS COUNTY
Planning Commission,	)	
	)	
Defendants.	)	

EXHIBITS

1. Kent Coleman Deposition of March 8, 2016.
2. Kent Coleman letter of August 10, 2015.
3. Letter of February 29, 2016 (stating County's position).
4. Email of March 18, 2016, requesting MRR to withdraw this Motion or face penalties.

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

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

MRR PICKENS, LLC,

PLAINTIFF,

vs.

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

DEFENDANTS.

DEPOSITION TRANSCRIPT

KENT M. COLEMAN

MARCH 8, 2016

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



A P P E A R A N C E S

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

C O N T E N T S

(Deposition of Kent M. Coleman)

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L E G E N D

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

[sic] WRITTEN AS SAID.

[ph] WRITTEN PHONETICALLY.

1 This deposition is taken in accordance with
2 the South Carolina Rules of Civil Procedure.

3 VIDEOGRAPHER: We're on the record at
4 10:10. Today's date is March 8th, 2016.
5 This is video Number 1 in the deposition
6 of Kent M. Coleman, taken in the matter of
7 *MRR Pickens, LLC, Plaintiff, vs. County*
8 *of Pickens and William Cato, et al,*
9 *Defendants,* in the Court of Common Pleas,
10 Thirteenth Judicial Circuit, State of
11 South Carolina, County of Pickens.

12 This deposition is being held at
13 1441 Main Street, Columbia, South
14 Carolina.

15 Will counsel introduce themselves
16 for the record, please?

17 MR. POLIAKOFF: I'm Gary Poliakoff, and I
18 represent the Defendant, Pickens County.

19 MS. NAVARRO: I am Camden Navarro, and I'm
20 standing in for Matt Johnson, who
21 represents the Pickens County Planning
22 Commission members, both individually and
23 in their official capacity.

24 And I just want to reserve for the
25 record that per the judge's ruling, Matt

1 Johnson, who's representing the Pickens
2 County Planning Commission members, he
3 reserves the right to depose Kent Coleman
4 at a later date.

5 SHELLEY ROBBINS: I'm Shelley Robbins.
6 I'm here with Gary Poliakoff.

7 MS. POLIAKOFF: As my expert and/or
8 consultant.

9 MR. GOINGS: My name is Robert Goings, and
10 I am counsel for MRR Pickens, LLC.

11 MS. KING: I'm Jessie King, Jessica King,
12 and I represent MRR Pickens, LLC.

13 MS. LINEN: I'm Etta Linen --

14 MS. SNYDER: And I'm Amy Snyder, and I
15 represent the Defendants.

16 MS. KING: Amy, could you clarify which
17 Defendants?

18 MS. SNYDER: I represent all of them at
19 this moment.

20 MS. KING: All of them being the County
21 and each Planning Commission member
22 individually?

23 MS. SNYDER: Yes, yes.

24 MS. KING: Okay.

25 MS. LINEN: I'm Etta Linen, and I

1 represent South Carolina Department of
2 Health and Environmental Control. I'm
3 here with Kent Coleman.

4 VIDEOGRAPHER: Will the court reporter
5 please swear the witness?

6 WHEREUPON:

7 KENT M. COLEMAN, being duly sworn and
8 cautioned to speak the truth, the whole truth and nothing
9 but the truth, testified as follows:

10 MR. GOINGS: This is Robert Goings for MRR
11 Pickens, LLC. Ms. King will be doing the
12 principal examination of the witness;
13 however, I want to put two things on the
14 record.

15 First, the Plaintiff stipulated to
16 allowing this deposition to remain open,
17 and that goes for all parties in this
18 matter pending additional discovery and
19 production of documents by DHEC.

20 Secondly, the Plaintiff will object
21 to Pickens County having a representative
22 from Upstate Forever in attendance of
23 this deposition. No prior notice was
24 given that a third party would be in
25 attendance for purposes of this

1 deposition.

2 And while there's not a Judge to
3 rule on this currently, we -- we object to
4 third parties being involved in
5 depositions going forward. And that's
6 all the stipulations and objections that
7 we have at this time.

8 MR. POLIAKOFF: Yeah, let me briefly
9 respond. As to Ms. Robbins, she's not a
10 third party. She is acting as my expert
11 and/or consultant. A report and
12 affidavit from Ms. Robbins were furnished
13 with my response to MRR's Motion for
14 Emergency Temporary Injunction.

15 She's highly qualified on the issues
16 of solid waste regulations, and her
17 purpose here today is to assist me with
18 solid waste regulation issues. She's not
19 going to be asking any questions. She's
20 not going to be participating otherwise
21 than to assist me as my expert and/or
22 consultant.

23 Per the Judge's Ruling -- we had a
24 conference call with Judge Stillwell last
25 week. The Judge said that there was an

1 issue about the timing of this deposition
2 since it's taking place prior to normal
3 discovery.

4 We issued a subpoena duces tecum to
5 DHEC. Yesterday I received a partial
6 production of documents from DHEC. DHEC
7 indicates that there are emails, perhaps
8 other things that are still to come.
9 Judge Stillwell ruled that we could keep
10 the deposition open once all the
11 documents are produced and reconvene the
12 deposition at that time. Thank you.

13 MR. GOINGS: And just so we are in
14 agreement, the deposition will remain
15 open after today's session, correct?

16 MR. POLIAKOFF: Agreed. Fully agreed,
17 yes.

18 MR. GOINGS: Right. Okay.

19 MS. KING: Ms. Williams [sic], can you
20 clarify -- you represent DHEC. What
21 documents have been provided, and what
22 has not, to -- in response to that
23 subpoena?

24 MS. LINEN: I believe what was provided --
25 because I wasn't there yesterday when my

1 assistant turned over the information,
2 but I believe it was the permitting file
3 for MRR Pickens. And I think that's all
4 that was turned over. It was turned over
5 in a disk -- in disk form. We have over
6 3,000 emails that are to be submitted,
7 but we have to review them first.

8 MS. KING: Okay.

9 MR. POLIAKOFF: And I did receive a disk
10 from DHEC yesterday, and it appears to be
11 generally what one would expect in a
12 permitting file.

13 In the short period of time, less
14 than 24 hours, from that production to
15 now, it's obviously been difficult for me
16 to determine completeness; But it appears
17 to be, generally, a permitting file.
18 But, certainly, the emails are still to
19 be produced.

20 MS. LINEN: That's correct.

21 MS. KING: Were any loose documents
22 provided other than the disk?

23 MS. LINEN: There were loose documents
24 that were copied and available to turn
25 over to Mr. Poliakoff, but he did not take

1 those because he said they weren't what
2 he needed.

3 MR. POLIAKOFF: Actually, those documents
4 that were copied, all of them appeared to
5 be related to the existing -- old Pickens
6 County C&D Landfill that's due to close,
7 not the current, present Highway 93 MRR
8 Landfill. So the only thing that was
9 photocopied, hard copy, that I saw
10 yesterday was in regard to that other old
11 landfill that's set to close and which is
12 not particularly at issue in this case.

13 MS. LINEN: Right. And that was copied
14 because, you know, the subpoena was
15 broad. We wanted to be as responsive --

16 MS. KING: Okay.

17 MS. LINEN: -- as possible.

18 MS. KING: Thank you.

19 MS. LINEN: You're welcome.

20 MS. KING: Have you sworn the witness?

21 COURT REPORTER: Yes.

22 VIDEOGRAPHER: Ma'am, I'm sorry. I'm
23 going to have to ask you to wear that
24 microphone.

25 DIRECT EXAMINATION

1 BY MS. KING:

2 Q. Okay. You've done this before? Good morning.

3 A. Good morning.

4 Q. You received a subpoena for your deposition
5 today; is that correct?

6 A. Yes.

7 Q. And we're here to ask you -- just to give you
8 some background, we're to ask you some questions about a
9 lawsuit that we're involved in. I represent MRR Pickens,
10 LLC, and we have filed a lawsuit against the Pickens
11 County -- Pickens County and the Planning Commission
12 members of Pickens County regarding a Class Two solid
13 waste landfill in Pickens County, which I think you're
14 familiar with.

15 I'm going to ask you a bunch of questions.
16 Please stop -- if any of my questions are unclear or you
17 don't understand them, please stop and ask me to repeat
18 them or to rephrase a question.

19 A. Okay.

20 Q. And again, we are -- while we are videotaping,
21 we are also transcribing a transcript, so if you could
22 speak and answer verbally, yes or no, or not nod your
23 head to any question asked. I know you've done this --

24 A. Okay.

25 Q. -- before.

1 A. Okay.

2 Q. Are you currently under any medications,
3 alcohol, drugs that might impair your ability to give
4 complete and truthful answers today?

5 A. No.

6 Q. Are you aware that you are under oath as if you
7 were in a court of law and obligated to give your best and
8 most accurate and most truthful responses to my
9 questions?

10 A. Yes.

11 Q. And have you ever been in a deposition before?

12 A. Yes.

13 Q. Have you been in a court proceeding before?

14 A. Yes.

15 Q. How many would you say have you been in? How
16 many depositions?

17 A. Dozens.

18 Q. Dozens?

19 A. I don't know exactly.

20 Q. Okay. All associated with your position at
21 DHEC?

22 A. Yes.

23 Q. Okay. Have you reviewed any documents to
24 prepare for this deposition?

25 A. No.

1 Q. Can you give me your full name and date of
2 birth?

3 A. Yes. Kent M. Coleman, February 26, 1965.

4 Q. Okay. And where do you currently reside? Your
5 home address?

6 A. In Columbia, South Carolina. Northeast
7 Columbia.

8 Q. Okay. And how long have you been there?

9 A. In the general vicinity, not in the same home
10 but in the general vicinity for about 20 years.

11 Q. Okay. And you're -- are you married?

12 A. Yes.

13 Q. What is your wife's name?

14 A. Bobbi.

15 Q. Bobbi Coleman?

16 A. Yes. Uh-huh.

17 Q. And can you give me your educational
18 background from undergrad up?

19 A. Uh-huh. I have a bachelor's degree from the
20 University of South Carolina in geology and business.
21 And I have a master's degree from -- also from USC in
22 earth resource management.

23 Q. Okay. Did you -- do you have any special
24 certifications other than the ones you've already
25 mentioned?

1 A. I'm a -- I'm a certified public manager through
2 the State Budget Control Board, and I -- I'm a -- I was
3 formerly a professional geologist in the state, but I've
4 allowed that license to lapse --

5 Q. Okay.

6 A. -- for the moment. I may -- I may renew it, but
7 I haven't decided.

8 Q. Okay. Can you give me your work history as far
9 as since graduating from college?

10 A. Since graduating, yes. I -- I worked for
11 Kennecott Minerals in an exploration office in Camden
12 doing basically mineral exploration in the Southeast,
13 and some Northeast a little bit.

14 And then I also worked for the University of
15 South Carolina as a cartographer and basically managed
16 mapping -- a mapping department for the academic
17 endeavors there, mostly with oil industry work. And then
18 I went to work for South Carolina DHEC in January of
19 1992, and have worked there since that time in various
20 capacities.

21 Would you like for me to go through those
22 different jobs?

23 Q. Yes, if you don't --

24 A. Okay.

25 Q. -- mind.

1 A. I was a project manager in the Solid Waste
2 Program at DHEC from '92 to -- when I started there,
3 until about, let's see, probably middle of '94 or so,
4 maybe '95, right in there, where I then became a program
5 manager for the CERCLA Program, where I dealt with
6 primarily groundwater issues related to CERCLA, but also
7 brown fields, dry cleaning, and some Department of Energy
8 sites as well.

9 And then I went -- I was -- then I became
10 director, I think it was about '93 -- I think, around -- I
11 mean, not '93, '03 -- 2003, director of the underground
12 storage tank program at DHEC. And then in the end of 2007
13 is when I started in my current position as the director
14 of mining and solid waste management at DHEC.

15 Q. Okay. And what are your job duties as the
16 Director of Mining and Solid Waste Management?

17 A. Well, I oversee the permitting programs for
18 both mining and solid waste in terms of any types of mine
19 activity in the state or solid waste management
20 facilities. Also, I also oversee the Office of Solid
21 Waste Reduction and Recycling. It resides in my
22 division, as well as the planning -- Solid Waste Planning
23 and Regulation Development and the solid waste grants for
24 the state.

25 And then also the Solid Waste Groundwater

1 section that oversees groundwater activities for both
2 mining and solid waste permits. And also financial
3 assurance requirements for mines and solid waste
4 facilities.

5 Q. And when you --

6 A. I think that kind of covers most of it.

7 Q. Okay. Sorry. Didn't mean to interrupt.

8 A. That's all right.

9 Q. When you say solid waste facilities or solid
10 waste managed facilities, would that include landfills?
11 Solid waste landfills?

12 A. Yes. It would include landfills, yes.

13 Q. But not hazardous waste landfills?

14 A. That's correct.

15 Q. Okay. And do you manage individuals in that
16 position?

17 A. Yes.

18 Q. How many employees do you manage?

19 A. I'm direct supervisor for four program
20 managers. And then there's 37 employees within the
21 division that are under my chain of command, I would say.

22 Q. Okay. And is it true that you are -- you have
23 resigned or retired from DHEC?

24 A. I've -- I have submitted a letter of, I guess
25 you would call it resignation, notifying my -- my

1 supervisor that I plan on retiring from the agency.

2 Q. And when is your last day?

3 A. Friday. This week.

4 Q. Congratulations.

5 A. Uh-huh. Thank you.

6 Q. We're going to move on and talk about -- I'd
7 like to ask you some questions about the solid waste
8 permitting in South Carolina and changes in that. So
9 since you've been in your position since 2007, that was
10 probably a busy time in solid waste permitting
11 regulations. So can we talk a little bit about how those
12 regulations were changing in '07 and '08?

13 A. Uh-huh.

14 Q. Can you just give us a little background of --
15 on that?

16 A. Well, when I -- when I first started in
17 December of '07 in the program, the solid waste -- what
18 we call the Landfill Regulation, which is 61-107.19, it
19 was in the process of being revised.

20 It was, you know, well on its way and pretty
21 close to final draft form, at that point, when I began.
22 And it was submitted to -- through the DHEC Board to the
23 legislature for approval that following winter and
24 spring in that legislative session in '08.

25 And it became effective -- it was approved and

1 became effective in -- I believe it was early June,
2 perhaps, or somewhere around there. It could have been
3 the end of May, early June. Right in that time frame.

4 Q. Of which year?

5 A. Of '08.

6 Q. Okay. And prior to what you call the Landfill
7 Regulation, 107.19 -- 67-107.19, was there a regulation
8 in effect for siting and design --

9 A. Yes.

10 Q. -- and operation of solid waste management?

11 A. Yeah, there were a number of different regs
12 that covered different types of landfills -- industrial,
13 non-commercial, commercial, C&D --

14 Q. Okay.

15 A. -- MSW, municipal solid waste. They all had
16 sort of their separate regulations.

17 Q. Okay.

18 A. All of those were consolidated into one -- you
19 know, one comprehensive landfill regulation. That was
20 the change in '08 --

21 Q. Okay.

22 A. -- that happened.

23 Q. Okay. And for -- you mentioned C&D.

24 A. Uh-huh.

25 Q. What was the regulation that governed C&D

1 before 61-107.19 consolidated?

2 A. Right. Yeah, I don't recall the numbering on
3 that one.

4 Q. Okay.

5 A. But it was -- it was its own separate
6 regulation that just -- that just, you know, laid out the
7 requirements for construction and demolition type waste.

8 Q. Okay. I'm going to hand you my first exhibit,
9 Exhibit 1, which is a copy of Regulation 61-107.11. Is
10 that the plan for regulation you were referring to for
11 C&D that was in existence prior to the --

12 A. Yes.

13 (PLAINTIFF'S EXHIBIT NO. 1; MARKED FOR IDENTIFICATION)

14 Q. -- current --

15 A. Yes.

16 Q. Okay. And so this no longer governs landfills
17 that take C&D waste. Is that correct?

18 A. That's correct.

19 Q. Okay. And that was effective sometime in the
20 spring of 2008?

21 A. Yes.

22 Q. The change -- can you tell me, with the change,
23 what change -- what's the difference with respect to how
24 a landfill that was permitted under 61-107.11, the
25 previous --

1 A. Uh-huh.

2 Q. -- regulation and one today, which I think is
3 called -- is it a Class Two landfill?

4 A. Yes.

5 Q. What's the difference in those regulations, as
6 far as did it change anything for how they operate?

7 A. Well, it did -- it did certainly make some
8 changes. We added, like, groundwater monitoring and
9 financial assurance requirements that were beyond what
10 we had previously. But I think one of the biggest
11 differences was that we started looking at landfill
12 classes 1, 2 and 3 versus land clearing debris, C&D.

13 And then Municipal Solid Waste used to be -- it
14 was the -- the landfills were designed and the
15 determination of what kind of waste could go there was
16 kind of more on -- based on source of the waste, like if
17 it was from a construction or demolition site, you know,
18 that type of thing.

19 Whereas, under the new reg it goes more into
20 the character of the waste. In other words, if you -- if
21 the waste is a certain character or has a certain
22 analytical testing result, then that would be more of how
23 -- what kind of landfill it has to go to is determined, as
24 opposed to the source.

25 Q. Okay.

1 A. I think that was probably the most significant
2 -- one of the most significant changes that was made.

3 Q. Okay. If you look at 61-107.11 --

4 A. Uh-huh.

5 Q. -- and on Page 26 you have Appendix I.

6 A. Yes.

7 Q. And Appendix I is entitled, Acceptable Waste
8 for Construction, Demolition and Land Clearing Debris
9 Landfills. And that lists certain waste. Is that
10 correct?

11 A. Yes.

12 Q. Now those wastes are -- is it -- is it true
13 those wastes are acceptable for any -- at that time,
14 those wastes were acceptable for any C&D landfill without
15 having prior approval from DHEC?

16 A. That was -- yeah, that's the way it worked.
17 Uh-huh.

18 Q. Okay. If you'll look at Page 18, there's a
19 section that's Part IV, A-6. I'm sorry. That's --
20 that's a different one. I'm sorry. Let's do the next, on
21 Page 20. I'm sorry, B -- B-2(p). I think it's B-2(p).
22 B-2(2)(p) is what it is. But there's a "P" on Page 20.
23 Would you read what that says aloud?

24 A. Okay. I'm reading P --

25 Q. P.

1 A. -- on Page 20.

2 "A list of items that are not listed in
3 Appendix I of this regulation that the owner/operator
4 wishes to place in the landfill, the anticipated quantity
5 and source of the waste."

6 That didn't sound right the way I read it,
7 but anyway --

8 Q. Well, read the next sentence.

9 A. "Upon Department review, items other than
10 those listed in Appendix I that are not -- that are
11 approved for land filling, shall be listed on the permit
12 for that facility. After issuance of the permit, other
13 items may be approved for disposal at the landfill by
14 modification of the permit by the Department. Only items
15 that will cause no environmental harm as determined by
16 the Department will be approved for disposal."

17 Q. So prior to 2008 -- and I understand that you
18 had started your job around that time frame --

19 A. Uh-huh.

20 Q. -- so if you're not familiar, that's fine if
21 you say --

22 A. Right.

23 Q. -- I'm not sure how that worked.

24 A. Uh-huh.

25 Q. Would it have been proper for a permittee with a

1 C&D landfill permit to submit to the Department, after
2 they've been in operation for a while, a request to add a
3 waste stream that's not listed on Appendix I?

4 A. That would be -- that would have been possible
5 under this regulation. They could have requested that.

6 Q. Okay.

7 A. And then it would have been up to the
8 Department to determine whether that was appropriate.

9 Q. Okay. Let's move on to 61-107.19 since that's
10 the regulation in effect today.

11 A. Uh-huh.

12 Q. I'm going to hand you a copy of that, which
13 would be Plaintiff's Exhibit 2.

14 (PLAINTIFF'S EXHIBIT NO. 2; MARKED FOR IDENTIFICATION)

15 A. You mean this one? Okay.

16 Q. So this is the current regulation. You were
17 just discussing some changes --

18 A. Uh-huh.

19 Q. -- that were made by this regulation.

20 A. Right.

21 Q. And you mentioned that it's not -- it changed
22 whether where a waste stream went was dependent on the
23 source or the characterization of the waste stream. What
24 -- if you read on Page 46, that's where Part IV, Class Two
25 Landfills begins.

1 A. Uh-huh.

2 Q. So these are the landfills, correct, that
3 replaced what was previously called a C&D LCD landfill?
4 Is that correct?

5 A. Yes, or C&D landfill.

6 Q. Or C&D?

7 A. Uh-huh.

8 Q. Okay. So Class Two landfills, from 2008
9 forward, they were called Class Two landfills?

10 A. They currently are referred to as Class Two,
11 yes.

12 Q. Okay. And that began in 2008?

13 A. Yes.

14 Q. Part IV, A.1 says that, "Part IV. establishes
15 minimum criteria for all landfills used for the disposal
16 of: waste as outlined in Appendix I of this regulation;"

17 A. Uh-huh.

18 Q. "Other waste not listed in Appendix I that
19 demonstrate similar properties to the waste listed and
20 are approved by the department on a case-by-case basis;
21 or, waste that tests less than ten times the maximum
22 contaminant level, as published in Regulation 61-58
23 State Primary Drinking Water Regulation current at the
24 time of the submittal of the permit application."

25 And then it goes on to talk about the testing

1 criteria. So is this what you were referring to when you
2 said that it has -- that the waste stream is dependent on
3 its characterization and not its source?

4 A. Right. I mean, in Section -- Part I.C., I
5 think specifically talks about that a little bit more
6 than this section, but yes.

7 Q. Part I.C. Okay.

8 A. Yeah, the Waste Characterization Section.

9 Q. Okay. So Part I.C. of this regulation.

10 A. Uh-huh.

11 Q. Let's look at that. So Page 15 is Part I, C.3,
12 and it says, "Waste Characterization Report for Class Two
13 Landfills". Is that what -- partly what you're referring
14 to?

15 A. Yes. Uh-huh.

16 Q. On Page 15. And it says that, "Class Two
17 landfills shall, prior to permit issuance, submit a waste
18 characterization report that contains at a minimum the
19 following:" and it lists certain things. And then 3.b
20 says Class Two landfills that accept only those wastes
21 specifically listed in Appendix I are exempt from all
22 these characterization report requirements.

23 A. Right.

24 Q. So a permittee, someone applying for a Class
25 Two permit, could, at the beginning, in their

1 application, propose waste not in Appendix I that they
2 would like to accept at their landfill. Is that correct?

3 A. Yes.

4 Q. Okay. And that would --

5 A. Appendix -- not in Appendix I. Is that what
6 you said?

7 Q. If it's not, yes. I'm sorry. If it's not in
8 Appendix I. And there is -- again, in this -- in this
9 regulation, on Page 109, there is an Appendix I similar
10 to the one that was in the old regulation. Is that
11 correct?

12 A. Yeah, I don't --

13 Q. You can --

14 A. I'll look at it. I don't know what page it's
15 on, but --

16 Q. It's on 109, if --

17 A. -- yes, there is.

18 Q. -- you'd like to look at it.

19 A. Okay.

20 Q. We can wait.

21 A. Yes, Appendix I, "Acceptable Waste for Class
22 Two Landfills."

23 Q. So both under the old regulation and the new
24 current regulation --

25 A. Uh-huh.

1 Q. -- a facility could take waste other than those
2 listed in Appendix I. Is that correct?

3 A. Yes.

4 Q. And what -- what was different in the way that
5 would be done now and the way that was done in the old
6 regulation?

7 A. Well, the old regulation didn't have the
8 specific less than ten times the drinking water standard
9 in it. Also, the waste characterization procedures are
10 laid out in much more detail in the newer regulation.

11 Q. Okay. So in the previous regulation, it would
12 have been done on a case-by-case basis?

13 A. Just basically at our discretion.

14 Q. Okay.

15 A. That it would not be environmentally harmful?
16 I think that was the -- roughly, the wording.

17 Q. Under the new regulation, if it's below the ten
18 -- if the waste stream that is requested to be approved
19 is under ten times the MCL, under the State Drinking
20 Water Standard, is there any discretion for DHEC as far
21 as granting or denying that request?

22 A. If it's less than ten times? Well, I mean, I
23 think there's always some discretion. It just depends if
24 the character of the waste were such that there would be
25 other dangers --

1 Q. Okay.

2 A. -- related to it, or it's not -- or that the
3 leaching process would not determine some of the issues
4 that might be relevant; such as if it were, you know,
5 radioactive material, that may not be the appropriate way
6 to look at it.

7 Q. Okay.

8 A. Yeah. And if it were -- some materials tend to
9 heat up and cause fires once they're buried. So those --
10 like some different kinds of aluminum sludges and such
11 that you wouldn't want to probably dispose of in that way
12 with wood and other debris that would be flammable, you
13 know. So there would be certain other considerations,
14 besides just the ten times, with perhaps fire hazards,
15 radioactivity, that would not necessarily be picked up in
16 a leaching test.

17 Q. Okay.

18 A. That type of thing.

19 Q. So you -- you still will make a determination
20 on each case on a case-by-case basis?

21 A. Yes, depending on the type of waste and the --
22 and the results of the waste characterization.

23 Q. Okay. What is -- so let's look -- if you look
24 at Page 64 of the regulation -- of the new regulation -- I
25 call it new. It's not new anymore. The third full

1 paragraph down; it's an L. And that is actually, just
2 for the record, Part IV, H.b7(1). And this section is
3 under, on the previous page, Operating Plan; and it says
4 your plan shall at a minimum address the following.

5 A. So what page are we on?

6 Q. Well, 63 and 64.

7 A. Okay.

8 Q. And I'm just giving some reference, that this
9 is under an operating plan as required for a --

10 A. Okay.

11 Q. -- Class Two landfill.

12 A. Uh-huh.

13 Q. And it gives you things that must be in the
14 operating plan. On 64, (1), it states, "A list of items
15 that are not listed in Appendix I, but are similar in
16 nature to Appendix I of this regulation that the permittee
17 wishes to place in a landfill, the quantity and the
18 source of the waste.

19 Upon department review, items other than
20 those listed in Appendix I, that are approved for
21 landfilling, shall be listed on the permit for that
22 facility. After the issuance of the permit, other items
23 may be approved for disposal at the" facility -- I mean,
24 "at the landfill by modification of the permit by the
25 department. Only items that will cause no environmental

1 harm as determined by this department shall be approved
2 for disposal."

3 So I assume this is what -- the process that
4 you were just describing?

5 A. Yes. If someone has a permit and they would
6 like to add a waste stream that's not listed, or is not
7 also either on Appendix I or listed in the permit, it
8 would require a modification of the permit. We would go
9 through the waste characterization process to determine
10 if it was an appropriate waste.

11 Q. Have you done this for facilities around the
12 state?

13 A. Yes.

14 Q. So this is not uncommon?

15 A. Right.

16 Q. When you do that -- when you add a waste stream
17 -- let's say that someone submits a waste
18 characterization; you all look at it; you determine that
19 it is proper for a Class Two landfill --

20 A. Right.

21 Q. -- and that there will be no environmental
22 harm. What is the process? What is the next step that
23 DHEC takes to add it to the permit?

24 A. Well, we would have to, at some point through
25 that process, try to decide whether we're going to

1 consider that a major or a minor permit modification.
2 Sometimes we approve modifications that we consider
3 minor just by issuing a letter to the facility, once they
4 have met all the requirements for that waste stream and
5 demonstrated that it's appropriate.

6 If it's something that doesn't really
7 significantly alter the operation, and it's similar to
8 what the permit was already issued for, we may do it that
9 way. And that would be considered a minor mod, minor
10 modification. If it's a major modification, and those
11 definitions are in this reg --

12 Q. Right.

13 A. -- that you have to read --

14 Q. We're going to go there.

15 A. -- to kind of get to that. But if it's a major
16 modification, then it's a more expensive process. More
17 similar to a new application almost.

18 Q. Okay. But either way it is -- whether it's
19 minor or major, it is a modification to the permit?

20 A. Yes.

21 Q. Okay. If you'll go back to 109 of 61-107.19,
22 Appendix I --

23 A. Page 109?

24 Q. Yes.

25 A. Okay.

1 Q. That's where Appendix I begins.

2 The introductory paragraph says, "The
3 following types of waste have been determined by the
4 department to be environmentally safe and may be accepted
5 at Class Two landfills unless specifically prohibited by
6 the department. Acceptable waste may be generated by
7 construction, demolition, land clearing, industrial,
8 and/or manufacturing activities, and are obtained from
9 segregated commercial waste."

10 So do Class Two -- based on that sentence --

11 A. Uh-huh.

12 Q. -- are Class Two landfills in South Carolina,
13 under 61-107.19, allowed to take waste from industrial
14 manufacturing or commercial activity?

15 A. Yes, if it meets the criteria.

16 Q. If it meets the criteria?

17 A. Right.

18 Q. So it's dependent on the waste
19 characterization?

20 A. Correct.

21 Q. Is that correct?

22 A. That's correct.

23 Q. You gave, before, some examples of waste that
24 DHEC may not want to go into a Class Two landfill --

25 A. Uh-huh.

1 Q. -- because of certain characteristics.

2 A. Right.

3 Q. And I think your examples were radioactive or -
4 - what was the other example?

5 A. That it would cause spontaneous combustion of
6 other materials.

7 Q. What would be a waste that does that?

8 A. Aluminum sludge.

9 Q. Aluminum sludge, that's what you said?

10 A. Yeah.

11 Q. Okay. What -- we're talking about Class Two
12 landfills right now. Under this regulation, obviously,
13 there's other types of landfills because this is a
14 consolidated regulation that deals with all the
15 different types of solid waste landfills. Correct?

16 A. Yes.

17 Q. So what are the other two types you mentioned?

18 A. Well, there's Class One, which is just land
19 clearing debris. And then there's Class Three, which is,
20 you know, municipal solid waste and other materials that,
21 say -- they may leach above the ten times drinking water
22 standard, so they would not be appropriate for a Class
23 Two landfill --

24 Q. Okay.

25 A. -- but they are not hazardous waste --

1 Q. Okay.

2 A. -- under the RCRA rules, then they could go
3 into a Class Three.

4 Q. So a Class Three landfill takes the waste that
5 you just described?

6 A. Uh-huh.

7 Q. Do they take municipal solid waste?

8 A. Yes.

9 Q. Okay. So those are Class Three landfills?

10 A. Yes.

11 Q. And they have different operating criteria and
12 *closure, and all that, than a Class Two landfill?

13 A. Correct.

14 Q. Okay. Appendix II on Page 111 --

15 A. Uh-huh.

16 Q. -- lists wastes that are unacceptable for
17 Class Two landfills. Is that correct?

18 A. Yes.

19 Q. So under no circumstances those wastes are
20 allowed in a Class Two landfill? Is that correct?

21 A. That's correct.

22 Q. Okay. You just mentioned minor and major
23 modifications in terms of adding a waste stream, and that
24 it was sort of a case-by-case determination.

25 A. Right.

1 Q. Let's look at that part of the regulation. I
2 have it. It's on Page 8 and 9. There are definitions in
3 Part I, beginning on Page 8, Number 48 says
4 "Modification." This is Regulation 61-107.19.

5 And it says, "Modification" means changes to a
6 solid waste landfill as follows: (a) Minor modification
7 means a change that keeps the permit current with routine
8 changes to the facility or its operations or an
9 administrative change; and (b) Major modification means
10 a change that substantially alters the facility or its
11 operations."

12 And it gives examples, such as a tonnage
13 increase above 25 percent, volumetric capacity increase
14 and alternate designs that vary from the design
15 prescribed in this regulation.

16 So I assume that you all are tasked on a
17 regular basis with deciding -- when I say you all, I mean
18 DHEC.

19 A. Yes.

20 Q. With deciding how to treat changes to a
21 facility's permit.

22 A. Correct. We have some discretion.

23 Q. Okay. Well, I guess that's my question. Is
24 that -- based on that definition --

25 A. Uh-huh.

1 Q. -- does DHEC -- how does it approach to make
2 that decision? How does it decide whether it's minor or
3 major?

4 A. Right. Well, we certainly look very closely at
5 the words that are in those, you know, each word that's
6 in there, as we think about the proposal that's in front
7 of us. And so, for example, minor, if it's -- you know,
8 it uses words like routine and administrative, and so
9 things that aren't really substantive to the operations
10 of the landfill, but may be keeping it current with,
11 maybe new requirements or if some administrative change
12 like a -- maybe a transfer of ownership or something like
13 that, we would generally consider minor.

14 Q. Uh-huh.

15 A. As far as major goes, it gets a little more
16 difficult. Because minor is defined, but then major uses
17 words like substantially alters the facility and things
18 like that. So you have to think, well, if it's something
19 that -- it may not be administrative, but it really
20 doesn't alter substantially what the facility is doing, I
21 think you have some discretion to decide there.

22 And then there's some specific examples of
23 what would constitute --

24 Q. So if you're making your landfill bigger, or at
25 least --

1 A. Yeah.

2 Q. -- 25 percent --

3 A. If you're taking 25 percent more waste in on a
4 yearly basis or actually increasing the total volume that
5 the facility can accept, those things are clearly spelled
6 out.

7 Q. Okay.

8 A. That's major.

9 Q. And is DHEC the only -- and when I say DHEC, I
10 mean the Department of Health and Environmental Control.
11 Is that the only agency with discretion, or the only
12 party with discretion over those decisions?

13 A. In terms of the department's permits, yes.

14 Q. You were discussing before, when an entity is
15 wanting to add a waste stream, and you're -- and if you
16 don't know, please tell me, I don't recall.

17 A. Uh-huh.

18 Q. But if you do know, has DHEC treated any of
19 those requests to add a waste stream as a minor
20 modification?

21 A. Yes.

22 Q. Okay. Has DHEC treated any of those requests
23 for a new waste stream as a major modification?

24 A. Yes.

25 Q. So again, it's on a case-by-case basis?

1 A. Correct.

2 Q. Are you familiar with the term special waste
3 and the term -- in the context of South Carolina solid-
4 waste permitting?

5 A. I'm sorry. Ask that again.

6 Q. Yeah, I will. Are you familiar with the term
7 special waste, as it applies in the solid waste
8 permitting scheme in South Carolina?

9 A. Yes, I am familiar. I may need to read the reg
10 again, if you ask me real specific questions about it,
11 but --

12 Q. Okay. What is your understanding of what is a
13 special waste?

14 A. I think of it more in the context of Class
15 Three landfills really, because it's, you know, in terms
16 of their -- their way of managing waste is different.
17 The Class Three landfills have what is called a solid
18 waste or a special waste analysis and implementation plan
19 that is a part of their operations, and really, in
20 essence, a part of their permit.

21 Where we -- the department doesn't necessarily
22 approve on a case-by-case basis every single different
23 waste stream that they take. What we approve is a plan on
24 how they would evaluate whether that waste is acceptable.
25 So they have to follow -- they -- we -- we approve their

1 procedures, and they have to follow those procedures; as
2 opposed to a Class Two, where we would normally approve
3 each waste -- each different waste stream, you know, as
4 opposed to them having that kind of a plan.

5 Q. Okay. So for a Class Two, it has to be pre-
6 approved. And for a Class Three, if their procedures are
7 approved, DHEC doesn't need to know every specific waste
8 stream?

9 A. That's correct.

10 MR. POLIAKOFF: I object to the form.

11 It's leading.

12 Q. You can answer.

13 A. Correct.

14 Q. So when you are mentioning special waste and
15 Class Three landfills, is it your opinion that special
16 waste is not disposed of in a Class Two landfill?

17 A. I'm not sure. I -- I -- I'd normally think of
18 special waste in the context of Class Three.

19 Q. Okay.

20 A. But I don't know that I could say absolutely
21 that there's no mention of that term, as it relates to
22 Class Two --

23 Q. Okay.

24 A. -- without looking.

25 Q. That's fair. Are Class Two landfills required

1 to have special waste analysis in the implementation
2 plan?

3 A. No, not normally. There may be a case where we
4 have a non-commercial situation --

5 Q. Okay.

6 A. -- where there's a Class Two in non-
7 commercial, related to a specific industry. And we may
8 have some rules established with them that are similar
9 to, you know, that type of a plan.

10 Q. Well let's talk about that. You mentioned non-
11 commercial. Can you explain the difference between a
12 commercial and a non-commercial Class Two landfill?

13 A. A non-commercial Class Two landfill is -- if
14 it's the landfill facility that has -- that is under the
15 ownership or control of a facility which generates some
16 type of waste that would be appropriate for Class Two
17 disposal, and that landfill is owned and controlled --
18 or, owned or controlled by that industry, the only waste
19 that can be disposed there is waste generated by that
20 particular industry.

21 It's not open to other, you know, just -- it's
22 not a commercial business where they take in waste from
23 whomever wants to pay them. It's their own -- it's for
24 their own purposes of that industry.

25 Q. Okay. And are there non-commercial Class Two

1 landfills permitted in South Carolina?

2 A. Yes.

3 Q. Do you know how many, currently?

4 A. No, not exactly.

5 Q. Okay. Fair enough. I'm going to hand you --

6 A. You have a list.

7 Q. I have a list. And I'm going to hand this --

8 I'm going to hand you a document which is on the DHEC

9 website, and it's the smallest print I have ever seen.

10 But it's from DHEC's website and that will be Plaintiff's

11 Exhibit 3. Oh, I'm sorry. Yeah. See how small it is?

12 This is, as I said, there's a link on DHEC's solid waste

13 permitting website for a listing of landfills. And you

14 can do it by class --

15 (PLAINTIFF'S EXHIBIT NO. 3; MARKED FOR IDENTIFICATION)

16 A. Uh-huh.

17 Q. -- or by I think, location.

18 A. Uh-huh.

19 Q. And so I printed this from -- from the website,

20 and it goes -- as I said, you can do it by class, which is

21 how I printed it.

22 A. Right.

23 Q. And it goes through a bunch of Class Ones and

24 then -- I have to take my glasses off to see it. It

25 changes about halfway down. And actually, the facility

1 name goes to all caps when it turns to Class Two, which is
2 helpful.

3 A. Uh-huh.

4 Q. And it lists a bunch of Class Two landfills on
5 Page 1.

6 A. Right.

7 Q. And then -- and this is double-sided on the
8 back of Page 1. It continues down about -- again, about
9 halfway. And I can read the names better than the rest.

10 A. Uh-huh.

11 Q. But there are numerous -- this does not -- this
12 just says Class Two landfill. Can you tell -- and you can
13 tell me if you just can't decipher it. But can you
14 decipher from this, are these listed Class Two landfills
15 both commercial and non-commercial?

16 A. Yes.

17 Q. Okay. So some of these would be the type, as
18 you said, that --

19 A. Right.

20 Q. -- are generated -- they're disposing of waste
21 that they generate. And then there are those that are
22 commercial and take waste from multiple industries for
23 profit. Correct?

24 A. Yes. That's correct. There are both. There
25 are both of those types on this list

1 Q. Okay.

2 A. -- of Class Two, yes.

3 Q. So they don't make a distinction?

4 A. No. I can tell by -- I can tell most of them
5 just by the name --

6 Q. You can?

7 A. -- in the far left column.

8 Q. Okay. Well, can you tell me a few that would
9 be Class Two, non-commercial --

10 A. Non-commercial, okay.

11 Q. -- landfills.

12 A. Let's see. The first one that I can recall,
13 there's Owens Corning.

14 Q. Okay.

15 A. And then there's one at -- there's another --
16 there's another Owens Corning actually in Anderson. And
17 then there's Santee Cooper (Cross) --

18 Q. Right.

19 A. -- Kapstone, DAK Americas, Sonoco Products,
20 Rock-Tenn Paper Company, IP Georgetown. I'm going to the
21 next page.

22 Q. Okay.

23 A. General Electric, SCE&G - McMeekin, Domtar
24 Paper, IP - Union.

25 Q. Uh-huh.

1 A. Intertape Polymer, Kohler Company, Martek.
2 Duke Power, I'm not sure about that one. Resolute, I
3 don't recall that one. I think it's non-commercial, but
4 -- the SRS Facilities are --

5 Q. Uh-huh.

6 A. -- for their own use. SCE&G, Santee Cooper
7 again. That's -- I'm into Class Three now.

8 Q. Oh, yeah.

9 A. So Class Two --

10 Q. Yeah, the last --

11 A. Roseburg Forest.

12 Q. Yeah, that's the last --

13 A. That's also non-commercial.

14 Q. Okay. Let's talk about Santee Cooper, as one
15 of the examples you mentioned.

16 A. Class Two?

17 Q. Santee Cooper (Cross).

18 A. Okay. Well they have --

19 Q. Listed as a Class Two.

20 A. Right. Okay. Uh-huh.

21 Q. Are you familiar with their operations and
22 their facility?

23 A. Yes. Uh-huh.

24 Q. Okay. And one of the issues in this case is
25 coal combustion residuals. So I'd like to talk a minute

1 about that with you.

2 A. Okay.

3 Q. Santee Cooper, do they dispose of coal
4 combustion residuals at their Class Two landfill?

5 A. Currently, they -- they may be finishing out
6 some final grades on that Class Two.

7 Q. Okay.

8 A. They're almost finished with it.

9 Q. But have they in the past done that?

10 A. Yes.

11 (PLAINTIFF'S EXHIBIT NO. 4; MARKED FOR IDENTIFICATION)

12 Q. Okay. I'm going to hand you Plaintiff's
13 Exhibit 4. It's a coal combustion residual Class Two and
14 Class Three landfill inspection for Cross Generating
15 Station, Santee Cooper. Is that the Class Two landfill
16 that is listed on this printout that we were just looking
17 at?

18 A. It's at Cross Generating Station, yes.

19 Q. Okay. And it says Class Two and Class Three
20 landfill inspection. And it is dated January 2016.

21 A. Okay.

22 Q. If you look at Page 3 --

23 A. Okay.

24 Q. -- in the executive summary, it states, "This
25 assessment of the stability and functionality of the

1 Cross Generating Station coal combustion residual, Class
2 Two and Class Three landfill is based on a review of
3 available documents and on-site assessment conducted by
4 Santee Cooper engineering staff on November 16, 2015."

5 So can you explain -- and if you don't know,
6 please state that. Santee Cooper has both a Class Two
7 and a Class Three non-commercial facility; is that
8 correct?

9 A. Yes.

10 Q. It's non-commercial?

11 A. That's correct.

12 Q. Okay. And up until recently, they have been
13 placing coal combustion residuals in their Class Two
14 landfill?

15 A. Correct. I don't know what recently exactly
16 means, but --

17 Q. Okay. Is their Class Two landfill lined?

18 A. No.

19 Q. Is it in closure?

20 A. Yes. It's in the process of being closed.

21 Q. And do you know how -- what -- what is going to
22 be required by DHEC for its closure?

23 A. Well, it would have to have a final capping; a
24 final cover of soil and grass, as far as I remember.

25 Q. Okay. And it states on Page 8, under 2.3.2,

1 that "Santee Cooper is currently constructing a new Class
2 Three CCR landfill adjacent to the existing Class Two
3 landfill."

4 So is it correct that they are not -- at least
5 at the time of this report, they were not prepared to put
6 their CCR in their Class Three landfill?

7 A. Well, it certainly seems to say that. I don't
8 recall the specific, you know, dates of where they are
9 with -- I believe they finalized -- I think we finalized
10 that Class Three construction currently, but I'm not a
11 100 percent certain.

12 Q. Okay. Why are they closing out their Class Two
13 landfill?

14 A. Because a combination of things happened in
15 the last several years that required that change. The
16 first thing that happened back in -- and I don't know
17 exact dates, but somewhere around '06, I believe it was,
18 the arsenic MCL changed. The drinking water standard for
19 arsenic dropped to -- I think it was 50 parts per
20 billion, and it dropped to 10 parts per billion.

21 And so at that time, some of the coal
22 combustion residual landfills, if you want to call them
23 that, in the state started having some difficulties
24 meeting the less than ten times the MCL rule for -- that
25 came into effect in the new '08 regulation. So really it

1 started becoming an issue when the new '08 reg passed.

2 But it was in part due to the MCL change in
3 arsenic and also the fact that when they installed new
4 pollution control equipment -- air pollution control
5 equipment, it was more efficient in capturing metals and
6 some contaminants out of the air. And so those
7 contaminants went from the air to the residuals -- to the
8 combustion residual waste stream.

9 And so a combination of those things kind of
10 came together and -- and some of the waste
11 characterizations started being very, very close to the
12 limit and some even failed by a small margin, and so we
13 started talking to the companies about transitioning.

14 And this was around probably 2010, in that
15 ballpark or so, when we first started having those
16 conversations when we realized these characterizations
17 were becoming a problem. We started having conversations
18 with mostly the coal-fired utilities, being the ones who
19 generate most of the ash and being the ones that had the
20 most advanced air pollution control equipment.

21 And so we started having those conversations
22 with them about transitioning into Class Three. And so
23 over the course of a couple of years' time, we had
24 basically -- most of the coal-fired utilities had entered
25 into consent agreements with the department that laid out

1 time frames and procedures for transitioning from Class
2 Two to Class Three.

3 And then sort of on the tail end of all of that, the
4 new federal CCR rule came into effect, which, you know,
5 we fortunately, because we had already started to deal
6 with the issue for other reasons, we were kind of ahead
7 of the curve with the power utilities on that and we
8 already had them all transitioning, you know.

9 By the time the CCR rule came out, they were
10 all either constructing a Class Three or in the
11 permitting process for a Class Three, so we kind of had -
12 - you know, were fortunately down that road pretty far by
13 the time the federal rule came out.

14 But what was the original question? How did we get
15 there? I'm sorry.

16 Q. No, I think you -- I think you answered it.
17 But I guess I want to follow up on that, which is -- so I
18 asked you what -- why we were closing out some Class Two
19 landfills --

20 A. Uh-huh, right.

21 Q. -- in these non-commercial facilities,
22 primarily utilities, as you said.

23 A. Uh-huh.

24 Q. So, if coal ash or coal combustion residuals or
25 fly ash, whatever you want to call it --

1 A. Uh-huh.

2 Q. -- does not exhibit arsenic --

3 A. Uh-huh.

4 Q. -- above -- at limits, you know, above the
5 limit for the new drinking water standard --

6 A. Right.

7 Q. -- would it be required to go into a Class
8 Three landfill?

9 A. Well, I mean, arsenic is only one contaminant
10 that we --

11 Q. Right.

12 A. -- would be concerned about. But if it did not
13 fail the ten times the MCL test for any contaminant, then
14 it could potentially go into a 3 -- I mean a Class Two
15 landfill. I mean we have -- that, you know, that tends to
16 be the case with other types of industrial facilities
17 that, you know, they burn -- they may not burn coal
18 exclusively. They may have biomass wood, coal, tire
19 chips.

20 I mean, they burn a lot of things. And some of
21 those boys burn all of those things together, mixed
22 together, or they switch from time to time. And they
23 also are covered under a different air standard. They're
24 under the boiler -- what's called the Boiler MACT Air
25 Standard as opposed to the higher standards that the

1 utilities are under.

2 So they don't have the pollution control
3 equipment on their boilers like the power utilities do.
4 So they don't pull as much out of the air as, say, a power
5 utility situation. So they are -- in other words,
6 the paper companies and some of these other companies
7 that do generate some amount of coal ash, their ash is
8 much less likely to fail the ten times rule as opposed to
9 say a, you know, utilities were having those issues.

10 Q. So you're saying some coal ash can meet the
11 standards for a Class Two landfill and then be accepted
12 at a Class Two landfill?

13 A. Correct.

14 Q. You mentioned the federal CCR rule, and you
15 implied -- you said, "Well, we're ahead of the game
16 because of the arsenic issue by the time the federal -- "

17 A. Right.

18 Q. Do you -- are you familiar with when the
19 federal rule came into effect for CCR?

20 A. It was in 2015, I believe. It was very
21 recently.

22 Q. Okay.

23 A. Toward the end of 2015, I think.

24 Q. And does the federal rule -- the federal rule
25 was an EPA rule. Is that correct?

1 A. Yes.

2 Q. And does it -- does it make coal combustion
3 residual a hazardous waste --

4 A. No.

5 Q. -- or a solid waste?

6 A. It's not a hazardous waste.

7 Q. It's not a hazardous waste. Okay.

8 Is it a solid waste?

9 A. Yes.

10 Q. Okay. And does it require that CCR go into a -
11 - what we call in South Carolina, a Class Three landfill?

12 A. Essentially. I mean, if it's -- if it's -- if
13 it's coal combustion residuals that are generated by a
14 power utility -- and there's some specific wording in
15 that sentence that I don't have in front of me. But if
16 it's essentially a power utility that's generating that
17 material, then it would need to be in a lined facility.

18 Q. A lined facility?

19 A. A lined facility. Something that meets the
20 specific -- there are specific design standards in the
21 coal combustion residuals rule --

22 Q. Okay.

23 A. -- the federal rule that it would have to meet.

24 Q. So let me just make sure I understand. If it
25 needs to be in a lined and other design to meet the

1 federal standard, in South Carolina, does it have to be
2 in a Class Three landfill? Or can it be in a Class Two
3 landfill that meets those design criteria?

4 A. Well, it just needs to meet the -- if it -- if
5 it -- at the state level, it has to meet the less-than-
6 ten-times rule.

7 Q. Okay.

8 A. If it meets that, then it could potentially go
9 into a lined landfill that is not necessarily a Class
10 Three.

11 Q. Well, and this brings me sort of back to what
12 we were talking about before because I'm trying to
13 understand. By lining a landfill, does that convert it
14 from a Class Two to a Class Three landfill?

15 A. No.

16 Q. Okay. And by lining a Class Two landfill --
17 let's talk just about a Class Two landfill -- if we were
18 to line a Class Two landfill with a liner similar to that
19 in a Class Three landfill --

20 A. Uh-huh.

21 Q. -- would that enable the Class Two landfill to
22 take waste streams that don't meet the waste
23 characterization requirements in the Class Two part of
24 the regulation?

25 A. No.

1 Q. No?

2 A. No.

3 Q. So basically it's a two-part analysis that
4 DHEC would make, which is does the waste stream meet the
5 Class Two waste characterization requirements?

6 A. Correct.

7 Q. And does -- if it's coal ash, does it meet the
8 federal design requirement?

9 A. Yes.

10 Q. Okay. Okay. Well, then let's talk about if a
11 Class Two landfill like MRR Pickens, for example, wanted
12 to take coal combustion residuals --

13 A. Uh-huh.

14 Q. -- what would the process be for it to request
15 that of DHEC?

16 A. Well, I mean there's a -- there is a new state
17 law that just passed like in the beginning of March that
18 kind of changes -- I think changes some of those answers
19 to those questions. I don't -- I'm not sure, we haven't
20 really had, you know --

21 Q. Okay.

22 A. -- this happen since the new law.

23 Q. Okay.

24 A. But --

25 Q. Are you speaking of the law that just passed in

1 the last month?

2 A. Yes.

3 Q. Okay.

4 A. March 2nd.

5 Q. March 2nd? Okay. We're going to talk about
6 that in a little bit.

7 Can -- let's assume for the sake of the next
8 few questions that that law hasn't -- doesn't change
9 anything. And I understand that that's not your
10 position.

11 A. Okay.

12 Q. Just for the sake of my question.

13 A. Okay. Can we just assume that, you know, we're
14 talking about prior to that law?

15 Q. Yes.

16 A. Is that fair?

17 Q. Yes.

18 A. Okay.

19 Q. So notwithstanding the brand new South
20 Carolina law that governs disposal of coal combustion
21 residuals --

22 A. Okay.

23 Q. -- that passed in March of this year, what
24 would be the process for a Class Two landfill to add coal
25 combustion residuals to its permit?

1 A. Okay. And are we answering this question in
2 the sense that both the state regulations that are
3 currently in place and the federal CCR rule are in place?

4 Q. Yes.

5 A. Okay. Well, if a -- so if a Class Two landfill
6 requests to take coal combustion residuals under this
7 scenario, then the first thing that we would look at
8 would be whether it meets the waste characterization;
9 because if it doesn't, then we don't need to go any
10 further with that analysis.

11 So if it meets -- if that particular waste
12 meets the less than ten times MCL limit for Class Two,
13 and if it comes from a power-generating utility, then we
14 would also ask that they comply with the federal rule;
15 which would require their, you know, specific design
16 standards for those coal combustion residuals. Which
17 means it has to be lined with leachate collection and,
18 you know, essentially the same design as we would have in
19 a Class Three here.

20 And then we would -- assuming all those -- you
21 know, I guess the application would have to come in to
22 modify -- you know, their permit would need to be
23 upgraded or modified to take that line -- to add that
24 liner. And then we would, you know, modify the permit
25 appropriately for the liner and the new waste stream.

1 Q. Okay. Other than the requirements in the
2 federal CCR rule, would the process be similar as adding
3 other waste streams to a Class Two permit that are not
4 currently in Appendix I?

5 A. Yes. I mean, at the state level it doesn't
6 really matter. When somebody requests a new waste
7 stream, it doesn't necessarily matter where it comes from
8 or what type of waste it is, as long as it meets the
9 criteria.

10 Q. Okay. I'm going to move on and ask you
11 questions about MRR Pickens' permit in particular, but
12 why don't we take a quick break before then.

13 A. Okay.

14 MS. KING: Is that all right?

15 VIDEOGRAPHER: We're off the record at 11

16 --

17 MR. POLIAKOFF: May I just state one thing
18 before we go off the record? The rules
19 for South Carolina Civil Procedure state
20 that while the deposition is going on you
21 may conduct conversations not involving
22 this case or the testimony. In other
23 words, you can talk to people about
24 sports, weather, et cetera. But the
25 rule is to not discuss with anybody here,

1 any of the lawyers present, even your own
2 attorney, either the case or the
3 substance of the deposition testimony.
4 Just wanted to state that. Thank you.

5 THE WITNESS: Yes, sir.

6 MS. KING: Thanks, Gary.

7 THE WITNESS: Thank you.

8 VIDEOGRAPHER: We're off the record at
9 11:21.

10 (OFF THE RECORD | BREAK FROM 11:21 AM - 11:43 AM)

11 VIDEOGRAPHER: This is Video No. 2. We're
12 on the record at 11:43.

13 CONTINUATION OF DIRECT EXAMINATION

14 BY MS. KING:

15 Q. I'll just -- quickly just recap a couple things
16 that we talked about, just to make sure I understand what
17 you said.

18 A. Okay.

19 Q. Is it a fair statement that a Class Two permit
20 -- permitted landfill in South Carolina -- and this is
21 notwithstanding the March 2nd legislation, the new coal
22 ash legislation.

23 A. Okay.

24 Q. A Class Two permitted landfill in South
25 Carolina is allowed to accept coal ash if the coal ash

1 meets the waste characterization requirements and the
2 federal design criteria.

3 A. Yes.

4 Q. Is it -- is it true that you said coal ash is
5 not a hazardous waste under the federal rule?

6 A. That's correct.

7 Q. Is DHEC the sole agency that has the authority
8 to determine if coal ash meets the environmental
9 thresholds to be placed in a Class Two landfill?

10 MR. POLIAKOFF: Object to form, leading.

11 MS. LINEN: You can answer.

12 THE WITNESS: (To Ms. King) Would you
13 repeat that?

14 MR. POLIAKOFF: So as not to interrupt,
15 let me just state my objection for the
16 record, and I won't interrupt you.

17 MS. KING: Okay.

18 THE REPORTER: Ma'am, is she the one that
19 said that he could answer?

20 MS. KING: Yeah. She's his attorney.

21 THE REPORTER: I just want to make sure.

22 Okay.

23 BY MS. KING:

24 Q. Is DHEC the agency that has the authority to
25 determine if coal ash or CCR meets the environmental

1 threshold to be placed in a Class Two landfill?

2 A. Yeah, I mean as far as the South Carolina
3 regulations that govern Class Two landfills. Yes, DHEC
4 is the agency with that authority.

5 Q. Okay. Is DHEC the agency that has the
6 authority to determine if a modification to a solid waste
7 permit issued by DHEC is a major or minor modification?

8 MR. POLIAKOFF: Object to form, leading.

9 A. Yes.

10 Q. I handed you this January 2016 Santee Cooper
11 coal combustion residual inspection report.

12 A. Uh-huh.

13 Q. I think it was Exhibit -- Plaintiff's Exhibit
14 4.

15 A. Yes.

16 Q. Let's look at that. On Page 8, under section
17 2.3.1, could you read that first sentence? Well, the
18 first two sentences in 2.3.1 on Page 8?

19 A. 2.3.1, the first few sentences?

20 Q. The first two, please.

21 A. The first two.

22 "The CGS Class Two landfill is regulated under
23 South Carolina, or SC DHEC's solid waste management
24 regulations. It was originally permitted in 1982 and
25 began receiving CCRs in 1984. The original permit

1 allowed placement of material up to elevation of 120
2 feet, which is approximately 38 feet above grade."

3 Q. And you can read the next sentence.

4 A. "A consent agreement in 2011, allowed Santee
5 Cooper to continue placement of material above this
6 elevation with a maximum top elevation of 210 feet."

7 Q. So reading this, do you interpret that to mean
8 that since 1984, Santee Cooper has been placing CCR in
9 its Class Two landfill in South Carolina?

10 A. Yes.

11 Q. And it, it mentions a consent agreement
12 entered into in 2011.

13 A. Correct.

14 Q. And based on that last sentence in that
15 paragraph that you just read, DHEC -- in 2011, DHEC
16 agreed to allow it to continue to place CCR in its Class
17 Two landfill after 2011?

18 A. Yes. That was related to the transition that I
19 mentioned earlier, where there was a consent agreement to
20 lay out the sort of the finishing of the Class Two and
21 transition into a Class Three.

22 Q. But the arsenic standard changed in 2008. Is
23 that correct?

24 A. I think it was before that. But the reg with
25 the ten times rule came in '08, yes.

1 Q. But there was not a huge rush to transition to
2 a Class Three, since that -- it is now --

3 A. Right.

4 Q. -- 2016. And it appears from this that Santee
5 Cooper has been disposing of CCR in its Class Two
6 landfills up until last year.

7 A. Right. That's correct. I don't -- I don't
8 recall the specifics of this case with Santee Cooper.
9 But what I recall is that a lot of the characterizations
10 that we were doing at that time were either very close to
11 exceeding the standards, or maybe just slightly
12 exceeding.

13 Q. Okay.

14 A. And so we were working with all the utilities
15 to transition at that point.

16 Q. Were you allowing utilities to use up any
17 remaining space in their Class Two landfills before
18 transitioning to a Class Three landfill?

19 A. Within reason.

20 Q. Within reason?

21 A. Yes.

22 Q. So yes, in some circumstances.

23 A. Yes.

24 Q. Adding a liner to a Class two landfill, did you
25 say that that does not turn it into a Class Three

1 landfill?

2 MR. POLIAKOFF: Object to form, leading.

3 A. That's what I said, yes.

4 Q. Okay. Is it not -- is it uncommon for a permit
5 holder to add a new waste stream, a Class Two permit
6 holder to add a new waste stream to its permit after it's
7 been initially permitted?

8 A. No. It's not. It's not uncommon.

9 Q. So that's standard in the industry?

10 A. It's very common.

11 Q. Okay. Notwithstanding the new state
12 legislation regarding disposal of CCR, coal combustion
13 residuals in South Carolina, was it your statement that a
14 Class Two landfill can accept coal combustion residuals
15 from certain circumstances?

16 A. If they meet the criteria for Class Two.

17 Q. Let's move on to MRR Pickens, LLC's permit.

18 A. Okay.

19 (PLAINTIFF'S EXHIBIT NO. 5; MARKED FOR IDENTIFICATION)

20 Q. I'm going to hand you -- I'm sorry. I'm going
21 to hand you a document that will be marked as Plaintiff's
22 Exhibit 5. And this document is titled Class Two Solid
23 Waste Landfill Permit for Highway 93, C&D Landfill. And
24 it's dated November 3, 2008. Could you read the first
25 paragraph of the cover letter to Mr. Gilkerson(ph)?

1 A. "Enclosed is a Class Two Solid Waste Landfill
2 Permit for the Highway 93 construction and demolition
3 landfill in Laurens County. This permit is issued under
4 Regulation 61-107.19, solid waste management, solid
5 waste landfills and structural fill." Should I keep
6 going?

7 Q. No. You can stop there. So that -- first of
8 all, let's clarify. It says Highway 93 in Laurens
9 County. Is that a typographical error since -- regarding
10 section, and the permit itself says Pickens County?

11 A. Oh yeah, someone must have just left that in
12 from a previous letter or something.

13 Q. So just to be clear, it's not in Laurens
14 County. Is that correct?

15 A. That's correct.

16 Q. Okay. And this permit was issued -- based on
17 that statement and the date, this permit was issued under
18 the current regulation 107.19. Is that correct?

19 A. Yes.

20 Q. So it is a Class Two permit?

21 A. Correct.

22 Q. Okay. Is that your signature on that cover
23 letter, the second page of this document, and on the
24 first page of the permit itself?

25 A. Yes.

1 Q. So is that your -- in your position as manager,
2 is that your job to sign off on all permits that are
3 issued to solid waste management facilities in South
4 Carolina?

5 A. Yes. Most permits, I do sign, yes.

6 Q. And you did sign this particular permit?

7 A. Yes.

8 Q. Okay. Let's look at Page 2 of 4 of the permit
9 itself. And it says at the bottom, Page 2 of 4.

10 A. Uh-huh.

11 Q. That would be excluding the cover letter. And
12 section A special conditions.

13 A. Uh-huh.

14 Q. Paragraph 2 states this permit is limited
15 solely to the disposal of items listed in Appendix I of
16 Regulation 61-107.19. All other wastes, including
17 animal carcasses are prohibited from disposal in this
18 landfill. That particular sentence -- if a permit
19 applicant had not listed any other waste streams than
20 those listed in Appendix I on its application, is this
21 the standard language that would be included in a permit?

22 A. Yes.

23 Q. When it --

24 A. The standard language probably has evolved
25 over time, but yeah, that was the standard.

1 Q. In 2008?

2 A. At the time, yes.

3 Q. Okay. And when it says that all other wastes
4 are prohibited from disposal in this landfill, does that
5 mean that the permittee cannot request to add any
6 additional waste streams to its permit in the future?

7 A. No.

8 Q. Okay. And if we look back at 61-107.19, which
9 we were talking about earlier, the current regulation,
10 and the regulation that this permit was issued under, we
11 talked about process, the process to add a waste stream,
12 correct?

13 A. Right, yes.

14 Q. Okay. And correct me if I'm wrong. Part of
15 that process would be to submit a waste characterization
16 for a particular waste stream.

17 A. Correct.

18 Q. And DHEC would determine whether that waste
19 stream is acceptable in a Class Two landfill in South
20 Carolina.

21 MR. POLIAKOFF: Objection, leading.

22 Objection to form.

23 BY MS. KING:

24 Q. Is that correct?

25 A. Yes.

1 Q. Okay. If you look at Appendix I to the
2 regulation, I don't think it's attached to this permit
3 itself -- but Appendix I to 107.19.

4 MR. POLIAKOFF: I have it, if you need it.

5 MS. KING: Thank you. Mine is all tabbed.

6 BY MS. KING:

7 Q. It lists specific wastes. And I had you read
8 earlier that acceptable waste may be generated by C&D,
9 construction, demolition, land clearing, industrial,
10 and/or manufacturing activities and are obtained from
11 segregated commercial waste.

12 So based on the Regulation 61-107.19, if a
13 waste stream is not listed herein, in Appendix I, does
14 Appendix I allow additional waste to be added to the
15 permit, or does it restrict?

16 A. Well, the regulation allows for the addition
17 of wastes, other than Appendix I.

18 Q. Okay. And under MRR's 2008 permit, would it be
19 prohibited from accepting other waste than those listed
20 in Appendix I, if they meet the waste characterization
21 requirements in Regulation 61-107.19?

22 MR. POLIAKOFF: Object to form.

23 A. They could be -- they could add an additional
24 waste stream that is not included on Appendix I, if it
25 met the waste characterization requirements and the

1 permit were modified to include it.

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

8 A. Right.

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

12 A. Yes.

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

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

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

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

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

1 county --

2 A. Uh-huh.

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

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

7 Q. Do you hold public hearings on permits?

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

10 Q. Okay.

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

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

15 A. No. I don't recall.

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

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

24 A. Yes.

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

1 the first page of the permit?

2 A. Yes.

3 Q. What is this document?

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

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

8 A. That's correct.

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

10 A. Yes.

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

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

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

19 A. Yes.

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

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

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

5 A. Uh-huh.

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

8 A. No.

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

10 A. That's correct.

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

14 A. Yes.

15 Q. And what type of liner is this?

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

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

21 A. Yes.

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

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

25 Q. But not required in a Class Two?

1 A. Correct.

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

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

6 Q. An unlined landfill.

7 A. Yes, certainly.

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

10 A. Class Two?

11 Q. Yeah.

12 A. No.

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

16 A. Uh-huh.

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

19 MR. POLIAKOFF: Objection, form.

20 Leading.

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

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

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

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

5 A. Okay.

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

8 MR. POLIAKOFF: Five.

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

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

23 So the language is a little different.
24 Correct?

25 A. Yes.

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

5 A. Does the -- which permit?

6 Q. Does the new --

7 A. 2015?

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

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

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

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

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

20 MR. POLIAKOFF: Objection, form. Leading.

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

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

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

3 A. Uh-huh.

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

7 A. Yes.

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

9 A. Uh-huh.

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

16 A. Yes.

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

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

23 Q. Okay. Can you tell me why?

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

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

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

12 Q. Okay. So since no new waste streams were added
13 --

14 A. Uh-huh.

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

18 A. Correct.

19 MR. POLIAKOFF: Object to form, leading.

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

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

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

1 A. Uh-huh.

2 Q. -- would it be allowed to take wastes only
3 acceptable for Class Three landfills in South Carolina
4 under the regulations?

5 A. No. It couldn't take Class Three. It could
6 not take waste that would be only acceptable for Class
7 Three. It would have to still take Class Two waste.

8 Q. Okay. So the liner -- so again, the liner does
9 not change it from a Class Two to a Class Three landfill;
10 is that correct?

11 A. That's correct.

12 MR. POLIAKOFF: Object to form, leading.

13 Q. You just said that the liner in the
14 modifications listed, that we just discussed in the 2015
15 modification, did not change the waste stream. So I
16 think that leads -- is a good segue to talk about a letter
17 sent to you in October of 2015. This is Plaintiff's
18 Exhibit 7. It's just one page. This, again, it's dated
19 October 16, 2015. It's a letter addressed to you from
20 Christopher Roof of MRR Southern.

21 Do you recall this letter?

22 (PLAINTIFF'S EXHIBIT NO. 7; MARKED FOR IDENTIFICATION)

23 A. Yes.

24 Q. Okay. And it says it's a large Class Two waste
25 disposal project. It states -- let, let me read a little

1 bit, and then I'm going to ask you a question about it.

2 It states that pursuant to Regulation
3 61-107.17(D) (3) (d) (2), MRR Pickens requests DHEC grant
4 MRR Pickens a temporary variance to the permanent annual
5 disposal rate, and DHEC permit LF2-00003.

6 And it states that the large project agreement
7 relates to immediate need for disposal of coal combustion
8 residuals which meet Class Two specifications.

9 Do you recall the provisions in 61-107.17
10 (D) (3) (d) (2)?

11 A. Yes.

12 Q. And have you ever received a request for a
13 variance under that provision before at DHEC?

14 A. Prior to this letter?

15 Q. Yes.

16 A. No.

17 Q. What is the status of this request?

18 A. We, we responded to this letter by asking MRR
19 for some additional information --

20 Q. Okay.

21 A. -- about the project that they were
22 requesting. That's, that is -- the current status is we
23 have not received a reply, that I recall, to those
24 details.

25 (PLAINTIFF'S EXHIBIT NO. 8; MARKED FOR IDENTIFICATION)

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

4 A. Uh-huh.

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

7 A. Yes.

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

10 A. Not, not that I know of.

11 Q. -- to your knowledge?

12 A. Uh-uh.

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

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

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

21 A. Not to my knowledge.

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

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

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

1 residuals --

2 A. Uh-huh.

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

6 A. Yes.

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

9 A. Yes.

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

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

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

17 A. Yes.

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

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

24 Q. Well, I guess --

25 A. Any?

1 Q. -- anyone from Pickens County. Has anyone from
2 Pickens County reached out to you with questions
3 regarding disposal of coal combustion residuals under
4 the new legislation?

5 A. Let's see. I don't -- I don't remember me,
6 personally. I -- I'm pretty certain that some of my
7 staff has had conversations with County people that work
8 for Pickens County.

9 Q. Okay.

10 A. But I don't know what the details -- I just --
11 I don't think those were -- I'm not familiar with the
12 specifics of those conversations. However, personally,
13 I was involved in discussions with Senator Martin's staff
14 through -- you know, at his request, asking questions
15 about this situation, and trying to understand what
16 current regulations say; what's allowed, what's not
17 allowed.

18 It's fairly complicated for someone who --
19 especially someone who doesn't, like, you know, deal with
20 this regularly. Because you have -- you have the -- you
21 know, you have state regulations that govern coal ash and
22 other waste, and then you have a federal rule that
23 governs coal ash from certain sources, but not others.

24 So it gets fairly complicated to try to
25 understand exactly what can and cannot be done. But

1 anyway, they were basically just asking since we -- you
2 know, we are, I guess, the experts on at least the state
3 requirements, what exactly could be done in terms of, you
4 know, what the current regs allow. And why they allow
5 that, and those types of things. We had a lot of
6 conversations about, you know, just them understanding
7 what current rules say.

8 Q. Okay. Are there any current -- are there any
9 rules that were current, prior to this new legislation
10 that we haven't discussed today that govern disposal of
11 coal combustion residuals or fly ash or coal ash in South
12 Carolina?

13 A. Well, I mean there are -- yes. I mean there
14 are other -- there are other state regulations that, that
15 do in some way impact disposable coal ash, other than
16 solid waste regulations.

17 Q. Okay. Did staff from Senator Martin's office --
18 -

19 A. Uh-huh.

20 Q. I think that's who you said you spoke with.

21 A. Yes.

22 Q. Did they ask questions specific to MRR Pickens
23 when they asked you these general questions about coal
24 combustion residual disposal?

25 A. Well certainly, they were, you know, aware of

1 this particular landfill, the particular proposal that
2 we just looked at by MRR to add the coal ash. And so they
3 were asking, you know, what, what do they have a permit
4 to do? What can they do under their current permit? So
5 in that sense, yes, they were asking about the specific
6 project.

7 Q. Okay. And did anyone come to visit you in
8 person from Pickens County legislative delegation or
9 Senator Martin's office, or Pickens County counsel to
10 discuss any of this?

11 A. I visited them personally. I mean, I went to
12 their office --

13 Q. And their office --

14 A. -- at their request.

15 Q. -- being whose?

16 A. Senator Martin's office.

17 Q. Okay. And was Senator Martin present?

18 A. I did talk to him once, yes.

19 Q. Okay. And were those conversations similar to
20 the ones that you just discussed, or was --

21 A. Yes.

22 Q. -- something different discussed?

23 A. No. It was the same. It was just -- there was
24 a lot of confusion about what they -- at first it was, you
25 know, it was even -- there was just a misunderstanding

1 about what, even what status -- what, what kind of status
2 this project was even in. I mean, folks thought that --
3 initially, they thought that they had applied for a
4 permit to dispose of coal ash.

5 And we were considering a permit. And then
6 they thought that, you know, we had already approved
7 certain things in terms of this variance that we, you
8 know. So there was just a lot of clarification on, you
9 know, us basically kind of taking them through. We
10 issued the permit in '08. They modified it in '15. They
11 can do this under the -- you know, under this permit, it
12 allows them to do this.

13 They've asked to do something different, and
14 we're considering that. Just so that everybody
15 understood, specifically, where we were with this
16 particular project because it was, like I said, a little
17 bit more complicated than your average one to understand.

18 Q. And during those conversations, did you
19 communicate that nothing had been finalized to allow MRR
20 Pickens to take coal ash right now?

21 A. Yes.

22 Q. And did you describe the process that would go
23 forward to allow that to happen, or disallow that to
24 happen?

25 A. We specifically discussed the process for the

1 variance.

2 Q. For the variance?

3 A. Not so much for the addition of coal ash to the
4 permit generally.

5 Q. Okay.

6 A. It was more -- this, this was more in the
7 forefront of their -- because they had this letter they
8 had seen. They asked for it, that kind of thing.

9 Q. And I think you stated earlier, to your
10 knowledge, you've never received a waste
11 characterization to add coal combustion residuals to the
12 MRR permit to date. Is that correct?

13 A. That's correct.

14 Q. Okay. Did Senator Martin discuss any proposed
15 legislation with you that would deal with the issue of
16 disposal of CCR in South Carolina?

17 A. No, not him. No. Not him personally, no.

18 Q. Did his staff?

19 A. Yes.

20 Q. Okay. Did they ask for your opinion on any
21 drafts of the legislation?

22 A. Yes.

23 Q. Did DHEC provide comments to the draft
24 legislation?

25 A. We had discussions, verbally. We talked about

1 it.

2 Q. Did DHEC provide written comments to the draft
3 legislation?

4 A. I don't -- not that I know of.

5 Q. And who at DHEC would have been involved in the
6 conversations regarding comments --

7 A. Uh-huh. Well, I was --

8 Q. -- to the draft legislation?

9 A. -- involved. I was involved in the
10 conversations.

11 Q. Anyone else?

12 A. David Wilson --

13 Q. Okay.

14 A. -- was our legislative liaison. He was
15 certainly talking with Senator Martin's staff and
16 Senator Martin.

17 MR. POLIAKOFF: I'm sorry. Was that
18 Wilson?

19 THE WITNESS: David Wilson, yes.

20 MR. POLIAKOFF: Wilson. Thanks.

21 BY MS. KING:

22 Q. That's a new position for David Wilson. Is
23 that correct? Fairly.

24 A. Yes. Uh-huh.

25 MS. KING: Okay. Can we take a short

1 five-minute break?

2 MR. POLIAKOFF: Certainly.

3 MS. KING: Okay

4 VIDEOGRAPHER: We're off the record at
5 12:28.

6 (OFF THE RECORD | BREAK FROM 12:28 PM - 1:14 PM)

7 VIDEOGRAPHER: We're on the record at
8 1:14.

9 CONTINUATION OF DIRECT EXAMINATION

10 BY MS. KING:

11 Q. Okay. We're back on the record. Mr. Coleman,
12 I'll just remind you that you are still under oath, as
13 you were sworn in this morning.

14 A. Okay.

15 Q. You were talking earlier about modifications.
16 And what is a minor modification and what is a major
17 modification, generally.

18 A. Uh-huh.

19 Q. And would you agree -- I'm just not clear from
20 your description. Would you agree with me that adding a
21 waste stream to a Class Two permit, is not automatically
22 a major modification?

23 A. I would agree that it's not -- it depends.
24 There's some discretion there to -- for that to be
25 determined.

1 Q. Okay. And that discretion -- DHEC is the
2 authority with the discretion to make that decision. Is
3 that correct?

4 MR. POLIAKOFF: Objection to form;
5 leading.

6 A. Yes. I think if it's a -- if it's a waste
7 stream, not already included in the permit, it would
8 clearly be a modification of the permit. But as to
9 whether that would be major or minor, it depends on, I
10 think, you know, how much waste? What type of waste, and
11 that sort of thing.

12 Q. Okay. And the permit holder doesn't make the
13 determination whether it's a major or minor
14 modification, but DHEC does. Is that correct?

15 A. Yes.

16 MR. POLIAKOFF: Objection to form;
17 leading.

18 Q. Could you repeat your answer?

19 A. Yes.

20 Q. Thank you. Earlier you stated that you had
21 conversations with Senator Martin's staff concerning the
22 issue of disposal of coal ash or CCR or whatever you want
23 to refer to it as. Isn't it true that Senator Martin's
24 staff was concerned with, in particular, MRR Pickens
25 taking out-of-state coal ash and disposing of it in

1 Pickens County?

2 MR. POLIAKOFF: Objection to form,
3 leading.

4 A. I don't know. I have -- that was not the
5 subject of my conversations with them.

6 Q. Did they ever ask you if MRR had identified the
7 source of the coal combustion residuals mentioned in the
8 variance request?

9 A. I don't recall whether they specifically asked
10 me that. I know that we did -- some of the discussions
11 were about, you know, us not knowing where the, you know,
12 not having information about a source. We didn't have
13 any -- we still don't have any information about that.
14 And I know that was relayed. I don't remember, you know,
15 exactly why that came up in the conversation.

16 Q. We talked earlier about non-commercial and
17 commercial facilities --

18 A. Uh-huh.

19 Q. -- and sort of the difference between them in
20 the solid waste permitting world.

21 A. Right.

22 Q. Are commercial facilities, under South
23 Carolina law, limited to in-state waste?

24 A. No.

25 MS. KING: I think that's all I have for

1 today. I want to be clear that we are
2 leaving the deposition open, due to the
3 fact that records have not been -- all
4 records have not been provided from DHEC
5 in response to Mr. Poliakoff's subpoena,
6 so I reserve the right to ask more
7 questions when we reconvene.

8 MR. POLIAKOFF: Well, certainly you'd be
9 entitled to appropriate follow up after I
10 ask questions, and after Matt Johnson
11 asks questions. I mean, you'd be
12 entitled to your normal redirect or
13 follow up, whatever you want to call it,
14 after that.

15 But I invite you to go ahead and ask
16 all the questions you want for today
17 because this is your deposition, your
18 subpoena.

19 MS. KING: Well, I haven't received any
20 records from you.

21 MR. POLIAKOFF: Well, my record requests
22 are from DHEC. And I got some yesterday.
23 And as best as I can tell, MRR is copied
24 on every single thing that DHEC has given
25 me. I don't think I have anything here

1 that either wasn't generated by MRR or
2 sent by DHEC to MRR.

3 MS. KING: Well, I don't think that you
4 can guarantee that we have every record
5 that you have received from DHEC.

6 MR. POLIAKOFF: I can't guarantee any
7 such thing. Why don't we just reserve
8 this discussion for later. We don't need
9 to --

10 MS. KING: Well, I -- I just want to make
11 sure it's clear --

12 MR. GOINGS: I want to be -- I want the
13 record to be clear that we are not
14 finishing our portion of the examination
15 of this witness today.

16 MR. POLIAKOFF: Why not?

17 MR. GOINGS: Because there's additional
18 documentation and information that we
19 need to receive. The purpose of the
20 deposition was to ask questions based on
21 information that we know to date.

22 Obviously, there's additional
23 documentation and information that is
24 pending. And once we get that
25 information, we're going to continue our

1 examination of this witness. And you can
2 ask any and all questions you would like.
3 And Mr. Johnson can ask any and all
4 questions he would like. And that's the
5 spirit of us moving forward. So --

6 MR. POLIAKOFF: Let's move forward and
7 agree to disagree.

8 MR. GOINGS: Okay. Well, when we
9 reconvene the deposition, we intend to
10 begin asking this witness additional
11 questions because we're not finished with
12 our examination. But we are as it relates
13 to today, based on the information that
14 we have received to date.

15 MR. POLIAKOFF: Yeah. It's -- it's the
16 deposition requested and scheduled by
17 MRR. And it's the subpoena issued by MRR.
18 My interpretation of the rules is any
19 direct questions you have, you need to go
20 ahead and proceed today. Following the
21 continuation, you have the right, as
22 everybody here does, to ask any follow-up
23 questions based on the continuing
24 questions.

25 I don't think you and I are going to

1 beat each other up and come to a
2 resolution of that today. Why don't we --
3 we've stated our positions on the record.
4 Why don't we move forward.

5 MR. GOINGS: Sounds good. But when we
6 reconvene this deposition that we
7 noticed, we intend to ask questions of
8 the Deponent, and I understand you
9 disagree with that.

10 MR. POLIAKOFF: I disagree. Why don't we
11 move forward?

12 MR. GOINGS: All right.

13 MR. POLIAKOFF: Thank you.

14 CROSS-EXAMINATION

15 BY MR. POLIAKOFF:

16 Q. Mr. Coleman, of course we've met before, and,
17 as you know, I'm Gary Poliakoff. I represent Pickens
18 County in this case. MRR has sued Pickens County and the
19 six individually named members of the County Planning
20 Commission for \$25 million in this case, and I am
21 defending the County. Let me ask you some basic
22 questions to start with. In your position at DHEC --so
23 you're head of Solid Waste Management. Is that right?

24 A. Yes.

25 Q. All right. And you've had a number of other

1 hats at DHEC in the past, but you've been basically head
2 of Solid Waste Management since about '07 roughly. Is
3 that --

4 A. End of '07, yes.

5 Q. Okay. All right, actually, back in '07, you
6 and I, I think we had met when you were, were in differing
7 departments with DHEC prior to all that. But in '07 do
8 you recall that there was a set of regulations that
9 ultimately became 61-107.19 that was being submitted to
10 the DHEC Board, and I was on the agenda; appeared before
11 the Board; had some objections to that? Do you recall
12 that?

13 A. Okay. Not -- I'm sorry. I don't.

14 Q. That's all right. Do you recall the DHEC Board
15 instructing you to form a task force or a work group and
16 have the environmental community represented and to
17 report back to the Board with at least some changes or
18 changed recommendations?

19 A. It seems like there were -- was this related to
20 the 19 or 17?

21 Q. When you say 19 or 17, I'm not sure.

22 A. 61-107.19 is the Landfill Regs. 107.17 is the
23 Demonstration of Need.

24 Q. Actually, you could probably -- you're
25 probably right. I remember that there were notice issues

1 and demonstration of need issues.

2 A. Right.

3 Q. The Board instructed you to form a task force -
4 -

5 A. Yeah.

6 Q. -- or a work group.

7 A. I remember about there being an issue about the
8 distance that we notice --

9 Q. For demonstration of need purposes?

10 A. -- and sort of things like that. Well, for --
11 I think for permitting in general. And I'm not sure if
12 that's the one you were referring to. But we were
13 directed to look at -- like how far out we would notice.
14 How, you know, what people that lived around the new
15 proposed facility, like how far out we would go with our
16 noticing and that sort of thing.

17 Q. Right. What, what types of notice would be
18 required and also some changes were made to the
19 demonstration --

20 A. Oh, yeah, absolutely.

21 Q. -- of need regs.

22 A. '07. Uh-huh, there were quite a few changes.
23 I mean '09, I'm sorry.

24 Q. And for the environmental community you were
25 kind enough to put me and Shelley Robbins on that work

1 group.

2 A. Right.

3 Q. Do you recall?

4 A. Yes.

5 Q. And there were, of course, industry people
6 represented as well.

7 A. Yes.

8 Q. At the end of six months or so, a new package
9 of regs were submitted to the Board and those were
10 approved. And I believe you're correct. It was the --

11 A. That was demonstration of need, yes.

12 Q. Demonstration of need and notice of issues.

13 A. Yes, sir.

14 Q. All right. In your position with DHEC, would
15 you agree that you're required to uphold the law as it
16 pertains to solid waste?

17 A. Yes.

18 Q. And you would agree that you have to follow the
19 law?

20 A. Yes.

21 Q. You've got to follow statutes. You've got to
22 follow regulations. Would you agree?

23 A. Yes.

24 Q. And you must carry out statutes and
25 regulations to the best of your ability. Would you

1 agree?

2 A. Yes.

3 Q. And would you agree that you must not violate
4 statutes or regulations?

5 A. We are to follow them, certainly.

6 Q. All right, sir. In regard to local
7 government's solid waste management plans, in the Solid
8 Waste Act itself, there are provisions, statutory
9 provisions, that talk about local governments developing
10 solid waste management plans. Is that correct?

11 A. Yes.

12 Q. It can be counties or it can be even regional
13 groups of local governments. Is that right?

14 A. Yes.

15 Q. And once they develop a solid waste management
16 plan, any actions by the Department and any actions by a
17 permittee or proposed permittee have to be consistent
18 with the local government's solid waste management plan.

19 A. Well, I mean I think the word "any action", I
20 don't know that I could answer that exactly. That's
21 fairly broad. But certainly permitting, the permitting
22 decisions in regard to solid waste facilities have to
23 take into account the solid waste management plan. And
24 permits that we issue for solid waste facilities are
25 supposed to be consistent with County solid waste plans.

1 Q. All right, fair enough to talk about it in
2 terms of permitting. But the permits issued by the
3 Department and any permits issued to a permittee or a
4 proposed permittee, or a permit applicant, must be
5 consistent with the local government's solid waste
6 management plan?

7 A. Unless they conflict directly with state law,
8 but yes, generally we --

9 Q. Obviously you --

10 A. We certainly try -- we certainly try to be
11 consistent with those County plans.

12 Q. Well, in addition to try to be consistent,
13 doesn't the law say that you must be consistent in
14 permitting decisions. They must be consistent with the
15 local government's solid waste management plan?

16 A. It says -- I wish I had the Act in front of me.
17 But it says that we are not to issue a permit that --
18 unless it's consistent, or something along those lines.

19 Q. All right. In general, a permit is supposed to
20 be consistent with the local government solid waste
21 management plan.

22 A. Yes, uh-huh.

23 Q. And if you issued a permit that violated a --
24 or that was not consistent with a local government solid
25 waste management plan, that would be invalidly issued.

1 Would you agree?

2 A. Well, I mean our permits are supposed to be
3 consistent. And if they're not, and if they're
4 challenged, you know, then obviously that might be a
5 reason to have a permit overturned or remanded or
6 something along those lines.

7 Q. Right, because again, the law does require a
8 permit issued by the Department to be consistent --

9 A. Yes.

10 Q. -- with the local government solid waste
11 management plan.

12 A. Yes.

13 Q. All right. If the language of a statute is
14 clear and unambiguous, if the language is plain, you must
15 follow it. Would you agree?

16 A. We make every attempt to follow statutes, yes.

17 Q. In addition to making every attempt, if the
18 language of a statute is clear and unambiguous, you must
19 follow it, would you --

20 A. Yes.

21 Q. -- agree?

22 A. Correct.

23 Q. Same with the regulation. If the language of a
24 regulation that's been passed and approved, if the
25 language of a regulation is clear and unambiguous, you

1 must follow that?

2 A. Yes.

3 Q. All right. You've been asked about
4 definitions of major and minor. If you would pick up
5 Exhibit 2 for me, please, sir. And if you would turn back
6 to page 8, Number 48. Again, the definition of
7 "modification".

8 (WHEREUPON, the Deponent reviewed the document
9 previously identified as Plaintiff's Exhibit 2.)

10 A. Uh-huh.

11 Q. So minor modification, "Means a change that
12 keeps the permit current with routine changes to the
13 facility or its operations or an administrative change."

14 A. Uh-huh.

15 Q. All right. I read that correctly?

16 A. Yes.

17 Q. All right. Then B, major modification, "Means
18 a change that substantially alters the facility or its
19 operations, e.g., tonnage increase above 25 percent, any
20 volumetric capacity increase, alternate designs that
21 vary from the design prescribed in this regulation." Do
22 you see that?

23 A. Yes, uh-huh.

24 Q. All right. Now let's focus on that word,
25 "alternate designs", it goes on to the "vary from the

1 design prescribed in this regulation".

2 A. Uh-huh.

3 Q. All right, so "alternate designs" would be a
4 major modification under this regulation. Would you
5 agree?

6 A. Yeah, that's what it says.

7 Q. Okay. Under A, 48A, "minor modification",
8 there's no mention of alternate designs under 48A, is
9 there?

10 A. No.

11 Q. All right, so if it's an alternate design, then
12 it's a major modification, would you agree?

13 A. Perhaps.

14 Q. Tell me why it wouldn't be clearly? Is there
15 any -- I just asked you, is there any mention of
16 alternate designs in 48A?

17 A. Right.

18 Q. But there is none in 48A, is there?

19 A. No, not specifically, no.

20 Q. And the term "alternate designs" is in 48B,
21 "major modifications" definition, is that right?

22 A. Yes, it is.

23 Q. Okay. Keep that handy for just one minute,
24 please. And would you pick up Exhibit 6? So the first
25 page of that being your cover letter of August 10, 2015.

1 A. Uh-huh.

2 (WHEREUPON, the Deponent reviewed the document
3 previously marked for identification as Plaintiff's
4 Exhibit 6.)

5 Q. All right. Do you see that? Let's look at the
6 second sentence talking about the modification. It says,
7 "The modification includes an alternate ladder design
8 and associated changes resulting from the design
9 change." Did I read that correctly?

10 A. Uh-huh. Yes, uh-huh.

11 Q. All right. And that's your signature there, at
12 least a copy of your signature. Is that right?

13 A. Yes.

14 Q. All right. So again your sentence was, "The
15 modification includes an alternate ladder design and
16 associated changes resulting from the design change."

17 A. Uh-huh.

18 Q. All right, and that's -- you wrote this letter?

19 A. Yes.

20 Q. All right, you signed --

21 A. I signed that letter.

22 Q. You signed the letter, so you stand by the
23 letter I take it.

24 A. Uh-huh, sure.

25 Q. Okay. "Design change" is the words in your

1 letter. Is that right?

2 A. Yes.

3 Q. Now let's look back again at 48B, "alternate
4 designs that vary from the design prescribed."

5 A. Uh-huh.

6 Q. So 48B, definition of "major modification",
7 includes "alternate designs," In this sentence alone it
8 says -- it talks about "the design change." There was a
9 design change in this permit modification that occurred
10 in 2015 that is a design change from the 2008 permit,
11 isn't it?

12 A. Yeah. We approved an optional design change to
13 add a liner.

14 Q. And I'm just asking you, it was a design
15 change. Is that right?

16 A. Sure. Yes.

17 Q. Okay. And we've just confirmed that design
18 change is mentioned under "major modification"
19 definition but not mentioned under "minor modification"
20 definition. Isn't that correct?

21 A. That is correct.

22 Q. Now, the big difference as far as the public
23 and Pickens County or any local host government is
24 concerned, if it's a minor modification, then the public
25 and the local host government gets no notice. Is that

1 right?

2 A. There's certainly less noticing during a minor
3 modification.

4 Q. Okay. We'll get to what noticing was. But a
5 major modification requires notice to affected persons.
6 Is that right?

7 A. Yes.

8 Q. And affected person is -- there's actually a
9 statute that divides -- that defines "affected persons",
10 but it generally includes things like local governments,
11 host -- a host local government. So, would you agree?

12 A. Yes. Uh-huh.

13 Q. So if it's determined that this change that
14 occurred from the '08 permit to the 2015 permit was a
15 major modification, then that would have required notice
16 to Pickens County and the public at large. Would it not?

17 A. Yeah, if we had -- if we'd determined it to be
18 a major modification, we would have noticed --

19 Q. Okay.

20 A. -- adjacent land -- we would have followed our
21 normal process, which would include adjacent owners,
22 concerned parties, local governments.

23 Q. Okay. And again, we know that there was -- for
24 this 2015 permit change, I see you've written Mr. Roof at
25 MRR Pickens, and it's copied people at DHEC, but there's

1 no copy that went to Pickens County. And there was no
2 public notice, was there?

3 A. I don't -- not that I recall, no, uh-uh.

4 Q. So again, if it's a major modification, the law
5 requires there to have been a public notice, notice to
6 the County, and notice to the public. Is that correct?

7 A. Yes. That's our normal process for major
8 modifications, yes.

9 Q. It's not only normal process, but isn't it
10 actually required in regulations that if it's a major
11 modification that it has to be notice provided to the
12 public?

13 A. I, I think that wording -- let me -- generally,
14 yes. Let me --

15 Q. I can dig it out somewhere.

16 A. Yeah, there's a process.

17 Q. You would agree with generally if it's a major
18 modification the public gets notice?

19 A. Uh-huh. Yes.

20 Q. All right, sir. And again, this was a design
21 change; that is, a change from '08 to 2015 was a design
22 change as you stated in your letter. Isn't it?

23 A. Yes.

24 Q. And design change, again, is mentioned under
25 the definition of "major modification" but not under the

1 definition of "minor modification."

2 A. Yes.

3 Q. Is that correct?

4 A. Uh-huh.

5 Q. All right. So if it's determined, if some
6 court or some higher authority than you or perhaps us
7 determines that this in fact was a major modification,
8 then it should have been -- there should have been notice
9 to Pickens County and notice to the public, shouldn't
10 there?

11 A. Well, you know, we, we made a decision to treat
12 it as a minor modification at the time.

13 Q. Yes, sir.

14 A. And I don't -- I can't really speak to what --
15 you know, what would happen if others determined
16 otherwise.

17 Q. All right. Clearly, you made a determination,
18 or you and MRR made a determination that this was going
19 to be a "minor modification." But if it's determined
20 that in fact the design change puts it into the category
21 of a "major modification" then the law required there to
22 be public notice, didn't there? And notice to the host
23 local government?

24 A. I mean we determined that it was a minor
25 modification. And that's, you know, many, it's many

1 months in the past at this point, so I don't know what,
2 what you're asking me about.

3 Q. Well, if your determination was wrong that in
4 fact it met the definition of a "major modification" --

5 A. Right.

6 Q. -- it should have had public notice and notice
7 to the host local government, shouldn't it?

8 A. Well, I guess if --

9 MS. LINEN: Object to form. Speculative.

10 A. -- if someone determines --

11 Q. You can answer.

12 A. -- you know, if someone --

13 Q. It's not speculative.

14 A. -- determines that it was wrong, then I guess
15 they'll direct us to do whatever they need to do.

16 Q. All right.

17 A. And we'll certainly follow that.

18 Q. All right. But again, we, we've covered the
19 definition of "major" and "minor", and you admit in your
20 letter that this was a design change. Isn't that right?

21 A. That's what the letter calls it. The letter
22 terms it that, yes, uh-huh.

23 Q. Your letter, signed by you, is that correct?

24 A. Yes. That's correct.

25 Q. All right. In addition to the "design change",

1 I made notes today as you were answering Ms. King's
2 question. In answers to Ms. King's question one time
3 today, you said this was a, "New design for the
4 landfill." Is that a fair statement?

5 A. Yeah, I mean it is.

6 Q. Okay.

7 A. It was a new design.

8 Q. And I wrote down also a quote earlier today
9 when your answer to Ms. King's questions that this was,
10 "Essentially the same design as a Class Three."

11 A. Yes. I recall saying that, yes.

12 Q. All right. And that is basically the change
13 from the '08 to the 2015 modification was essentially the
14 same design as a Class Three. Is that right?

15 A. Yes, uh-huh.

16 Q. So in other words, what we're doing is changing
17 a Class Two by adding Class Three features. It became
18 essentially the same design as a Class Three.

19 MR. GOINGS: Object to the form of the
20 question.

21 Q. You can answer that.

22 A. The design became very similar to a Class
23 Three, yes.

24 Q. Okay. And you agree, I wrote this down,
25 "Alternate designs would be a major modification", is

1 that correct?

2 A. That's what the definition says, yes.

3 Q. Okay. Yeah, and another thing I wrote down
4 earlier today, "If it substantially alters", if it
5 substantially alters the facility or the operations,
6 then it's a major modification, isn't it?

7 A. Yes.

8 MR. GOINGS: Object to the form of the
9 question.

10 Q. All right. And in addition, the changes from
11 the '08 permit to the 2015 permit -- of course we've
12 talked about it -- added the liner, is that right?

13 A. Yes.

14 Q. And it had additional groundwater monitoring
15 requirements. Is that right?

16 A. I'm not -- I don't recall that.

17 Q. All right. Well, what additionally in regard
18 to groundwater was done in the -- from the change from
19 the '08 permit to the 2015 modification?

20 A. I don't -- I don't think there were any changes
21 in groundwater that I remember.

22 Q. Not even in monitoring?

23 A. Uh-uh. They were already in place. I mean
24 groundwater monitoring was already in place in the 2008
25 permit, so --

1 Q. All right. The 2015 permit added some final
2 coverage changes, did it not?

3 A. It would, yes --

4 Q. All right.

5 A. -- to correspond with the liner.

6 Q. Didn't -- but, are you sure? I mean, we can
7 hold the two permits, the 2008 permit and the 2015
8 modification side by side, but weren't there additional
9 groundwater reporting requirements done in the 2015?

10 A. I'd have to look. I don't recall that.

11 Q. Could you do that for me, please?

12 A. Sure.

13 Q. If you would grab those two permits. Let's
14 see, Exhibit 6 is the 2015, and Exhibit 5 is the 2008.

15 A. You want -- there's a section in each of these
16 permits called -- under the "Groundwater" called
17 "Reporting".

18 Q. Uh-huh.

19 A. Is that the parts that you want me to compare?

20 Q. Well, any of it related to groundwater,
21 assessment of groundwater impact. Let me see. In the
22 2008 permit, under "Special Conditions", I see seven
23 paragraphs, and in the 2015 modification I see eight
24 paragraphs.

25 A. Uh-huh. Yeah. I don't -- I mean I don't

1 really think there's -- I haven't really identified any
2 differences in the groundwater monitoring or reporting
3 requirements that are -- maybe there are some slight
4 differences in the wording, but there's -- I think
5 they're the same.

6 Q. All right. Let me ask you this. The name of
7 the facility changed in 2008. It was addressed to
8 Highway 93 C & D Landfill, was it not?

9 A. 2008? Are you looking at the permit cover
10 page? I think so.

11 Q. The --

12 A. 93 --

13 Q. The front page of the permit itself, LF2-0003,
14 says, "Name of Facility: Highway 93 C & D Landfill".

15 A. Yes. Uh-huh.

16 Q. Okay. And in the 2015 modification it says,
17 "Name of Facility: Highway 93 Class Two Landfill".

18 A. Correct.

19 Q. All right, so the name changed. Is that right?

20 A. You know, we, we -- I don't know if the company
21 name changed. We referred to it differently in our
22 permit because, you know, the new regs. I think we were
23 still sort of using the old -- the old names before. I'm
24 not sure what -- I'm not sure if this Highway 93 C & D
25 Landfill was actually a company name at the time or

1 whether we --

2 Q. Well, the company name is MRR Pickens --

3 A. Right.

4 Q. -- LLC, isn't it?

5 A. That's, that's my understanding, yes.

6 Q. Okay. But "Name of Facility" -- I mean a
7 permit is a pretty formal document, isn't it?

8 A. Yes.

9 Q. And it indicates "Name of Facility" in '08
10 "Highway 93 C & D Landfill" and indicates in year 2015
11 modification "Highway 93 Class Two Landfill". Is that
12 right?

13 A. That's correct.

14 Q. Okay. Additionally, if you would take a look
15 at Special Condition Number Two. It's actually A2 -- in
16 each of them. Let's hold these side by side, please,
17 sir. Now, in 2008 --

18 A. We're looking at A2?

19 Q. A2, yes, sir, under "Special Conditions". All
20 right, A2, "This permit is limited solely to the disposal
21 of items listed in Appendix 1 of R61-107.19."
22 Emphasizing "all other waste, including animal
23 carcasses, are prohibited from disposal in this
24 landfill." Did I read that correctly?

25 A. Yes.

1 Q. So we can talk about what's listed or not
2 listed on Appendix 1 shortly, but aside from what's
3 listed on Appendix 1, it specifically said, "All other
4 waste, including 'animal carcasses' are prohibited."
5 Isn't that right?

6 A. Yeah, unless the permit's modified. That's
7 correct.

8 Q. We'll get to -- unless the permit's modified.
9 But under the '08 permit, all other wastes were
10 prohibited, right?

11 A. Yeah, that's what it says.

12 Q. Okay. And then in the 2015 modification, "This
13 permit is limited to the disposal of the items listed in
14 Appendix 1 of R61-107.19, 'and any other waste approved
15 by the department for disposal in a Class Two landfill'
16 pursuant to R61-107.19, Part IV, Section C2." So aside
17 from the items that are listed on Appendix 1 of the reg,
18 previously, in '08, it said, "All other wastes including
19 animal carcasses are prohibited from disposal in the
20 landfill."

21 A. Uh-huh.

22 Q. And the modification in '15 said, "Any other
23 waste approved by the Department."

24 A. Uh-huh.

25 Q. Would you agree that that's correct?

1 A. Yes.

2 Q. All right. So the change from '08 to your
3 modification in '15 took away the prohibition of other
4 waste and added "Any other waste approved by the
5 Department", didn't it?

6 A. Well, I mean, first of all, the wording is
7 different --

8 Q. Wait a minute --

9 A. -- but the process --

10 Q. -- first of all, am I correct in that
11 statement?

12 MR. GOINGS: Let the witness finish his
13 answer and then you can follow up.

14 Q. First answer my question, and then I'm happy
15 for you to explain. My question is, did -- in '08 it
16 said, "All other wastes are prohibited," your
17 modification in '15 took out that prohibition language
18 and added expansive language of "Any other waste approved
19 by the Department for disposal in a Class Two". Didn't
20 it make that change?

21 A. Well, Item -- clearly we've read Item 2 on both
22 and --

23 Q. First of all, am I correct that that change --

24 A. -- they say something different.

25 Q. -- was made?

1 A. A change was made, yes.

2 Q. All right, sir. You can explain whatever you
3 want to explain about it.

4 A. Okay. Well, I mean what -- I guess I was only
5 going to say that the process for the regulation didn't
6 change. In other words, if they'd asked for a new waste
7 under this permit or a new waste under the -- if they'd
8 asked for new waste under the '08 permit or a new waste
9 under the '15 permit, the process would not have been any
10 different from DHEC's point of view.

11 Q. All right, so from -- but as far as the
12 differences between the '08 permit and the modification
13 in 2015, which you and MRR had decided to call a "minor
14 modification" to avoid public notice --

15 MS. KING: Object to form.

16 A. I don't understand what you're just saying
17 there.

18 Q. Oh, you didn't have discussions with MRR about
19 calling this a "minor modification"?

20 A. I did not, no.

21 Q. Did anybody at DHEC have those discussions?
22 Because I'm going to show you some MRR documents
23 submitted to DHEC that say that.

24 A. Okay. Well, not to my knowledge. I don't
25 recall that.

1 Q. We'll get to those documents in a minute. I'm
2 talking about documents submitted by CEC. Do you recall
3 there being a Work Plan for Hydrogeologic Study and
4 Hydrogeologic Study Minor Modification, all submitted by
5 CEC, Civil and Environmental Consultants, Inc., on
6 behalf of MRR? Remember seeing those engineering reports
7 coming --

8 A. I mean I'm aware that they were -- there were
9 engineering reports, yes.

10 Q. Okay. I'm going to get to those shortly, but -
11 -

12 A. Okay.

13 Q. So let's talk about the differences then from
14 '08 to your "minor modification", as you choose to
15 describe it, in the 2015 modification. So first of all
16 we've got an alternate design, as you stated in your
17 letter. Is that correct?

18 A. Yes.

19 Q. All right. And you've got -- you're adding a
20 liner. Is that right?

21 A. We approved the addition of a liner, yes.

22 Q. All right. There were final cover changes. Is
23 that right?

24 A. That's part of the liner, yes.

25 Q. All right. You admitted that -- earlier today

1 you described this as adding Class Three features to this
2 Class Two landfill.

3 A. I don't think I used the word "features", but
4 yeah, the class, the design -- I think I said it would be
5 essentially --

6 Q. I wrote down --

7 A. -- the same as a Class Three as far as the
8 liner design.

9 Q. Right, talking about the changes, and I wrote
10 down, "essentially the same design as a Class Three." Is
11 that right?

12 A. I believe I did say it that way, yes, sir.

13 Q. Okay. And additionally, we just talked about
14 changing from Appendix 1 in '08, Appendix 1, and "All
15 other waste, including animal carcasses, are prohibited"
16 and changing that and instead saying, "Waste on Appendix
17 1 and any other waste approved by the Department for
18 disposal in a Class Two." So all of those changes
19 occurred from the '08 permit to this "minor modification"
20 done in 2015. Is that right?

21 A. There was a change in design and --

22 Q. Yes, sir.

23 A. -- there were differences in wording between
24 the two permits.

25 Q. Well, when you talk about differences in

1 wording, if, if there's a local host government, such as
2 a county, that has made it clear that it doesn't want
3 waste other than construction and demolition and land
4 clearing debris, C & D LCD, and in the '08 permit it says
5 all other waste other than Appendix 1 "are prohibited",
6 that's a big difference from expanding that to say
7 Appendix 1, "and all other waste approved by the
8 Department." You took out the prohibition.

9 A. Right. Yeah. I mean, I understand why -- in
10 DHEC's --

11 MS. KING: Object to the form of the question.

12 Q. Didn't you? You took out the prohibition?
13 Previously there was a prohibition on any other wastes
14 other than Appendix 1, wasn't there?

15 A. That's the wording in the permit, yes.

16 Q. And you took that out for the 2015
17 modification?

18 A. That's correct.

19 Q. Okay. All those changes -- if it's determined
20 that that's a "major modification", then your major
21 modification would have required, to be legal, public
22 notice, wouldn't it?

23 MS. KING: Object to form. Speculative.

24 Q. You can answer that question.

25 A. I don't -- I don't know.

1 Q. Wait a minute, you are the head of Solid Waste
2 Management --

3 A. Right.

4 Q. -- and you don't know if major modification
5 would require --

6 A. I'm not, I'm not -- you said if it's
7 determined. That's what I'm saying I don't know, I
8 don't.

9 Q. Let me ask it this way then. If it's a major
10 modification, it requires public notice, doesn't it?

11 A. Yes. If DHEC determines it to be major, then
12 it requires public notice.

13 Q. All right. And it still -- as you sit here
14 today, it's still the opinion of Kent Coleman that the
15 changes we just discussed from the '08 permit to what you
16 call a minor modification in 2015 is a minor
17 modification?

18 A. Yes.

19 Q. All right. Does anybody in your department
20 agree with that?

21 A. I assume so. I mean you'd have to ask them.

22 Q. All right. Who is superior to you within the
23 DHEC, within the Department?

24 A. My direct supervisor is Stan Clark.

25 Q. All right. Does Stan Clark agree that these

1 changes that occurred from '08 to your "minor
2 modification" in 2015, does he agree that that's a minor
3 modification?

4 A. At the time that we made the decision he did.

5 Q. Did you specifically run by him all of the
6 changes that were being made, including the design
7 change?

8 A. We discussed the addition of a liner.

9 Q. Do you know if he still holds that view today?

10 A. No, I don't.

11 Q. All right. And who's above him in the chain of
12 command in the Department?

13 A. His boss is Daphne Neel.

14 Q. And what is her position?

15 A. Bureau Chief for Land and Waste.

16 Q. Okay. Do you know if she agrees that all these
17 changes we just discussed under the Regulation Paragraph
18 48 would be legitimately a minor modification?

19 A. I don't know. I haven't discussed it with her.

20 Q. And in the chain of command at DHEC, who is
21 superior to her?

22 A. Myra Reece.

23 Q. I'm sorry?

24 A. Myra Reece.

25 Q. And tell me her job title, please.

1 A. Director of Environmental Affairs.

2 Q. Okay. Any idea if she agrees that legitimately
3 the changes made from '08 to 2015 are legitimately a
4 minor modification?

5 A. I have no idea. She did not hold that position
6 at that time that we made the decision.

7 Q. All right. Do you know if somebody in her
8 position approved that at the time?

9 A. I don't know.

10 Q. All right. And in the chain of command at
11 DHEC, who is superior to her?

12 A. Agency director.

13 Q. All right. Is that the executive director?

14 A. Catherine Heigel.

15 Q. All right. Any idea if Ms. Heigel or her
16 predecessor would agree that legitimately the changes we
17 just described from '08 to 2015 legitimately qualify as a
18 "minor modification?"

19 A. No, I don't know.

20 Q. All right. So whatever your opinion is, and I
21 understand you were head of Solid Waste Management when
22 that decision was made, but you're not the final arbiter
23 of DHEC's official position, are you?

24 MR. GOINGS: Object to the form of the
25 question.

1 A. I mean my job is to make decisions like this.
2 Make sure if I think they're questionable or
3 controversial or might bring on some, you know, issues,
4 then I'll raise that to the person above me and they need
5 to agree. I don't specifically -- I'm pretty sure that
6 this one was mentioned at the time we made the decision.
7 And as far as whether I'm the final arbiter, I mean I
8 don't -- I don't know how to answer that other than to say
9 that it's my job to make these decisions.

10 Q. All right. There are people superior to you in
11 the chain of command that we just discussed that could
12 veto whatever decision you made. Is that right?

13 A. Certainly, yes.

14 Q. Or could interpret this as being not
15 legitimately a minor modification but under the plain and
16 clear language of the reg, they could determine that it's
17 a major modification, couldn't they?

18 A. Now or -- they could have, I guess. I don't
19 know --

20 MS. LINEN: Object to form.

21

22 BY THE WITNESS: (Resuming)

23 A. I don't know what the mechanism is --

24 MS. LINEN: Speculative. Object to form.

25 Q. All right, you can still answer.

1 A. I don't know because I don't understand the --
2 I don't understand how the process would be for going
3 back -- them going back and making a different decision
4 at this point.

5 Q. As we sit here today, has the Department, that
6 is DHEC, ever formally mailed the 2015 permit
7 modification to Pickens County?

8 A. I am not sure.

9 Q. All right. Have you ever seen anything to
10 indicate that that was mailed to Pickens County?

11 A. I believe they were given a copy of the permit
12 at some point, probably email, but I don't know when that
13 was.

14 Q. Do, do you have some evidence of that that you
15 could show?

16 A. I just have a recollection that -- and it would
17 have been fairly recently.

18 Q. Recently --

19 A. They may have asked for it, yes.

20 Q. -- since this thing came up.

21 A. Yeah, uh-huh, right.

22 Q. But the regulation that I read says that DHEC
23 is supposed to "mail" the permit, any proposed new permit
24 or new permit to affected persons. Is that right?

25 A. It says that they're supposed to mail it?

1 Q. That's how I read the regulation, yes, sir. I
2 believe it says that exactly.

3 A. Okay. I don't -- I don't recall whether --
4 whether they were mailed a copy of the draft permit or
5 the permit back, you know, at some point in the past. I
6 don't remember.

7 Q. The draft of the 2015 permit?

8 A. Right.

9 Q. All right. Should they have been mailed the
10 draft of the 2015 permit?

11 MR. GOINGS: Object to the form of the
12 question; calls for legal conclusion.

13 BY MR. POLIAKOFF:

14 Q. You can answer that. Because it should --
15 should Pickens County have been mailed --

16 A. Well, if it were determined to be a major
17 modification, we would have mailed it to them.

18 Q. All right. We agree with that. If it's
19 legitimately a major modification, Pickens County was
20 entitled to notice, weren't they?

21 A. Yes.

22 Q. All right. I haven't seen any indication that
23 Pickens County was ever formally notified.

24 A. Right.

25 Q. Are you able to tell me --

1 MS. LINEN: Object to form. I'm sorry.

2 BY MR. POLIAKOFF:

3 Q. Are you able to tell me of any formal mailing
4 or providing of formal notice to Pickens County either of
5 the proposed draft permit modification or even the permit
6 modification after it was issued?

7 MR. GOINGS: Object to the form of the
8 question.

9 BY MR. POLIAKOFF:

10 Q. You can answer.

11 A. I don't -- I don't recall.

12 Q. In fact, wasn't the entire purpose of calling
13 it a "minor modification" instead of a "major
14 modification," the entire purpose of that is to avoid
15 public notice, isn't it?

16 A. No.

17 Q. What other purpose is there?

18 A. I don't -- I don't understand. The purpose --
19 the purpose is if, if we determine it to be minor,
20 there's a process. And if we determine it to be major,
21 there's a process.

22 Q. And when --

23 A. And we follow the process.

24 Q. And the difference between the two processes
25 is notice to the public and notice to affected persons,

1 isn't it?

2 A. Yes. That's part of it.

3 Q. What other -- what else is different? The
4 effect of calling it minor versus the effect of calling
5 it major is all about whether you have to notify the host
6 local government, affected persons, and the public.

7 MR. GOINGS: Object to the form of the
8 question.

9 BY MR. POLIAKOFF:

10 Q. Now you agree with me, if it's a major
11 modification, that, quote, affected persons, host local
12 government and the public are entitled to notice. Is
13 that right?

14 MR. GOINGS: Object to the form of the
15 question.

16 BY MR. POLIAKOFF:

17 Q. What else is different? If it's a minor
18 modification, what -- what other differences are there in
19 effect from calling it a minor or a major?

20 MR. GOINGS: Same objection.

21 A. Well, the the method, the process that we use
22 or the methods that we use to change -- to modify the
23 permit may differ depending on the nature of it.

24 Q. How does it differ other than the fact that you
25 can avoid giving notice to affected persons, host local

1 government, and the public?

2 A. Well, we may just decide to modify it by letter
3 versus changing the permit itself or something like that,
4 depending on what the issue is.

5 Q. Right, because minor modification, if it's a
6 legitimate minor modification, it says, "A change that
7 keeps the permit current with routine changes to the
8 facility or its operations or an administrative change,"
9 is that right?

10 A. That's -- that's the wording in the
11 definition, yes.

12 Q. All right. But you would agree with me, we've
13 already discussed this, major modification includes
14 design changes, doesn't it?

15 A. That is in the definition.

16 MR. GOINGS: Object to the form of the
17 question.

18 Q. Yeah, and this was a design change, as you
19 described in your letter, wasn't it?

20 MR. GOINGS: Object to the form of the
21 question.

22 A. Yes.

23 Q. Okay. So whose idea was it to call this a
24 minor modification instead of a major modification? Was
25 it your idea or was it MRR's idea?

1 A. Well, I mean it's got to be my idea. I don't --
2 you know, and the Department's idea. We don't -- people,
3 people can make any suggestion they want to, to me, but
4 it doesn't really matter. I have to make a --

5 Q. Well, did MRR ask you to call it a minor
6 modification?

7 A. I don't know.

8 Q. Did they come and say, "Hey, we'd like to do
9 this without notifying Pickens County?"

10 A. No.

11 Q. Because if they notified Pickens County, they
12 knew Pickens County would not approve this change,
13 wouldn't you agree?

14 A. No.

15 MS. KING: Object to form.

16 MS. LINEN: Object to form.

17 Q. Why not notify Pickens County?

18 A. I -- my information at the time was that they
19 were already talking to Pickens County about the permit.

20 Q. Who told you that?

21 A. I just remember some conversations in a
22 meeting or something about the County and --

23 Q. Conversations with MRR?

24 A. Uh-huh, yeah.

25 Q. Where they told you they were giving

1 information to the County?

2 A. Uh-huh. I just -- not specifically. I don't --
3 -- I don't have any specific information. I just remember
4 that there were conversations.

5 Q. All right, where MRR was indicating to you that
6 it was telling the County about this change in the
7 permit?

8 A. That they were talking to the County about the
9 permit, yes.

10 Q. Okay. And about making this modification that
11 ended up being the 2015 permit modification. MRR told
12 you that?

13 A. They told me they, they were talking to the
14 County about their permit and modifying their permit.

15 Q. So you assumed that the County was being fully
16 informed because of what MRR told you?

17 MR. GOINGS: Object to the form of the
18 question.

19 A. I don't really remember the timing of that,
20 that conversation, so --

21 Q. All right. What I'm asking you --

22 A. I'm not saying that it was -- took the place of
23 any noticing. I'm not --

24 Q. All right. Relying on MRR to tell you that
25 they were giving appropriate information to the County,

1 that doesn't substitute a true notice to the public --

2 A. Right, and I wasn't relying on that.

3 Q. All right. So anyway, let me ask you about
4 several things in particular.

5 THE REPORTER: Are you going to mark these
6 exhibits?

7 MR. POLIAKOFF: Yeah.

8 BY MR. POLIAKOFF:

9 Q. I'm giving you excerpts from it. I have the
10 entire document here. It's called, "Work Plan for Site
11 Specific Hydrogeologic Investigation." What I'm handing
12 you is the cover sheet and two pages of it. Let's mark
13 that as -- why don't we mark the numbers consecutively
14 just so we can keep up with it? What was the last number
15 of the Plaintiff's?

16 MS. KING: 8.

17 MR. POLIAKOFF: Okay. Why don't we mark
18 this as Number 9, please?

19 THE REPORTER: You want Plaintiff's, as
20 well?

21 MR. POLIAKOFF: No, let's mark it as
22 Pickens, but still mark it Number 9,
23 please.

24 THE REPORTER: Okay. Yes, sir.

25 MR. POLIAKOFF: I'm sorry. That was the -

1 - did I just hand you the Work Plan?
2 Okay. Let me give everybody copies here.
3 THE REPORTER: Can we go off the record
4 just for a second? I just need to know
5 how many pages this is.

6 MR. POLIAKOFF: Three.

7 COURT REPORTER: Do you want me to get
8 some paperclips or something, so we can
9 keep this all together?

10 MS. POLIAKOFF: That'd be wonderful.

11 MR. GOINGS: We're going off the record?

12 THE REPORTER: Yeah, we're off.

13 VIDEOGRAPHER: Off the record at 2:01.

14 (OFF THE RECORD | BREAK 2:01 P.M. - 2:09 P.M.)

15 VIDEOGRAPHER: This is video No. 3. We're
16 on the record at 2:09.

17 MS. KING: Can we get a copy of this, the
18 entire --

19 MR. POLIAKOFF: I've got it in a notebook
20 here, and I'm happy if you've got some
21 staff that can copy it. I mean, your
22 people submitted it to DHEC.

23 MS. KING: Okay. But you're using it in a
24 deposition.

25 MR. POLIAKOFF: I'm using three pages of

1 it, but I can find it if you want to make
2 a copy of it.

3 MS. KING: Sure. Thanks.

4 MR. POLIAKOFF: Let's see. Hold on.
5 We're plan --

6 MS. LINEN: This is 9, right? Exhibit 9?

7 MR. POLIAKOFF: Yes. Uh-huh.

8 THE REPORTER: Is that what he has in
9 front of him?

10 MR. POLIAKOFF: Yes.

11 THE REPORTER: Here's the -- it doesn't
12 matter.

13 THE WITNESS: That's 9.

14 MR. POLIAKOFF: And August 14 --

15 MS. LINEN: Do they keep going --

16 THE WITNESS: Well, that's the sticker.
17 It --

18 THE REPORTER: I just want to clarify; all
19 of what --

20 THE WITNESS: She just said 9.

21 THE REPORTER: -- you guys are saying
22 right now is on the record?

23 MS. KING: Oh, it's on the record?

24 MR. POLIAKOFF: That's fine with me.

25 MS. LINEN: I just want to know, was this

1 Defendant's 9? That's what I was asking.

2 THE WITNESS: It's consecutive though. I
3 mean --

4 MS. KING: Right.

5 THE WITNESS: There's not a Defendant's 1
6 --

7 MR. POLIAKOFF: Right.

8 THE WITNESS: -- that I know of.

9 MS. LINEN: Right.

10 THE REPORTER: Let's just go off the
11 record until she comes back.

12 MR. POLIAKOFF: Okay.

13 (OFF THE RECORD DISCUSSION)

14 VIDEOGRAPHER: We're on the record at
15 2:11.

16 (DEFENDANT'S EXHIBIT NO. 9; MARKED FOR IDENTIFICATION)

17 MR. POLIAKOFF: Are you ready to go?

18 MS. KING: Yes. Thank you.

19 MR. POLIAKOFF: Okay.

20 CONTINUATION OF CROSS-EXAMINATION

21 BY MR. POLIAKOFF:

22 Q. All right. I've handed you three pages from --
23 we've marked it as Pickens County Exhibit 9, Work Plan
24 for Site Specific Hydrogeologic Investigation.

25 It says, "Prepared for MRR Pickens, LLC." It

1 references the Highway 93 landfill, and it's by --
2 prepared by Civil & Environmental Consultants, Inc. The
3 first date is August 2014. Below that, it says revised
4 September 19, 2014.

5 First of all, do you see that?

6 A. Yes.

7 Q. And is this a copy of a report that was
8 submitted to your department by MRR through its
9 consultant, Civil & Environmental Consultants?

10 A. This -- this would be the type of report that
11 would be submitted to us as part of a process. I don't --
12 I mean, I don't see a received stamp on it. Was there one
13 on the cover?

14 Q. I might be able to find out.

15 A. I'm assuming.

16 Q. I could represent to you that it was submitted
17 to me through the DHEC response that I received
18 yesterday.

19 A. Okay.

20 Q. All right. So August '14, do you recall that
21 by August of 2014, there were discussions between DHEC
22 and MRR concerning site specific hydrogeologic
23 investigation?

24 A. Well, I mean, that doesn't surprise me. I
25 couldn't have recalled it off the top of my head prior to

1 seeing this document, but I can see that there was some -
2 - there was a submittal at that time related to this
3 landfill.

4 Q. All right. Do you have any information as to
5 whether Pickens County at the time got any notice of this
6 document?

7 A. No.

8 Q. All right. If you would turn to the third page
9 of what I've -- what I've handed to you, it's actually --
10 at the bottom, it indicates that it's page 5 of the
11 actual report. And under paragraph 2.1, Class Two permit
12 modification, do you see that?

13 A. Uh-huh, yes.

14 Q. All right. The second sentence of that says,
15 "The permit issued in November 2008 is for a construction
16 demolition and land clearing landfill with 7.3 million
17 cubic yards of capacity."

18 First of all, did I read that accurately?

19 A. Yes.

20 Q. And would you agree that that's an accurate
21 statement, that is that the November 2008 permit was for
22 a construction demolition and land clearing landfill?

23 A. Well, the -- the 2008 permit was a Class Two
24 landfill, so this --

25 Q. Can you take a look at --

1 A. -- is someone else's terminology, not ours.

2 Q. Would you take a look at the 2008 permit for
3 me, please?

4 A. Uh-huh.

5 Q. I believe it's Exhibit No. 5, Plaintiff's
6 Exhibit No. 5.

7 A. It says Class Two solid waste landfill permit.

8 Q. Right, but let's look at the front page of the
9 permit itself.

10 And, first of all, the name of it is Highway 93
11 C&D Landfill, isn't it?

12 A. It says Class Two landfill permit No. LF2-
13 00003.

14 Q. Where are you reading from? Which page?

15 A. The top of the permit, the first page right
16 there (indicating).

17 Q. Class Two landfill, right. But the name of the
18 facility, you would agree, is Highway 93 C&D Landfill; is
19 that --

20 MR. GOINGS: Object to form.

21 A. Yeah. That's -- that's on that page.

22 Q. All right. And look at the DHEC letter on the
23 front signed by you, the November 3, 2008 letter signed
24 by you.

25 A. Uh-huh.

1 Q. The -- it says, "Enclosed is a Class Two solid
2 waster landfill permit for the Highway 93 construction
3 and demolition landfill."

4 So, first of all, did I read that correctly?

5 A. C&D, yes.

6 Q. Okay. So it is a Class Two, but it also
7 indicates that by the name itself is a construction and
8 demolition landfill.

9 A. Right. The name -- that's the way it was
10 named.

11 Q. Okay. And then we've talked about special
12 permit condition No. 2 that talked about Appendix 1, and
13 it prohibited all other wastes, including animal
14 carcasses, other than what's on Appendix 1 1; is that
15 right?

16 A. Yes.

17 Q. Okay. So going back, then, to the CEC report,
18 the work plan submitted apparently first in August of
19 2014, CEC, as you know -- you would agree they're the
20 consulting firm that submitted engineering reports to
21 the department regarding this permit modification; is
22 that right?

23 A. Yes, yes.

24 Q. Okay. And they say, "The permit issued in
25 November 2008 is for a construction demolition and land

1 clearing landfill."

2 A. Uh-huh.

3 Q. At least that's what CEC on behalf of MRR said.

4 A. That's right.

5 Q. Okay. Now, go to the next paragraph, still
6 under 2.1.

7 A. Uh-huh.

8 Q. And I'm going to read.

9 "During recent meetings between MRR and DHEC,
10 it was confirmed that the modification of the Class Two
11 permit to meet the -- excuse me -- to meet the
12 requirements of regulation R61-107.19, part V, Class
13 Three landfills would require a minor permit
14 modification."

15 Do you see -- did I read that correctly?

16 A. Yes.

17 Q. All right. So, first of all, meetings between
18 MRR and DHEC confirming that that modification would
19 require a minor permit modification, who was in those
20 meetings?

21 A. I most likely was in that meeting. I don't
22 specifically recall, but I do recall that, you know, we
23 were asked, as we often are by a permittee, what type of
24 modification this would be considered. And then we
25 communicated our decision to them.

1 Q. Did MRR suggest that it should be a minor
2 permit modification or DHEC suggest that?

3 A. We -- they asked us would it be minor or major.
4 We informed them that we had decided it would be minor.

5 Q. And, in fact, did MRR ask you to -- to
6 characterize it as minor?

7 MR. GOINGS: Object to form. Question
8 asked and answered.

9 MS. KING: Object to form.

10 BY MR. POLIAKOFF:

11 Q. You can answer that.

12 A. No, I don't recall that.

13 MR. POLIAKOFF: And, by the way, y'all
14 can't double team me. You're entitled to
15 one attorney per client. And if Ms. King
16 is asking the questions, she's the one
17 who is supposed to object.

18 MR. GOINGS: I don't see that in the rule
19 anywhere, but I'm going to object where
20 appropriate. And you and your co-
21 counsels can object where appropriate,
22 and we can all get along.

23 MR. POLIAKOFF: I'm objecting for two
24 attorneys. The standard rules are that
25 only one attorney per party can talk.

1 BY MR. POLIAKOFF:

2 Q. Anyway, first of all, was it between you and
3 MRR, or was it other DHEC people and MRR? Do you remember
4 the meetings -- do you actually remember the meetings
5 where it was discussed?

6 A. I don't specifically remember a date, but I do
7 remember having a meeting where we were asked if we had
8 decided whether this would be a major or a minor
9 modification and that we informed them --

10 Q. And was MRR asking you to call it a minor?

11 A. No.

12 MS. KING: Object to the form; asked and
13 answered.

14 MS. LINEN: Objection.

15 A. It's just like, you know, most applications,
16 the applicant wants to know whether it's going to be
17 major or minor if they're asking for a modification
18 because, you know, in one sense, the timing of it is --
19 you know, it takes longer. They need to understand the
20 time frame for their -- for their business purposes or
21 whatever. So that's a very common question.

22 Q. And the timing really has to do with the fact
23 that if it's major, you have to give notice to the public
24 --

25 A. Right.

1 Q. -- to effected persons and the host's local
2 government?

3 A. Right. The noticing adds time.

4 Q. Right. That adds to the time too.

5 A. That is true.

6 Q. All right. So what we're talking about here is
7 modifying a Class Two permit. This regulation, R61-
8 107.19 part V, when you get to part V, you're in Class
9 Three, aren't you?

10 A. I believe that is Class Three, yes.

11 Q. Okay. In fact, it says part V Class Three
12 landfills.

13 A. Uh-huh.

14 Q. So we're changing a Class Two permit to meet
15 the requirements of a Class Three permit?

16 MS. KING: Object to the form.

17 BY MR. POLIAKOFF:

18 Q. Is that right?

19 A. No.

20 Q. Well, what does the sentence say? It says --

21 A. Well, you know --

22 Q. Let me read it.

23 "The modification of the Class Two permit to
24 meet the requirements of regulation R61-107.19 part V,
25 Class Three landfills would require a minor permit

1 modification."

2 That's what it says, isn't it?

3 A. Well, I mean, you know, I can't control how
4 everybody that sends me a document phrases things, but,
5 you know, this means really very little to me in terms of
6 how we proceeded.

7 Q. All right. Would you agree this is what was --
8 this is a report submitted by the consulting engineering
9 environmental firm for MRR, isn't it?

10 A. Yes.

11 Q. All right. Now, would you agree that what you
12 were doing -- I believe you already agreed that what you
13 were doing in this modification was taking a Class Two
14 landfill and adding Class Three features to it or Class
15 Three design to it.

16 MS. KING: Object to form.

17 MR. GOINGS: Object to the form of the
18 question.

19 A. What I -- what I --

20 MR. POLIAKOFF: What's your objection?

21 MR GOINGS: You are mischaracterizing the
22 testimony of this witness. That's what

23 I'm objecting to. If you would not --

24 MR. POLIAKOFF: That's -- that's not a
25 form objection. That's --

1 MR. GOINGS: It is, it is, because you're
2 mischaracterizing what this deponent has
3 said.

4 MR. POLIAKOFF: I'm on cross examination.

5 MR. GOINGS: And you're putting -- and
6 you're putting your own spin on it, so I
7 object to the form of the questions that
8 you asked this witness.

9 MR. POLIAKOFF: This is cross
10 examination.

11 BY MR. POLIAKOFF:

12 Q. First of all, didn't you earlier tell me today
13 -- let me get the quote exactly -- that essentially the
14 same design as a Class Three? Didn't you say that
15 earlier today?

16 A. In terms of the liner. We were talking about
17 the liner.

18 Q. Okay.

19 A. And, yes, what they had proposed was
20 essentially the same as a Class Three liner design.

21 Q. Okay. Now you agree that under the
22 Demonstration of Need, the regulations of South
23 Carolina, there can be no Class Three landfill in Pickens
24 County; isn't that right?

25 MS. KING: Object to the form.

1 A. You mean no new class --

2 Q. No new class --

3 A. -- landfill?

4 Q. Right.

5 A. There --

6 Q. No new Class Three.

7 A. There -- there isn't one.

8 Q. There isn't one?

9 A. That's right.

10 Q. Nor could anyone, today, permit a new Class
11 Three in Pickens County, could they?

12 A. Not if it were commercial.

13 Q. All right. Non-commercial is, for example,
14 where you have a utility that's producing its own waste
15 and it has its own landfill, typically adjacent to where
16 it's producing the waste, and it manages itself; it
17 doesn't take it from other companies.

18 MS. KING: Object to the form.

19 BY MR. POLIAKOFF:

20 Q. That's a non-commercial, right?

21 A. That would be, essentially, non -- yes,
22 non-commercial.

23 Q. All right. So a commercial Class Three, under
24 the Demonstration of Need regs, wouldn't be permitted in
25 Pickens County today, would it?

1 A. That's true.

2 Q. And also, in addition to that, the
3 Demonstration of Need issue, the county -- the Pickens
4 County Solid Waste Management Plan doesn't allow for
5 Class Threes, does it?

6 A. I don't recall.

7 Q. Okay. You -- I can find it if you want me to.
8 But you would agree that there is not supposed to be a
9 Class Three landfill being permitted by MRR, presently,
10 in Pickens County, is there?

11 A. There's not --

12 MS. KING: Object to the form.

13 BY THE WITNESS: (Resuming)

14 A. There's not. To my knowledge, there is no
15 application for a Class Three landfill in Pickens County.

16 Q. So what MRR has been trying to get you to do
17 is, really, call it a Class Two, but add the features of a
18 Class Three landfill. Isn't that --

19 MS. LINEN: Object to form.

20 BY MR. POLIAKOFF:

21 Q. Isn't that --

22 MS. LINEN: Lack of foundation.

23 MR. POLIAKOFF: It's cross-examination

24 BY MR. POLIAKOFF:

25 Q. Isn't that --

1 MR. GOINGS: Object to the form of the
2 question.

3 MS. LINEN: Object to the form.

4 BY MR. POLIAKOFF:

5 Q. -- circumventing --

6 MS. LINEN: Lack of foundation.

7 BY MR. POLIAKOFF:

8 Q. -- the regulation, sir?

9 A. No.

10 Q. Tell me how -- if you call it a Class Two, but
11 you add the Class Three features, how that doesn't
12 circumvent both the Demonstration of Need Regulation and
13 the County Solid Waste Management Plan.

14 MR. GOINGS: I object to the question.

15 And I would request, Counsel, that you do
16 not bully or try to intimidate the
17 witness.

18 BY MR. POLIAKOFF:

19 Q. Go ahead.

20 A. Okay. If -- if someone has a landfill and --
21 and they -- a Class Two landfill, let's just talk about.
22 And they propose to me to upgrade that facility and add a
23 liner, which would make it more protective, but they
24 don't ask for any new additional waste streams or in any
25 other way for that landfill to be changed, then I don't

1 consider that circumventing any regulation.

2 Q. Okay. You -- We've already discussed that the
3 design has changed from '08 to the 2015 --

4 A. Okay.

5 Q. -- modification.

6 A. Right.

7 Q. You agree with that?

8 A. Yes. Uh-huh.

9 Q. All right. But anyway, let's go back to this
10 Exhibit No. 9.

11 First of all, "During recent meetings between
12 MRR and DHEC, it was confirmed that the modification of
13 the Class Two permit to meet the requirements of
14 Regulation R61-107.19, Part V, Class Three landfills
15 would require a minor permit modification."

16 All right. And I understand from your prior
17 testimony today that you've already told us that you
18 determined that that would be a, quote, "minor
19 modification," end quote. But the rest of the statement
20 is also true, isn't it? That what you're doing is
21 modifying the Class Two permit to meet the requirements
22 of Regulation 61-107.19, point -- Part V, Class Three
23 landfills?

24 A. No. That's not correct.

25 Q. Was MRR wrong here?

1 A. Yes.

2 Q. Oh, okay. So --

3 A. Their consultant misstated. And I certainly
4 don't agree with the statement in that sentence that we
5 discussed that in any way. What I agree to, what we
6 discussed, was they asked a question about whether this
7 would be a minor or major mod; and in a meeting, we did
8 inform them that we had decided it would be a minor
9 modification.

10 Q. Okay. How about the rest of the sentence? The
11 modification of the Class Two permit to meet the
12 requirements of Class Three? Isn't that what's being
13 done here?

14 A. They're adding a liner to a Class Two landfill.
15 I think we've pretty well established that. I don't -- I
16 don't know what this sentence means. I didn't write it.
17 I don't agree with it. I don't care what they say. I'm
18 going to do what the regulation requires.

19 Q. All right. At least we know that this was
20 submitted by the consultant for MRR, submitted to DHEC.
21 Is that right?

22 A. Yes. Uh-huh.

23 Q. Okay. All right. Let me show you another one.
24 That was the work plan. Let me show you a site specific -
25 - we'll mark this as No. 10.

1 (DEFENDANT'S EXHIBIT NO. 10; MARKED FOR IDENTIFICATION)

2 THE WITNESS: Do you want to give me that
3 paperclip or something, so I can put
4 something on there?

5 THE REPORTER: Didn't he put a staple --

6 THE WITNESS: No, not in that one. But I
7 can put a staple in it, if you want.

8 THE REPORTER: Actually, you know what,
9 let's -- for mine, just do these because
10 I'm going to have to scan them all and
11 everything, so.

12 THE WITNESS: All right. That's kind of
13 what I thought you were doing. What's
14 that?

15 THE REPORTER: That's your next exhibit.

16 THE WITNESS: Oh, okay.

17 MR. POLIAKOFF: Jess, you want the entire
18 report?

19 MS. KING: Yes, please. Thank you.

20 (OFF THE RECORD DISCUSSION)

21 MR. POLIAKOFF: All right. I think this
22 is the report. I'm handing it to Ms.
23 King, Mr. Coleman. It has a DHEC received
24 stamp on it, December of '14.

25 THE WITNESS: Sixteen? Okay.

1 MR. POLIAKOFF: December 16 of 2014.

2 MS. KING: Yeah, that's different than
3 the one you just handed -- it has no stamp
4 on the one you just handed them, the cover
5 page. Received.

6 MR. POLIAKOFF: Okay.

7 MS. KING: The short form one. So I'm
8 just trying to figure out if this is the
9 same document..

10 MR. POLIAKOFF: There's no differences in
11 the documents. One's got received on it;
12 the other doesn't.

13 MS. KING: Well, then it can't be the same
14 document.

15 MR. POLIAKOFF: I'm going to proceed. If
16 you want to voice an objection, you're
17 welcome to it, and you're welcome to copy
18 --

19 MS. KING: I'm not trying to be
20 argumentative, Gary. I'm just trying to
21 make sure that you have the right
22 document.

23 MR. GOINGS: They are two different
24 documents, if you look at them.

25 MS. KING: They're not the same document.

1 MR. POLIAKOFF: What's different about
2 it?

3 MS. KING: One is stamped received and one
4 is not. So one could be a draft. It
5 could be a -- it could be -- we don't
6 know. If you have this document that's
7 not stamped, the entire document, I'd
8 like to see that.

9 MR. POLIAKOFF: You know, while we're on
10 the record, that's the problem of having
11 a deposition when I've gotten bits and
12 pieces of information recently --
13 scattered out over the past month, and
14 bits and pieces of information received
15 yesterday from DHEC.

16 If you guys want to be that
17 technical, I guess we can slow this down.

18 MR. GOINGS: We're not trying to be
19 technical. I just want to make sure
20 you've got the right document because,
21 obviously, when documents get photocopied
22 and --

23 MR. POLIAKOFF: Let me -- let me see if --

24 MS. KING: If that document --

25 MR. POLIAKOFF: Well, let me see if it's

1 the same page.

2 MS. KING: -- didn't copy, the cover page

3 --

4 MR. POLIAKOFF: I'm going to look at --

5 MS. KING: -- and Page 1.

6 MR. POLIAKOFF: Let's look at Page 1.

7 MS. KING: Do you see those? Oh, is it
8 the first and second page?

9 MR. POLIAKOFF: The second page doesn't
10 have the received stamp. The first page
11 does have the received stamp.

12 MS. KING: Okay. I'm just --

13 MR. POLIAKOFF: Do you still have a
14 problem?

15 MS. KING: May I look at it?

16 MR. POLIAKOFF: You can look at it. And
17 Page 1 is the exact same of what I've
18 handed him, so it --

19 MR. GOINGS: Let's make a copy of that.

20 MS. KING: Yeah.

21 MR. POLIAKOFF: It would appear to me that
22 this controversy is there's one page that
23 has a stamp and the next page does not
24 have the stamp.

25 MS. KING: Okay.

1 MR. GOINGS: Gary, there is not a
2 controversy. I just want to make sure
3 we're all singing on the same sheet of
4 music, and apparently we haven't been.

5 MR. POLIAKOFF: No. We've been -- there's
6 no changing any documents here.

7 KIP MCALISTER: How many copies?

8 MR. GOINGS: Same amount, if you don't
9 mind.

10 THE REPORTER: What was his name? The man
11 that was just --

12 MS. KING: Kip McAlister.

13 THE REPORTER: McAlister.

14 MS. KING: With Williams Mullen.

15 MR. POLIAKOFF: Do you want to wait until
16 he's back, or can we proceed?

17 MS. KING: No, you can proceed.

18 BY MR. POLIAKOFF:

19 Q. Okay. All right. We've marked this Site-
20 Specific Hydrogeologic Investigation Report. Again, it
21 says, Highway 93 Landfill; prepared for MRR Pickens, LLC;
22 prepared by Civil & Environmental Consultants, Inc.

23 December '14 is typed. Handwritten, it says,
24 "12-15-14" on the front page. Do you see that, Mr.
25 Coleman?

1 A. Yeah. Handwritten, you mean the 12-15-14?

2 Q. Yes, sir.

3 A. Yes.

4 Q. It's handwritten, the --

5 A. Uh-huh.

6 Q. -- 12-15-14.

7 A. Yes, I see it.

8 Q. All right. If you would page over to the
9 second page of what I've handed you. It actually has a
10 numbered -- a No. 1 on that page.

11 A. Uh-huh.

12 Q. All right.

13 The second sentence under 1.1 says, quote,
14 "The permit, issued in November 2008, is for a
15 Construction, Demolition, and Land-Clearing Landfill."

16 First of all, did I read that correctly?

17 A. Yes.

18 Q. All right. The next paragraph.

19 "During recent meetings between MRR and DHEC,
20 it was confirmed that a modification of the Class Two
21 Landfill Permit to meet the requirements of Regulation
22 61-107.19, Part V., Class Three Landfills, would require
23 a minor permit modification," end quote.

24 First of all, did I read that correctly?

25 A. Yes.

1 Q. All right. So this is MRR again -- excuse me.
2 It's CEC, on behalf of MRR, in a report to DHEC, again
3 saying -- talking about the recent meetings between MRR
4 and DHEC and meeting the requirements, modification, of
5 the Class Two permit to the Class Three landfills.

6 Would you agree that that's what it says, at
7 least?

8 A. I would just -- I mean, can we just stick to
9 the quote? Like what the sentence says?

10 Q. All right. First of all, did I read it
11 correctly as to what it says?

12 A. Yes. When you read it, you did. Yes.

13 Q. All right. The next sentence says, "To satisfy
14 the Class Three Landfill requirements, MRR engaged Civil
15 & Environmental Consultants, Inc. (CEC) to conduct
16 further hydrogeologic evaluation of the proposed
17 landfill to provide additional data for a permit
18 modification."

19 First, did I read that correctly?

20 A. Yes.

21 Q. All right. So, first of all, would you agree
22 that what CEC is telling DHEC here, on behalf of MRR, is
23 quote, "to satisfy the Class Three landfill
24 requirements?"

25 Doesn't it say that?

1 MR. GOINGS: Object to the form of the
2 question.

3 A. My view of what this says is that they were --
4 this -- this is, you know, engineers basically talking
5 about design. And so they're saying that -- they're
6 talking about the design requirements; the liner design.

7 Q. Now, how do you know what they're talking
8 about? Are you surmising?

9 A. Because -- because I know what we were talking
10 to them about. I mean, I know what the -- what the
11 proposal is.

12 Q. All right. Well, see what they put in writing.

13 A. They're not say all the --

14 MR. GOINGS: Let -- let the deponent
15 finish answering the question.

16 BY THE WITNESS: (RESUMING)

17 A. -- requirements of Class Three. They're just
18 saying, in other words, this facility cannot take Class
19 Three waste, and it never could. And we never would
20 allow it, so that's not an issue. They're just talking
21 about the design.

22 Q. But the actual statement is, quote, "to
23 satisfy the Class Three landfill requirements."

24 Doesn't that say -- isn't that what CEC --

25 A. But they --

1 Q. -- on behalf of MRR --

2 A. They're saying that.

3 Q. -- put in this report to DHEC?

4 A. That is what they said in that sentence.

5 Q. All right. You agree that's what they said?

6 A. Uh-huh.

7 Q. All right. And isn't that what they -- what
8 you and MRR decided to do? Was change these Class Two
9 requirements to Class Three requirements?

10 MR. GOINGS: Object to the form of the
11 question.

12 MS. LINEN: Object to the form; asked and
13 answered.

14 A. No. No, that's not what we decided.

15 Q. All right. But that's what CEC said here,
16 isn't it?

17 A. That's the way --

18 MR. GOINGS: Objection. You're taking
19 this entire document out of context.

20 Q. I'm just asking -- it says, "to satisfy the
21 Class Three landfill requirements."

22 Doesn't that -- isn't that what the --

23 A. That's what CEC wrote in their report.

24 MR. POLIAKOFF: All right. All right.

25 Let me give you another one. Minor permit

1 modification. We'll mark this as No. 11.
2 I'll get you the whole report, Ms. King,
3 if you would like it.

4 (DEFENDANT'S EXHIBIT NO. 11; MARKED FOR IDENTIFICATION)

5 MS. KING: Yes, please.

6 THE REPORTER: Here.

7 THE WITNESS: Blank space.

8 MR. POLIAKOFF: I'm removing my sticky
9 notes from it.

10 MS. KING: Okay. Take your time.

11 MR. POLIAKOFF: All right. As best as I
12 can tell, this is the -- if you'd like to
13 see the -- well, there's an engineer's
14 stamp on the front.

15 MS. KING: Thank you.

16 (OFF THE RECORD DISCUSSION)

17 MR. POLIAKOFF: All right. This is
18 number? I'm sorry?

19 THE REPORTER: He has No. 11 right now.

20 MR. POLIAKOFF: Okay.

21 THE REPORTER: If you're making another
22 one, it would be No. 12.

23 MR. POLIAKOFF: The Minor Permit
24 Modification is 11 or 12?

25 THE REPORTER: Well, he has 11 right now.

1 Yeah. That would -- is that --

2 THE WITNESS: That's 11.

3 MR. POLIAKOFF: All right. Thank you.

4 MR. GOINGS: What does 11 say, because the
5 cover sheets all kind of look similar.

6 MS. KING: Minor --

7 MR. POLIAKOFF: It's Minor Permit
8 Modification.

9 THE WITNESS: It's March 2015.

10 MR. GOINGS: And it says updated August
11 15th underneath?

12 MR. POLIAKOFF: Yes.

13 THE WITNESS: Yes. Uh-huh.

14 MR. GOINGS: And that is 11?

15 THE REPORTER: Yes.

16 MR. POLIAKOFF: That's 11, yeah.

17 MR. GOINGS: Okay.

18 BY MR. POLIAKOFF:

19 Q. All right. First of all, would you agree that
20 on the front page of this that I've handed you, it says,
21 "Minor Permit Modification Highway 93 Landfill?"

22 It says, "Prepared for MRR Southern, LLC."

23 Do you see that?

24 A. Yes.

25 Q. Okay. MRR Southern, LLC is an entity different

1 from MRR Pickens, LLC; is it not?

2 A. My understanding is it's a parent or some
3 relationship like that, or some of the same principles.
4 But, yes, it's different.

5 Q. All right. But in any case, this document says
6 that it's prepared for MRR Southern, LLC; is that right?

7 A. Yes.

8 Q. All right. And it's prepared, also, by Civil &
9 Environmental Consultants, Inc.; is that right?

10 A. Yes.

11 Q. And it says, "March 2015, updated August
12 2015."

13 Is that correct?

14 A. Yes.

15 Q. All right. If you would turn to the second
16 page of what I've handed you, it bears a number at the
17 bottom of
18 Page 1.

19 The second paragraph says, quote, "This
20 document consists of a Minor Permit Modification
21 Application to obtain the option to develop cells of the
22 facility with an alternate liner system, as opposed to
23 the currently permitted Class Two system."

24 Is that correct?

25 A. Yes.

1 Q. That's what it says. So fair enough to say
2 that the alternate liner system is something different
3 from what was currently permitted in '08?

4 A. Yes.

5 Q. And if you go to the next page for me, the
6 third page of what I just handed you, it's actually -- 51
7 is the page number, actually, from the report itself. If
8 you would look in the middle there, it says, "4.11
9 Releases of Hazardous or Toxic Materials."

10 The first sentence says, "The landfill will
11 accept Class Two and certain special wastes as may be
12 specified in the permit or otherwise specifically
13 approved in writing by SCDHEC."

14 First of all, did I read that correctly?

15 A. Yes.

16 Q. The -- I think we've talked plenty here today
17 about Class Two wastes, but it says, "certain special
18 wastes."

19 Do you see that?

20 A. Uh-huh.

21 Q. Special waste is defined by -- defined by
22 statute, isn't it?

23 MR. GOINGS: Object to the form of the
24 question.

25 BY MR. POLIAKOFF:

1 Q. 44-96-390; doesn't it --

2 A. Uh-huh.

3 Q. -- define special wastes?

4 A. Yeah, I believe it says -- has that term, yes.

5 Q. Okay. And by statute and regulation, special
6 wastes are required to go into a Class Three, aren't
7 they?

8 A. As -- as they're -- I'm not sure.

9 Q. Okay.

10 A. I don't remember.

11 Q. Let me -- let me pull the reg. If you would
12 pick up Exhibit 2, please. Earlier today -- it's the big
13 body of regs.

14 A. Oh, okay.

15 Q. It's 61-107.19, Exhibit 2.

16 A. You -- you were asking me about the statute,
17 and you said 390?

18 Q. There's a statute, 44 --

19 A. Right.

20 Q. -- 96-390.

21 A. This is not -- this is the reg, so I'm just
22 trying to be -- understand what you're asking.

23 Q. I can show you the statute that defines special
24 waste --

25 A. Okay.

1 Q. -- but I'm also going to show you the reg that
2 talks about special waste.

3 A. Okay. That's fine.

4 Q. I can go back to the statute in just a minute,
5 but -- let's see if I can put my hands on the statute real
6 quickly.

7 MS. KING: Gary, I have one of each of
8 these.

9 MR. POLIAKOFF: If you -- thank you.

10 MS. KING: Sure.

11 THE REPORTER: Can we go off the record?

12 MR. POLIAKOFF: Sure.

13 THE REPORTER: I just need to make a phone
14 call.

15 MR. POLIAKOFF: Sure.

16 MS. KING: Of course.

17 VIDEOGRAPHER: We're off the record at
18 2:43.

19 (BREAK FROM 2:43 PM - 2:55 PM)

20 VIDEOGRAPHER: We're on the record at
21 2:55.

22 CONTINUATION OF CROSS-EXAMINATION

23 BY MR. POLIAKOFF:

24 Q. Okay. Mr. Coleman, we were talking about
25 Exhibit 11, which is the -- it's titled "Minor Permit

1 Modification," and it's got a date, "March 2015."

2 It says, "Updated August 2015."

3 And on the third page of what I handed you,
4 it's got a Page No. 51.

5 It says, "The landfill will accept Class Two
6 and certain special wastes."

7 And so I was asking you about special wastes,
8 and Ms. King was kind enough to hand me a copy of the
9 statutes. And 44-96-390 is regarding special wastes.
10 And --

11 A. Uh-huh.

12 Q. Would you agree that -- the statute is titled
13 "Approval Procedures for Special Wastes." And under A,
14 it says, "For the purposes of this section, quote,
15 'special wastes,' end quote, is defined as non-
16 residential or commercial solid wastes, other than
17 regulated hazardous wastes that are either difficult or
18 dangerous to handle and require unusual management of
19 municipal solid wastes landfills, including, but not
20 limited to." And then it's got a number of categories
21 listed.

22 No. 4, it says, "Industrial processed waste."

23 Do you see that?

24 A. Yes.

25 Q. And No. 5 is waste from a pollution control

1 process. Do you see that?

2 A. Uh-huh.

3 Q. All right. First of all, would you agree that
4 special wastes are supposed to go into municipal solid
5 waste landfills, otherwise known as MSW, which is also
6 known as a Class Three landfill?

7 A. Yeah. That's -- the statutory definition of
8 special waste refers to MSW landfills.

9 Q. Okay. Which is Class Three?

10 A. Yes.

11 Q. All right. And actually, there's a regulation
12 also on it. If you would take a look for me, please, at
13 Exhibit 2, and go to Page 11. And it's Paragraph 77.

14 And it says, quote, "Special waste," end
15 quote, means non-residential or commercial solid waste,
16 other than regulated hazardous waste that are either
17 difficult or dangerous to handle and require unusual
18 management at Class Three landfills, including, but not
19 limited to those waste contained in South Carolina code
20 section 44-96-390(a).

21 A. Yes.

22 Q. All right. So would you agree that if
23 something is a special waste, it's supposed to go into a
24 Class Three landfill?

25 A. Yes.

1 Q. All right. Now, this statement here that was
2 submitted by MRR's consulting firm, CEC, says, "The
3 landfill will accept Class Two and certain special
4 waste;"

5 Is that correct?

6 A. Yes.

7 Q. Wouldn't you agree that it would be illegal to
8 put special waste into this Class Two landfill in Pickens
9 County?

10 A. Yes.

11 Q. All right. Is that what they're trying to do?

12 A. No.

13 Q. How do you know? I mean, it says it right
14 here, doesn't it?

15 A. Yeah. Just a misuse of the term there.

16 Q. Okay.

17 A. But they -- they will not be allowed to use --
18 they will not be allowed to put special waste in the
19 Class Two. Their statement in their report doesn't
20 change what the statute says. That's --

21 Q. Okay. Now going back to coal ash, CCR.
22 Regardless of whether the -- the toxic levels are less
23 than ten times the EPA MCLs for drinking water purposes,
24 in fact, the special waste doesn't have -- you would
25 agree that between the statute for special waste and the

1 regulation for special waste that we just read through,
2 neither of those has any provision about whether or not
3 the toxic levels are below any thresholds, 10x MCLs or
4 any other thresholds, does it?

5 A. The definition on special waste?

6 Q. Right.

7 A. No, it doesn't refer to that.

8 Q. All right. So again, if something is a special
9 waste, it doesn't -- it's not supposed to go into a Class
10 Two landfill period; would you agree?

11 A. Well, the statute is referring to the
12 management of special waste in a -- in a Class Three
13 landfill.

14 Q. And then you go to the regulation, and the
15 regulation also says Class Three landfill, doesn't it?

16 A. Right.

17 Q. All right. You would agree, then, that if
18 something is legitimately a special waste, it belongs in
19 a Class Three, not a Class Two, landfill?

20 A. These definitions are referring to things that
21 require unusual management at Class Three landfills. It
22 doesn't talk about Class Two landfills, so I -- you know,
23 I think if something is dangerous or -- difficult or
24 dangerous to handle and require unusual management,
25 perhaps it would not be appropriate for a Class Two.

1 But, I mean, that's just not exactly what they're
2 speaking to here.

3 Q. And all I'm asking you is if something does
4 legitimately meet the definition of special waste, it
5 belongs in a Class Three, not a Class Two. Would you
6 agree?

7 A. Generally, I would agree with that.

8 Q. All right. Have you ever permitted -- have you
9 ever approved putting something that meets the
10 definition of "special waste" into a Class Two?

11 A. Well, we wouldn't -- if it goes into a Class
12 Two, we wouldn't term it -- we wouldn't use the term
13 "special waste."

14 Q. Right. So going back, if it meets the
15 definition of special waste, it does not belong in a
16 Class Two. Is that a fair statement?

17 A. I would agree that -- I don't recall ever
18 approving anything that I would consider a special waste
19 under the statutory definition into a Class Two.

20 Q. All right. Nor would it be appropriate to put
21 -- something that met the definition of special waste, it
22 would not be appropriate to put it into a Class Two,
23 would it?

24 MS. KING: Object to form; asked and
25 answered.

1 MR. POLIAKOFF: No. He --

2 MS. KING: Three times.

3 BY MR. POLIAKOFF:

4 Q. You answered that you've never approved it.
5 But I'm asking you, wouldn't it be inappropriate to put
6 a, quote, "special waste" -- something that meets the
7 definition of special waste into a Class Two landfill?

8 MS. KING: Object to form.

9 MR. GOINGS: Object to the form of the
10 question.

11 BY MR. POLIAKOFF:

12 Q. You can answer.

13 A. Well, primarily because if it were difficult
14 or dangerous to handle, most likely it would not be
15 disposed in a Class Two landfill.

16 Q. All right. Do you know whether it would be
17 inappropriate? Or you're just saying it generally would
18 not be?

19 A. What would not be?

20 Q. Anything meeting the definition of "special
21 waste."

22 A. Yeah. I can't testify that, you know,
23 absolutely anything that we could possibly come up with
24 that would -- may -- that someone may believe is a
25 special waste, could not go into a Class Two.

1 Q. You would agree with me at least that the --
2 both the statute for special waste and the regulation for
3 special waste both mention Class Three --

4 A. The --

5 Q. -- and do not mention Class Two?

6 A. The statute definition refers to these wastes
7 as they would be handled in a Class Three.

8 Q. All right. Now, you mentioned earlier some EPA
9 requirements. EPA, about a year ago or so, made some
10 requirements. Among the requirements, are that coal ash
11 has to go into a lined landfill; is that correct?

12 A. Yes.

13 Q. All right. Additionally, doesn't the EPA
14 require dust control? Special dust control operations?

15 A. Yes, it requires dust control.

16 Q. All right. There actually has to be a dust
17 suppression program --

18 A. Yes.

19 Q. -- doesn't there?

20 A. A plan. I think they have to submit a plan for
21 that.

22 Q. Because coal ash -- the handling of coal ash
23 creates dust. I mean, that's one of the known problems.
24 In addition to the toxic levels, one of the known
25 problems in handling coal ash is the dust, isn't it?

1 MR. GOINGS: Object to the form of the
2 question.

3 A. If -- if it's -- if it's not properly managed,
4 it can create dust, yes.

5 Q. Which is why the EPA requires a dust -- dust
6 suppression program; isn't that right?

7 A. Yes.

8 MS. LINEN: Object to form.

9 Q. All right. So would you agree, if we go back
10 to the statutory definition of "special waste," that coal
11 ash, CCR, coal combustion residuals, meet the definition
12 of "special waste?"

13 MR. GOINGS: Object to the form of the
14 question.

15 A. No, I don't think I do. I don't really agree
16 with that.

17 Q. Okay.

18 A. Not the way I think of it.

19 Q. Do you know if anybody else at DHEC shares your
20 opinion on that?

21 A. No. Uh-uh.

22 Q. All right. The -- going back to the statutory
23 definition for special wastes, it lists -- it lists eight
24 different categories that would qualify as special
25 waste. But No. 4, industrial processed wastes, would you

1 agree that coal ash, coal combustion residuals, are an
2 industrial processed waste?

3 A. Yes.

4 Q. And going to the next page, under No. 5, waste
5 from a pollution control process.

6 Coal ash, also known as coal combustion
7 residuals, would also qualify as "waste from a pollution
8 control process?"

9 A. Some types of -- certain types of coal
10 combustion residuals would be -- could be classified as a
11 pollution from a pollution control process, yes.

12 Q. All right. And if they are, then they would be
13 special wastes and the deposit would be appropriate for a
14 Class Three, not a Class Two, landfill; isn't that right?

15 MR. GOINGS: Object to the -- object to
16 the form of the question.

17 A. If they're -- if they're difficult or
18 dangerous to handle and require unusual management
19 practices at a municipal solid waste landfill, then --
20 and they're these things, yes, I would say they're
21 special wastes.

22 Q. All right. And you've read what the EPA
23 published about a year ago on CCR, coal ash.

24 Would you agree that EPA likely thinks that
25 coal ash is difficult to handle?

1 MS. LINEN: Object to form.

2 BY MR. POLIAKOFF:

3 Q. That is, they require dust suppression program
4 and things like that?

5 MR. GOINGS: Object to the form of the
6 question.

7 MS. LINEN: Object to form; speculative.

8 BY MR. POLIAKOFF:

9 Q. You can answer.

10 A. Okay. Well, I mean, lots -- lots of wastes
11 require dust suppression. Like, C&D wastes requires a
12 dust suppression program as well, so I don't think that
13 makes it necessarily difficult in relation to any other
14 waste.

15 Q. Would you agree that the federal program --
16 federal regulatory system views CCR/coal ash as meeting
17 the definition of a special waste?

18 MR. GOINGS: Object to the form of the
19 question.

20 A. I don't know.

21 MR. POLIAKOFF: All right. Here's
22 another letter. Let me -- let's mark this
23 as No. 13. Is that right?

24 THE REPORTER: Twelve.

25 MR. POLIAKOFF: Twelve. I'm sorry. All

1 right.

2 THE REPORTER: Do you want to go ahead and
3 mark anything else, or --

4 MR. POLIAKOFF: Let me --

5 THE REPORTER: Sure. You're fine.

6 However you want to do it.

7 (DEFENDANT'S EXHIBIT NO. 12; MARKED FOR IDENTIFICATION)

8 MR. POLIAKOFF: Some of these were
9 already covered, so --

10 MR. GOINGS: Hey, Gary? That's 12?

11 MR. POLIAKOFF: This is 12, I think. All
12 right --

13 THE WITNESS: I have a -- pardon me. I
14 have a copy of the statute that is not --

15 MR. POLIAKOFF: Actually, that is Ms.
16 King's.

17 THE WITNESS: So we're not -- that's not
18 an exhibit. We're not --

19 MR. POLIAKOFF: It's not.

20 THE WITNESS: We just -- okay. So I'll
21 just keep it. I'll just keep it here for
22 reference in case we need it.

23 MR. POLIAKOFF: That's fine.

24 THE WITNESS: Okay. All right.

25 BY MR. POLIAKOFF:

1 Q. And That actually belongs to Ms. King.

2 All right. We've just marked as Exhibit 12 --
3 it appears to be a letter from Tim Eleazer at the
4 Division of Mining and Solid Waste Permitting -- excuse
5 me. It's from CEC, Civil & Environmental Consultants,
6 which we've established is the consulting firm for MRR,
7 and it's submitted to Tim Eleazer.

8 Tim, I assume, is within your department or was
9 last year?

10 A. He -- yes, he still is.

11 Q. Okay. Who is going to be your replacement, by
12 the way, when you leave next week?

13 A. I don't know.

14 Q. Oh, it hasn't been chosen yet?

15 A. No.

16 Q. Who is the second in command currently at your
17 department?

18 A. For permitting, it would be -- I have four
19 different managers that work directly for me.

20 Q. Oh, okay.

21 A. And so they're -- you know, they are all
22 different areas. I don't know. I mean, as far as
23 permitting goes, the permitting section manager that
24 reports directly to me is Joan Litton.

25 Q. Oh, okay. Will Joan handle permitting when you

1 leave?

2 A. Yes, I imagine so.

3 Q. Okay.

4 A. I mean, she handles it now, and she will
5 probably report directly to my supervisor for a while
6 until they decide on --

7 Q. Okay.

8 A. -- you know, a replacement.

9 Q. Mr. Coleman, tell me your exact title, please.
10 You may have said it earlier today, but I missed it.

11 A. I'm -- I'm the director of the division of
12 mining and solid waste.

13 Q. All right. And it hasn't been determined as to
14 who the new director will be once you retire?

15 A. Not to my knowledge.

16 Q. Okay. Taking a look at this, it looks like
17 there's a stamp on it, received by the department August
18 6th of 2015.

19 A. Uh-huh.

20 Q. And it's signed by Nathan Bivins and Scott
21 Brown of CEC.

22 The second paragraph says, "The modification
23 includes an alternate liner design and associated
24 changes resulting from the alternate liner design."

25 First of all, do you see that?

1 A. Yes.

2 Q. Then it goes on to say, "Changes include
3 modified subgrade elevations that are appropriate for
4 the alternate liner design, modified limits of waste,
5 final cover elevations, perimeter grading, and other
6 associated details."

7 First of all, did I read that correctly?

8 A. Yes.

9 Q. Fair to say that the changes from the permit
10 issued in 2008 to the modification granted five days
11 after the date of this letter, August 10 of 2015,
12 included those various changes that he references in this
13 paragraph?

14 A. Yes.

15 Q. All right. Now, in addition to the alternate
16 liner design -- we've already talked about that. The
17 modified subgrade elevations, now does that have to do
18 with the -- the proximity to groundwater table?

19 A. I'm not sure, but, I mean, if you're installing
20 a liner with a leachate collection system, you certainly
21 would include the possibility of a modified subgrade to
22 ensure drainage into the -- leachate collection
23 drainage.

24 Q. Now, a Class Two C&D landfill does not require
25 a liner?

1 A. That's correct.

2 Q. Okay. Class Three that has a liner, aren't
3 there requirements as to how far the liner can be from
4 the underground water table, that is the groundwater
5 table?

6 A. Yes.

7 Q. All right. So is that, do you think, what they
8 mean by the "modified subgrade elevations?"

9 A. It could -- it could be -- it could be modified
10 to ensure proper drainage of the leachate system. It
11 could also have been modified to ensure a proper
12 separation from ground water. That is possible.

13 Q. All right. The next phrase in his sentence
14 says, "modified limits of waste."

15 Were there any modified limits of waste in the
16 2015 modification from the '08 permit?

17 A. Well, there -- there would not have been any
18 increase in the limits. There could have been a decrease
19 in the limits.

20 Q. Okay. Now, around the end of 2015, didn't MRR
21 request a variance where they could increase the annual
22 tonnage intake?

23 A. Yes.

24 Q. And did they tell you by how much they wanted
25 to increase it?

1 A. No.

2 Q. So the department hasn't granted any increase
3 in tonnage yet, have they?

4 A. No.

5 Q. Do you know if that request for the variance
6 was furnished to Pickens County formally?

7 A. No.

8 Q. All right. Should it have been?

9 MR. GOINGS: Object to the form of the
10 question.

11 A. I don't know. We -- if -- if -- I don't know
12 what -- you know, I can't really comment on what MRR
13 should have done or what anybody should have done. I can
14 comment on what the department will do --

15 Q. Okay.

16 A. -- if we consider it.

17 Q. Doesn't the department guide permittees and
18 people who want to modify permits? Doesn't the
19 department guide them on what notice should be provided?

20 A. Yes.

21 Q. Okay. Well, as head -- as director of your
22 department, did you direct MRR to provide notice to
23 Pickens County about their request to increase the annual
24 tonnage rate?

25 A. We -- we informed them that if we decided to

1 proceed with a decision on it -- we hadn't gotten all the
2 information we even need to make -- to consider it fully,
3 but we did inform them that if we were to proceed with
4 that, we would public notice -- we would be public
5 noticing it.

6 Q. All right. But how about the -- just when they
7 requested from DHEC? DHEC doesn't require them to go
8 ahead and notify the public and/or the local host
9 government?

10 A. Not at this point. We didn't -- we didn't even
11 know what they were asking. There's nothing to public
12 notice.

13 Q. All right.

14 A. We don't even know what they're asking for.

15 Q. Well, if there's supposed to be modified
16 limits of waste, do you think the department would likely
17 increase above 70,500 tons per year?*

18 MS. KING: Object to the form.

19 A. Well, the limits of waste referred to in this
20 letter --

21 Q. Yes, sir.

22 A. -- have nothing to do with the increased annual
23 rates that they're talking about. Limits means -- in
24 this letters, limits means the -- the volume, the
25 footprint, so to speak.

1 Q. All right. The size of it?

2 A. Yeah. The size, not the rate.

3 Q. The available cubic space?

4 A. Yes, yes.

5 Q. All right. I see. Final cover elevations,
6 those changed in the 2015 modification from the '08
7 permit, didn't they?

8 A. Yes.

9 Q. And perimeter grading and some other details
10 changed, didn't they?

11 A. Yes.

12 Q. All right. The -- I think Ms. King already
13 placed into evidence the October 16, 2015 letter. Let me
14 see if I can -- that's Exhibit 7, if you have that handy,
15 please, sir.

16 MS. KING: Which one?

17 MS. LINEN: Seven.

18 MR. POLIAKOFF: It is Plaintiff's Exhibit
19 No. 7.

20 MS. KING: What is that exhibit?

21 MR. POLIAKOFF: It's the October 16, 2015
22 letter. It's Exhibit 7.

23 MS. KING: Yes. Thank you.

24 MR. GOINGS: Gary, for clarification on
25 the exhibits, we're just doing them in

1 consecutive -- in numerical order,
2 correct? There's not like a plaintiff's
3 exhibits or defense exhibits?

4 THE REPORTER: There is. There's
5 Plaintiff's 1 through --

6 MS. LINEN: Eight.

7 THE REPORTER: -- 8, and then Defendant's
8 9 through --

9 MR. POLIAKOFF: Yeah.

10 MR. GOINGS: I got you.

11 MS. KING: It's both.

12 MR. POLIAKOFF: Because by the end of this
13 case, we're going to have 100-plus
14 exhibits, and I just figured --

15 MR. GOINGS: Okay.

16 THE REPORTER: I mean, I can change them
17 all later, you know, if you guys want --

18 MR. GOINGS: No.

19 THE WITNESS: -- to stipulate to just make
20 it Deposition, and then No. 1 through
21 however many.

22 MR. GOINGS: That's fine. I just --
23 obviously, I can't see the sticker on it.
24 I just want to make sure.

25 MS. KING: You didn't start over with No.

1 1 when you started Defendant?

2 MR. POLIAKOFF: No.

3 THE REPORTER: He asked me not to, but --

4 MS. KING: That's fine.

5 THE REPORTER: --like I said, it's very
6 easy to just make them all Deposition so
7 there's no --

8 MR. GOINGS: We're good.

9 THE REPORTER: Okay. Deposition is pink.

10 MR. POLIAKOFF: And a suggestion that
11 I'll make that I'll think you'll find to
12 be helpful is that at the next
13 deposition, we -- if we end today at 19,
14 we start the next deposition at 20.

15 MS. KING: I agree.

16 MR. POLIAKOFF: Okay. Well, beautiful.

17 MS. KING: We agreed.

18 MR. POLIAKOFF: Golly, guys. This is --

19 MR. GOINGS: See what happens when you've
20 got a 13-year-old? You start
21 compromising.

22 THE WITNESS: Don't do that.

23 MS. KING: You don't know yet, so --

24 MR. POLIAKOFF: That -- that's -- oh, you
25 comp --

1 MS. KING: He has no idea.

2 MR. POLIAKOFF: You have no -- you're a --

3 THE WITNESS: Don't --

4 MR. POLIAKOFF: Yeah, how do --

5 MR. GOINGS: Don't compromise with a 13-
6 year-old. Trust me.

7 MR. POLIAKOFF: -- get through --

8 THE WITNESS: It's like yes or no, done.

9 MR. POLIAKOFF: How do you get through
10 breakfast? I just --

11 THE WITNESS: I'm --

12 THE REPORTER: Are you sure about --

13 MR. GOINGS: Yeah.

14 THE REPORTER: I mean, I really --

15 MR. GOINGS: Yeah. That's great.

16 THE REPORTER: -- think it would make it
17 easier for guys.

18 MR. GOINGS: I like that.

19 MR. POLIAKOFF: Okay.

20 MR. GOINGS: We're on the same page. I
21 just wanted to make sure my notes were
22 correct.

23 THE REPORTER: They were.

24 BY MR. POLIAKOFF:

25 Q. All right. If you would pick up No. 7, the

1 October 16, 2015 letter -- and again, this is actually
2 from MRR Southern; is that correct?

3 A. The letterhead is MRR Southern, yeah.

4 Q. In fact, this stationary indicates MRR
5 Southern --

6 A. Uh-huh. Yes.

7 Q. -- which is not actually the permittee. It's
8 likely an affiliated entity to the permittee.

9 A. That's my understanding.

10 Q. All right. And it says, "MRR Pickens, LLC has
11 recently entered into a preliminary agreement to handle a
12 need for a large disposal project relating to the above-
13 referenced facility."

14 Do you see that?

15 A. Yes. Uh-huh. Yes.

16 Q. Okay. Now, at this point in time, by October
17 of 2015, were you aware that MRR intended to put coal ash
18 into this landfill in Pickens County?

19 A. You mean on this date?

20 Q. By this time. By October of '15, were you
21 aware that -- generally, that they intended to put coal
22 ash into this landfill?

23 MS. KING: Object to the form.

24 BY MR. POLIAKOFF:

25 Q. You can answer.

1 A. Well, I mean, it's in the letter.

2 Q. Okay. Does it say coal ash?

3 A. Yeah. It says, "coal combustion residuals."

4 Q. Thank you, sir. I'm sorry. I didn't read far
5 enough.

6 It says, "Need for disposal of coal combustion
7 residuals."

8 Prior to receiving this letter, were you aware
9 that they intended to put coal combustion residuals into
10 this landfill?

11 A. Yes.

12 Q. All right. In other words, when they started
13 making the requests about the liner, I would assume that
14 the discussion was that they would like to put coal
15 combustion residuals into the landfill.

16 A. No. I didn't -- that discussion wasn't nearly
17 that far back.

18 Q. Did you ask them why they wanted to add a
19 liner?

20 A. Jeez, I don't remember exactly.

21 Q. Did they tell you why they wanted to add a
22 liner to a C&D landfill that didn't require a liner?

23 MS. KING: Object to the form.

24 A. I don't recall exactly what they said. I mean,
25 we certainly could make some assumptions, but that

1 doesn't really matter. What we did know was that in the
2 application, the permit application that we received for
3 the modification, they're required to do stability
4 calculations --

5 Q. Okay.

6 A. -- in the application for the waste.

7 Q. Right.

8 A. And in those stability calculations, they
9 submitted calculations that would be appropriate for C&D
10 waste and calculations that would be appropriate for coal
11 ash.

12 Q. Okay. And how far --

13 A. So they submitted --

14 Q. I'm sorry. Go ahead.

15 A. In the application for the modification, they
16 -- they had done the stability calculations for both
17 types of waste.

18 Q. All right.

19 A. So we -- we certainly knew at that point that
20 they were considering maybe putting some coal ash, but we
21 didn't really have any detail on where or how much and
22 that sort of thing.

23 Q. All right. The -- for the CEC reports that we
24 identified today and talked about, the first one, I
25 believe, was dated August of '14. I can pull up the

1 number. I think it was Exhibit 10 or 11, maybe. But it
2 was the August --

3 MR. POLIAKOFF: Thank you, Jessica.

4 MS. KING: I think that's it.

5 BY MR. POLIAKOFF:

6 Q. The August '14 -- it was the work plan.

7 A. March 2015. August of --

8 Q. I think the first one was August '14, which was
9 the work plan.

10 MS. KING: I think that's right.

11 A. December 2014 work plan, yeah. The work plan
12 was August of 2014; revised September of 2014.

13 Q. All right. So you would agree that submission
14 of engineering reports like this, the work plan, the site
15 specific hydrogeologic investigation, the application
16 for the minor permit modification, I mean, these are all
17 engineering reports that would be some significant
18 expense to put together. Would you agree?

19 A. Uh-huh. Sure.

20 Q. And adding a liner to a permit that doesn't
21 require a liner, that's an expense. Isn't it?

22 A. Yes.

23 Q. Fair to say that by August of 2014, you at
24 least had some idea that they were intending to put coal
25 ash into this landfill?

1 A. I don't -- I don't know if I knew any -- I don't
2 know about at that time frame. When this -- these
3 documents are all previous -- generally, they're
4 submitted previous to the actual technical application.

5 So when the technical application came in,
6 that's when it had the calculations for stability.

7 Q. All right.

8 A. And I don't know exactly. It would have been
9 probably after these documents. I don't know exactly
10 what date.

11 Q. Now, for companies that operate landfills that
12 are restricted to C&D and LCD, typically those don't have
13 liners?

14 A. Correct.

15 Q. Because a liner is an expensive item, right?

16 A. Yes. Uh-huh.

17 Q. So when you start getting reports in that would
18 indicate intent to -- at least requesting an option for a
19 liner, wouldn't you then start assuming that the permit
20 applicant/permittee is requesting something more than
21 just C&D LCD?

22 MS. KING: Objection to form.

23 MS. LINEN: Objection to form;
24 speculative.

25 BY MR. POLIAKOFF:

1 Q. You can go ahead.

2 A. Well, I mean, in the sense of whether I, you
3 know, may have wondered about it or something, I don't
4 know how relevant that is. I do know that, you know, when
5 they -- you know, when they submit their application and
6 they tell us -- they have to tell us what they're
7 planning to do in the application. And so that's when we
8 -- you know, that's when we know.

9 Q. Each of these references -- we've talked about
10 this already. Each of these references, those paragraphs
11 that talk about the discussions that had occurred between
12 MRR and DHEC about a minor permit modification to add a
13 liner system, et cetera, we went through the exact
14 language previously.

15 As director of solid waste management for
16 DHEC, wouldn't you have preferred that MRR notify the
17 host local government --

18 MR. GOINGS: Object to the form of the
19 question.

20 BY MR. POLIAKOFF: (Resuming)

21 Q. -- that they were submitting these reports?

22 A. I don't know exactly whether I would prefer it.
23 I certainly would -- would hope that, you know, there's
24 no conflicts with the County.

25 Q. There's no downside of notifying the County,

1 would there be?

2 MS. KING: Object to form.

3 MS. LINEN: Object to form.

4 BY MR. POLIAKOFF:

5 Q. You can answer.

6 A. Not from my point of view.

7 Q. All right. Would you have preferred that they
8 notified their local host government?

9 MR. GOINGS: Object to the form of the
10 question.

11 MS. LINEN: Object to form; asked and
12 answered.

13 BY MR. POLIAKOFF:

14 Q. You can answer.

15 A. I don't really know.

16 Q. Well, you're aware that Pickens County has a
17 host agreement with MRR; is that right?

18 A. As of more recently, I'm aware of that.

19 Q. Okay.

20 A. I wasn't aware of it at the time these
21 documents came in. I could assume that they do because
22 most facilities -- most solid waste disposal facilities
23 do have a -- if they're private, they have a host
24 agreement with the County. I know that most of them do,
25 but I don't have specific knowledge of those agreements.

1 I'm not -- those aren't generally shared with me.

2 Q. Okay. The -- but you're aware that Pickens
3 County had a solid waste management plan?

4 A. Yes.

5 Q. All right. And we've agreed that actions by
6 the department and actions by permittee must be
7 consistent with the county solid waste management plan?

8 A. Yes.

9 Q. And we've agreed previously that the County,
10 as being the host local government, would be an affected
11 person, typically, to receive notice of things?

12 A. If -- yeah, if -- if the -- if notice was
13 required, they certainly would have been one of those
14 parties on the list, I would think.

15 Q. So any idea why MRR chose not to notify the
16 County --

17 A. No.

18 MS. KING: Object to the form.

19 Q. -- about what it was doing?

20 You can answer.

21 A. No.

22 Q. Do you think they were trying to hide from the
23 County their true intentions about coal ash into this C&D
24 landfill?

25 MS. KING: Object to the form.

1 MR. GOINGS: Object to the form.

2 BY MR. POLIAKOFF:

3 Q. You can answer.

4 A. I don't know. I don't know what their
5 intentions were.

6 Q. As you sit here today, does it seem likely that
7 they were trying to hide from Pickens County their intent
8 to put coal ash into what they previously represented as
9 a C&D landfill?

10 MR. GOINGS: Objection; calls for
11 speculation.

12 A. I don't know.

13 Q. All right. As a director of solid waste --
14 solid waste management -- correct me if I haven't stated
15 your exact position correctly. But as director of your
16 department, do you condone misrepresentations by permit
17 applicants and permittees to host local governments?

18 A. No.

19 MR. GOINGS: Objection.

20 MS. KING: Object to the form.

21 MS. LINEN: Object to form.

22 Q. And would you agree that that could be a
23 serious matter if, in fact, misrepresentations are made
24 by permittees or permit applicants to host local
25 governments?

1 MR. GOINGS: Object to the form of the
2 question; outside this witness' knowledge
3 and expertise.

4 A. I don't --

5 Q. Is that right?

6 A. I certainly don't condone any
7 misrepresentations. I don't really have a comment on
8 what, otherwise, that would --

9 Q. In fact, if it were a major modification, for
10 example, DHEC would actually conduct either public
11 hearings or public meetings; is that right?

12 A. We would certainly provide public notice.

13 Q. All right.

14 A. If there were a request for a meeting or a
15 hearing, we would hold one.

16 Q. All right. DHEC, usually, actually sets it up
17 when --

18 A. Yes.

19 Q. -- that occurs?

20 A. Yeah. Right.

21 Q. All right. And as director of your department,
22 you wouldn't condone misrepresentations by a permittee
23 to the public, would you?

24 A. No.

25 Q. If -- we've talked about a lot of what went on

1 in 2014. If I were to tell you that in January of 2015
2 that a representative of MRR told the County Planning
3 Commission that no liner was being contemplated, you know
4 that would be a false statement, don't you?

5 MS. KING: Objection to form.

6 MR. GOINGS: Objection.

7 MS. LINEN: Object to form.

8 BY MR. POLIAKOFF:

9 Q. Because there was discussions between MRR and
10 your department in 2014 about liner, wasn't there?

11 MS. KING: Object to the form.

12 A. I'm sorry. The dates-- you're going to have to
13 get the dates straight for me because that's --

14 Q. All right. Some of these CEC reports --

15 A. Uh-huh.

16 Q. -- were submitted to DHEC in the year 2014?

17 A. Yes.

18 Q. Okay. And the CEC reports indicate at least a
19 desire to put a liner down; is that right?

20 A. Yeah. They did discuss the Class Three -- the
21 way they termed it, the Class Three liner design or
22 something.

23 Q. So if in January of 2015, someone on County
24 Planning at a public County Planning Commission meeting,
25 asked MRR, do you need a liner, and the answer was no,

1 that would be either false or at least misleading,
2 wouldn't it?

3 MS. KING: Object to the form.

4 MS. LINEN: Object to the from.

5 MR. GOINGS: Object to the question.

6 MS. LINEN: Lack of foundation.

7 MR. GOINGS: -- assuming facts that are
8 not in evidence and asking a misleading
9 question to a deponent.

10 BY MR. POLIAKOFF:

11 Q. You can answer that.

12 A. I don't know.

13 Q. All right. But we know there was discussion
14 between MRR and your department in the year 2014 about a
15 liner, don't we?

16 A. Yes.

17 Q. And we know that there were discussions
18 between MRR and your department in 2014 about MRR's
19 intent to put wastes other than pure C&D into this
20 landfill, weren't there?

21 A. Are you referring to when they used the term
22 special waste?

23 Q. Special waste and anything related to coal
24 combustion residuals.

25 A. I'm not sure when they first mentioned coal

1 combustion residuals other -- other than when the
2 landfill's technical application came in, which included
3 the stability calculations. That's when we first -- that
4 I'm aware of that we first saw anything about coal ash.

5 Q. What -- what -- when you saw that they were
6 intending to or asking for the option to put a liner in
7 and submitting these pretty lengthy detailed engineering
8 reports, is it fair to say that you assumed that they
9 were going to -- that their intent was to put something
10 other than just construction and demolition waste into
11 this landfill?

12 MS. KING: Object to the form.

13 A. Well, we certainly assumed that they had some
14 type of plan. We didn't really know what it was.

15 Q. All right. Didn't know exactly, but you would
16 assume something other than strictly construction and
17 demolition waste?

18 A. Well, I would not expect them to install a
19 liner for construction and demolition waste. That's not
20 normally done.

21 Q. All right. And the reason I'm asking these
22 questions is because I can reference to you -- you may or
23 may not want to see it -- the transcript of the County
24 Planning Commission of January 2015 where I can show you
25 where County Planning asked MRR, "Do you need a liner?"

1 And MRR responded in the negative.

2 I can respond -- I can show you in the
3 transcript where County Planning asked, "Is this going to
4 be just construction and demolition LCD?" And they
5 indicated that's all it would be. I can show you the --
6 County Planning Commission --

7 MS. KING: Is there a question?

8 MS. LINEN: Yeah.

9 MR. POLIAKOFF: Yeah. I'm getting to it.

10 MR. GOINGS: Why don't you just show it to
11 him instead of misrepresenting it?

12 Because what you're saying -- what you're
13 saying is false, so instead of
14 misrepresenting to a deponent who is
15 under oath to testify truthfully and
16 accurately --

17 MR. POLIAKOFF: Don't accuse me of
18 falsehoods.

19 MR. GOINGS: I am when you misrepresent
20 facts. So if you want to show him the
21 document, you can do that. I just can't
22 let you misrepresent the truth to a
23 witness who is under oath to testify to
24 the truth.

25 MR. POLIAKOFF: First of all, you're out

1 of order. You're only entitled to one
2 attorney to ask questions and make
3 objections

4 MR. GOINGS: I know, but I can't -- I just
5 want you --

6 MR. POLIAKOFF: And number two, I'm not
7 misstating anything.

8 MR. GOINGS: Show him the transcript
9 instead of misrepresenting the
10 transcript. That's all I'm asking.

11 BY MR. POLIAKOFF:

12 Q. All right. Let me ask you, the existing county
13 landfill in Pickens is a C&D LCD landfill? The old one
14 that's going to close sometime soon, that's a C&D --

15 A. The one that's operated by Pickens County?

16 Q. Right.

17 MS. KING: Object to the form.

18 A. It's a Class Two landfill.

19 Q. And, historically, it's taken in C&D and LCD;
20 is that right?

21 A. Certainly it has taken those things. I'm not
22 aware of -- I don't have a memory of specifically what
23 their permit allows them to take.

24 Q. All right.

25 A. But my knowledge is that they take C&D waste.

1 Q. Do you know if they had ever taken anything
2 other than C&D LCD?

3 A. No, I don't recall.

4 Q. All right. And if someone from MRR stated to
5 County Planning Commission that the intended landfill
6 that MRR wanted to do was exactly the same as the
7 existing county landfill, by January 2015, that wouldn't
8 be accurate either, would it?

9 MS. LINEN: Object to form; lack of
10 foundation and speculative.

11 BY MR. POLIAKOFF:

12 Q. You can answer.

13 MR. GOINGS: Same objection.

14 A. I mean, they're both Class Two, so I don't
15 really understand -- I mean, I don't know what you want
16 me to say. I don't know details about what was said, how
17 it was said, when it was said. I don't -- I don't know.

18 Q. All right, sir. The December 11, 2015 letter
19 that was sent in response to -- I think that's Exhibit 8.

20 December 11, 2015 that's in response to Mr.
21 Roof's letter signed by Justin Koon. where the department
22 asked types of waste, who the generator is, where is the
23 waste coming from, how much waste, analytical data, I
24 believe you said that to this day, MRR has never
25 responded to that request; is that right?

1 A. Correct.

2 Q. At any time in your discussions with MRR, did
3 they ever tell you where the coal ash/CCR was coming
4 from?

5 A. No.

6 Q. Or any -- any of the aspects of it, what type
7 it was or what type of generation, anything like that,
8 whether it was from an electric utility, whether it was
9 from a boiler operation? Did they give you any of those
10 descriptors?

11 A. Well, we -- you know, at some point by October
12 of '15, we were aware that they wanted to dispose of coal
13 combustion residuals.

14 Q. Right.

15 A. As far as where it was coming from or any other
16 details about it, no, we did not. Still do not know.

17 Q. All right. Now, you were asked about Santee
18 Cooper earlier today, and there was one mention in the
19 Santee Cooper document. It is Exhibit 4. Could you pick
20 up Exhibit 4, please? It's this.

21 A. Okay.

22 Q. If you would, turn to Page 8 for me, please.

23 A. Eight, okay.

24 Q. Under -- in the middle of the page, 2.3.2 Class
25 Three landfill, it says, "Santee Cooper is currently

1 construction a new Class Three CRR landfill adjacent to
2 the existing Class Two landfill on its eastern and
3 western sides."

4 First of all, do you see that?

5 A. Yes.

6 Q. Skip down to the middle of the paragraph that
7 says, "The entire top deck of the Class Two landfill will
8 also be closed in this manner."

9 Do you see that?

10 A. Yes.

11 Q. All right. Wouldn't you agree that the Class
12 Two landfill at Santee Cooper is being closed and that
13 sometime this year the coal ash will go into the Class --
14 the new Class Three?

15 A. Yes.

16 Q. All right. And, actually, the old Class Two
17 was permitted in 1982, began receiving CCRs in '84; is
18 that right?

19 A. Yes.

20 Q. That was before the new reg, the new reg being
21 61-107.19?

22 A. Yes.

23 Q. And wouldn't you agree that in recent years,
24 the trend has been to not put CCR into Class Twos, but to
25 put CCR into Class Threes?

1 MR. GOINGS: Object -- object to the form
2 of the question.

3 MS. KING: Objection.

4 BY MR. POLIAKOFF:

5 Q. Hadn't that been the trend?

6 A. Yes.

7 Q. All right. And isn't that what Santee Cooper
8 is doing here? They're closing out the old Class Two and
9 opening a Class Three for their CCR?

10 A. Yes.

11 Q. All right. And Santee Cooper at its cross-
12 generating station, they produce the coal ash
13 themselves. Is that right?

14 A. They do.

15 Q. So this would be called a non-commercial
16 landfill. Would you agree?

17 A. Yes.

18 Q. Non-commercial in that they don't take coal
19 residue from other companies. This is just their own
20 that they manage right there onsite?

21 A. Right.

22 Q. All right. Are you aware that the major
23 utilities in South Carolina have all entered into
24 agreements as to handling their own CCR?

25 A. Agreements with, like, DHEC or --

1 Q. Or various groups, that they will handle their
2 own CCR in various ways.

3 MS. LINEN: Object to the form.

4 A. I'm generally familiar that there have been
5 settlements and agreements with various environmental
6 interests.

7 Q. Right.

8 A. Not specifically. I don't have any -- I really
9 haven't read -- I don't think I've read any of those
10 agreements, certainly not in whole, and I don't even
11 remember parts. But what I am aware of is that DHEC is in
12 the process of permitting Class Three landfills or either
13 has already permitted Class Three landfills at our
14 utilities.

15 Q. All right. And as far as coal ash production,
16 the largest volume of coal ash production would be, in
17 fact, by utilities that burn coal to create electricity?

18 A. Yes.

19 Q. All right. Now, there are lesser amounts of
20 coal ash that are produced by other kinds of businesses,
21 sometimes referred to as boilers, operations, et cetera;
22 is that right?

23 A. Yes.

24 Q. All right. But as far as the large percentage
25 majority volume of CCR is produced by utilities who burn

1 the coal to create electricity?

2 A. Yes.

3 Q. And so as far as any need around South Carolina
4 -- is there any need around South Carolina for coal ash
5 to go into a Class Two landfill at this point in time?

6 MR. GOINGS: Object to the form of the
7 quesiton.

8 A. I'm not specifically familiar with the needs
9 and the volumes of -- of CCR that are being produced
10 currently and what has been produced in the past that
11 needs to be relocated. I know that there is a pretty
12 large demand at the current time for CCR disposal in
13 lined landfills because of the deadlines in the federal
14 rule for cleaning out lagoons, the old waste water type
15 disposal areas.

16 Q. Right.

17 A. And so there's a lot of waste -- a lot of CCR
18 waste out there that needs to be relocated into a lined
19 facility that was produced in the past, and that -- I
20 mean, that -- that immediate need far exceeds anything
21 that's really being produced currently.

22 So there's really two -- two -- I guess two
23 components of the need. One is what is being produced
24 currently, and one is what has been produced in the past
25 and by federal rule has to be relocated into a lined

1 facility.

2 Q. The discussions that you've had with MRR
3 people -- first of all, I've gotten some reports here
4 that indicate that during the year 2014, MRR through CEC
5 was submitting these engineering reports, the ones we've
6 talked about today.

7 A. Uh-huh.

8 Q. About how far back in time does it go that MRR
9 started communicating to DHEC about this idea of making
10 these modifications to the old '08 permit?

11 A. The first -- I think the first thing that I
12 remember is we -- we had a meeting. They had previously
13 asked us about if they wanted to add a liner to a Class
14 Two landfill, what type of process that would require.

15 And so we had some internal conversations
16 about that, and then we informed them that, you know,
17 basically, they would have to submit all the proper
18 design and engineering reports, go through the hydro
19 process, and then also that -- you know, we informed them
20 that we would do it as a minor modification to the
21 permit.

22 Q. All right. And how far back in time do those
23 discussions go?

24 A. Sometime around -- it was in 2014. I don't
25 remember exactly when. And I think there was an

1 indication that there was a meeting in one of these CEC
2 reports.

3 Q. Actually, several of them indicated that there
4 were --

5 A. Yeah.

6 Q. -- meetings, plural, between --

7 A. Right.

8 Q. -- MRR and DHEC, where it was discussed that
9 these changes would be a, quote, "minor modification."

10 A. Right. Yeah. And that -- that meeting in 2014
11 is somewhere around -- that's pretty close to the
12 beginnings of some of those conversations. And, you
13 know, it was -- it's a situation where this was not a
14 process that we had gone through before.

15 There's nothing to stop or prohibit someone
16 from putting a liner into a Class Two landfill. However,
17 it's not something that we had previously done. So it
18 was a -- you know, how would you handle this kind of a
19 question.

20 Q. Okay. So this -- this would be -- if this
21 takes place, it would be the first time that the
22 department has permitted a liner in a Class Two landfill?

23 A. There's -- I think there may be a couple of
24 non-commercial facilities that have put liners in their
25 Class Twos as a part of their original permitting

1 processes --

2 Q. Okay.

3 A. -- just out of their own election.

4 Q. All right. And non-commercial, again, is
5 typically a utility or some entity that's producing the
6 coal ash or other waste onsite?

7 A. Right.

8 Q. And it handles it either onsite or adjacent to
9 site itself?

10 MS. KING: Object to the form.

11 BY MR. POLIAKOFF:

12 Q. Is that essentially correct?

13 A. Yes.

14 Q. All right. And non-commercial, again, meaning
15 that it's not taking wastes from other companies? It's
16 only handling its own wastes?

17 A. Correct.

18 Q. All right. So if we then go to the -- just the
19 category of commercial landfills, this would be -- if
20 this one ends up having a liner and getting permitted for
21 a liner, this would be the first time in South Carolina
22 history that the department has permitted a liner for a
23 Class Two landfill that's commercial?

24 A. Yeah. I don't -- I think this would be the
25 first commercial Class Two with a liner.

1 Q. Did that seem unusual to you as far as how
2 things have gone in the past?

3 MS. KING: Object to the form.

4 A. Well, it -- it's clearly different. I mean,
5 it's unusual in the sense that Class Twos don't usually
6 have liners.

7 Q. And so about when was it the first time that
8 you in your capacity realized that something other than
9 basic construction and demolition land clearing debris
10 was intended by MRR for this landfill?

11 MS. KING: Object to form.

12 MS. LINEN: Object to form. Asked and
13 answered.

14 BY MR. POLIAKOFF:

15 Q. You can go ahead.

16 A. Well, when they first asked if they could put a
17 liner in a Class Two, of course we wondered why.

18 Q. Did you --

19 A. But we didn't have any information, you know,
20 so it doesn't -- you know, we just waited on the
21 application.

22 Q. Did anybody at the department -- at the
23 department ask them why?

24 A. I don't know. No, not that I know of. But then
25 when the application came in and had the -- you know, the

1 engineering calculations for coal ash, then that was the
2 first time we were specifically aware --

3 Q. All right.

4 A. -- that that might be what they were thinking.

5 Q. Who were the MRR people that you recall talking
6 to any time in the past?

7 A. I've had meetings with Chris Roof, Norbert
8 Hector with the company.

9 Q. All right. And Scott Brown with CEC?

10 A. I don't specifically recall, but he may have
11 been in a meeting.

12 Q. All right. About how many times have you met
13 with Mr. Roof?

14 A. In what time frame?

15 Q. Totally, over the years from '07 --

16 A. Over the years?

17 Q. -- to the present?

18 MS. KING: Object to the form.

19 A. I don't know. Probably quite a few. I mean,
20 10, 12, I don't know, 15 maybe.

21 Q. Okay. How about --

22 A. Not related to this facility. I mean, it would
23 have been other facilities. They have other activities
24 in the state besides this.

25 Q. Okay. Where else is MRR -- is MRR currently

1 applying for any -- either a permit -- a new permit or a
2 permit modification anywhere in South Carolina right
3 now?

4 MS. KING: Object to the form.

5 BY MR. POLIAKOFF:

6 Q. You can answer.

7 A. Well, they have -- yes. They have other --
8 they have an -- they have facilities that they already
9 have permits for that they operate.

10 Q. Okay. Where -- where are the current
11 facilities where MRR operates in South Carolina?

12 A. Well, an affiliate company owns the SRR
13 landfill in -- Class Two landfill in Newberry County.

14 Q. All right.

15 A. And they have a solid waste transfer station as
16 well, which I forget exactly -- right now I can't recall
17 which county it's in. And they've -- you know, they've
18 had other times when they have at least started
19 permitting processes for other facilities.

20 Q. Marlboro County?

21 A. Yes.

22 Q. Do you recall that they actually sued the
23 citizens of Marlboro County during that?

24 MR. GOINGS: Object to form.

25 MS. KING: Object to the form.

1 MS. LINEN: Object to form.

2 A. I was -- I was familiar with the lawsuit
3 relative to the county and the zoning requirements at the
4 county. I'm familiar with that somewhat.

5 Q. All right. Where is MRR currently either
6 applying for permits or applying for permit
7 modifications at the present time?

8 A. Well, they've submitted the -- the variance
9 letter that we talked about today for MRR Pickens.

10 Q. Okay.

11 A. And we've received a -- the first phase of an
12 application for a facility in Laurens County.

13 Q. All right. Have they indicated what they
14 intend to do in Laurens?

15 A. They are -- they have submitted an application
16 with the intent to permit a non-commercial Class Two
17 landfill.

18 Q. All right. Now, non-commercial means that
19 they would not take waste from -- from companies other
20 than MRR; is that right?

21 A. It means they would -- someone with the same
22 ownership of control or control of that facility would be
23 the generator of the waste, yes.

24 Q. Okay. Well, can you explain to me how MRR is a
25 generator of waste?

1 A. No.

2 Q. Well, I'm just wondering. I thought MRR was in
3 the business of developing landfills.

4 So how is it that in Laurens County, MRR wants
5 to do a non-commercial landfill?

6 MR. GOINGS: Objection.

7 A. Well, that's a question that I have as well. I
8 don't know.

9 Q. All right. What is the status of that permit
10 application at the present time?

11 A. They public noticed their intent.

12 Q. To do a non-commercial landfill?

13 A. Yes.

14 Q. Is there a facility adjacent to the stop where
15 they are proposing this non-commercial landfill in
16 Laurens?

17 A. No.

18 Q. I just don't understand from my limited
19 knowledge of what non-commercial landfill means --

20 A. Right.

21 Q. -- how that could work.

22 A. Well, yeah, I don't understand it either.

23 Q. All right. Fair enough. The MRR people you
24 met with, you mentioned Mr. Norbert Hector, Mr. Chris
25 Roof.

1 Have you met with any other MRR people over the
2 years?

3 A. Dan, who is no longer with the company.

4 Q. Dan Moore?

5 A. Yes.

6 Q. Okay. Do you know where Dan Moore works now?

7 A. The last -- I don't know right now. I know
8 that at some point, in the past, he worked for Waste
9 Management.

10 Q. All right. Since working for MRR?

11 A. Yes, since.

12 Q. Okay. Any of the Griffins, David Griffin, any
13 of the Griffins? Have you ever met with them?

14 A. Not regarding this facility, but I have met Mr.
15 David Griffin before.

16 Q. Okay. Any others? Paul Gibbons, you ever met
17 him?

18 A. I don't remember.

19 Q. Kevin Franklin?

20 A. His name is familiar, but I couldn't recall.

21 Q. Kevin Franklin?

22 A. I don't recall him.

23 Q. Ron Gilkerson?

24 A. Yes, I've met with Mr. Gilkerson.

25 Q. Now, those people, have you -- do you know when

1 you met with them, whether they were employees or MRR
2 Pickens, LLC or MRR Southern, LLC?

3 A. No.

4 Q. All right. Because we've indicated today that
5 at least a couple of documents we've identified today
6 were submitted on at least stationary letterhead or at
7 least under the name of MRR Southern, as opposed to the
8 permittee, which was MRR Pickens, LLC.

9 A. Right.

10 Q. The -- earlier today when Ms. King was asking
11 you questions, you talked about the history of the change
12 of the old reg, which was 61-107.11, to the new reg,
13 current reg, that is 61-107.19.

14 But the 2008 permit that bears the date of
15 November 3, 2008 -- so the November 3, 2008 permit was
16 issued roughly six months or so after the current reg was
17 in effect. Does that --

18 A. Yes.

19 Q. -- sound accurate?

20 A. Yes.

21 Q. And Appendix 1 that's mentioned in the 2008
22 permit, it was in effect with the current regulation; is
23 that correct?

24 A. Yes.

25 Q. All right. Now, I've got a question about

1 Appendix 1. You mentioned that in the opening paragraph
2 there -- if anybody needs a copy, I've got a copy of just
3 that. Do you have it handy?

4 A. Appendix 1?

5 Q. Yes, sir.

6 A. Yes.

7 Q. Okay. So the first sentence of Appendix 1, it
8 says, "Acceptable waste for Class Two landfills; is that
9 correct?

10 A. Yes.

11 Q. All right. And it says, "The following types
12 of waste have been determined by the department to be
13 environmentally safe and may be accepted at Class Two
14 landfills, unless specifically prohibited by the
15 department."

16 First of all, did I read that correctly?

17 A. Yes.

18 Q. All right. And then it has that sentence that
19 you mentioned about, "Acceptable waste may be generated
20 by construction, demolition, land clearing, industrial,
21 and/or manufacturing and/or obtained from segregated
22 commercial waste." Is that correct?

23 A. Yes.

24 Q. And then it goes on to say, "However, any of
25 the materials listed in this appendix" -- it talks about

1 then contamination with hazardous constituents; is that
2 correct?

3 A. Yes.

4 Q. But the Appendix 1 -- the sentence about the
5 generation still refers to the wastes that are listed on
6 Appendix 1, doesn't it?

7 A. I'm not -- I'm not following you.

8 Q. Well, I thought earlier today you made a point
9 to the fact that -- that these wastes under Appendix 1
10 can be generated from a variety of sources; is that
11 right?

12 A. Well, we talked about how the new reg was more
13 focused on the character of the waste versus the older
14 one being the generator. Is that what you're referring
15 to?

16 Q. Okay. When you say "the new reg," you're
17 talking about the one we're looking at?

18 A. The '08 reg, yes.

19 Q. The '08 reg, okay.

20 But would you still agree that that sentence
21 about the generation, it's still talking about the wastes
22 that are listed in these four categories in Appendix 1?

23 MS. KING: Object to the form.

24 A. Yes.

25 Q. All right. And if you look at these

1 categories, the categories that are underlined are,
2 "Acceptable land clearing debris, such as brush and
3 limbs, et cetera."

4 Next category, "Acceptable debris, such as" --
5 it's got asbestos containing material, bricks and
6 masonry, et cetera.

7 It's got a third category of acceptable brown
8 goods, which is furniture, used furniture, et cetera, and
9 then the animal carcasses section; is that right?

10 A. Yes.

11 Q. Do you see in those four groupings of waste
12 anything that would include coal ash or coal combustion
13 residuals?

14 A. No.

15 Q. So if we go back to the 2008 permit -- if you
16 would pull that again for me, please. The 2008 permit,
17 under special condition No. 2 -- it is Exhibit 5.

18 A. The 2008 permit?

19 Q. Yes, sir.

20 A. Okay.

21 Q. All right. Do you see special condition No. 2?

22 A. Yes.

23 Q. All right. So under No. 2, it says, "This
24 permit is limited solely to the disposal of items listed
25 in Appendix 1 of R61-107.19."

1 And you've just agreed with me that coal ash,
2 coal combustion residuals are not listed in those
3 categories on Appendix 1; is that correct?

4 A. Yes.

5 Q. And the second sentence says, "All other
6 waste, including animal carcasses, are prohibited from
7 disposal in this landfill."

8 Do you agree with that?

9 A. Yes.

10 Q. So under the terms of the 2008 permit, coal
11 combustion residuals, also known as coal ash, would not
12 be allowed under this 2008 permit, would it?

13 A. Right.

14 MR. GOINGS: Object to the form of the
15 question.

16 Q. You can answer.

17 A. That permit -- yeah, that permit would have to
18 be modified to allow coal ash.

19 Q. All right. Coal ash was not permissible or
20 acceptable under the November 3, 2008 permit; is that
21 correct?

22 A. Correct.

23 Q. All right.

24 MS. KING: Object to the form.

25 BY MR. POLIAKOFF:

1 Q. And so then when we go to the 2015 permit
2 modification again, we've talked about this issue of
3 whether it's a major or a minor modification; is that
4 correct?

5 A. Right.

6 Q. Under the current law that passed, I believe,
7 March -- on or about March 2nd -- I think the governor
8 signed it on or about March 2nd -- would you agree that
9 CCR would not be allowed into this landfill, the Highway
10 93 landfill in Pickens County, in light of the new bill?

11 MR. GOINGS: Object to the form of the
12 question and the substance of your
13 question.

14 BY MR. POLIAKOFF:

15 Q. You can answer.

16 A. Can I read the new -- the new law? Do you have
17 it?

18 Q. Yeah, somewhere, if I can put my hands on it,
19 but I thought you participated in the drafting of it.

20 A. No. I mean, I wouldn't say that. I was
21 consulted.

22 Q. Oh, okay. Did the department participate in
23 the drafting of it?

24 A. No.

25 Q. Not at all?

1 A. We made suggestions and recommendations --

2 Q. Okay. Who was involved? Who was --

3 A. -- but we didn't write the law.

4 Q. Okay.

5 A. I mean, somebody else wrote it.

6 Q. Who was involved in making the suggestions and
7 recommendations for the department?

8 A. Me.

9 Q. Oh, okay. What suggestions and
10 recommendations did you have?

11 A. Well, we were asked what was -- as I talked to
12 earlier, we were asked what -- what the current law
13 allowed and didn't allow. And then -- and then we
14 explained how all that worked, and -- and then we -- you
15 know, they said, "What if we -- what if we said coal ash
16 could only go in a Class Three landfill? Would that be
17 okay?"

18 And we said, "Well, it's certainly okay with
19 us."

20 And then they were -- you know, they want to
21 know, well, who else might be -- who else might have an
22 issue with it or who -- who it might impact.

23 And so we talked about other industries that
24 had Class Two landfills that might dispose of some coal
25 ash and, you know, whether or not they would be impacted

1 by that change. And so then there were conversations
2 that I was not a party to, with, you know, utilities and
3 other industries, and then they came up with whatever
4 language they came up with.

5 Q. All right. Do you know if any of your
6 recommendations made it into the bill or were adopted by
7 the final drafting of the bill?

8 A. No, I don't. I mean, you know, whenever they
9 wrote -- they had written a version or two, which they --
10 they ran by us.

11 And they said, "Well, what about this? Would
12 this work? What would this do? And who else -- you know,
13 is there -- are there any unintended consequences?" That
14 kind of thing.

15 Q. Was it the department's intent to create any
16 loopholes that would allow coal ash to go into Class Two
17 landfills?

18 A. No.

19 Q. As best as your understanding, does the new
20 bill generally prohibit coal ash going into Class Two
21 landfills in South Carolina?

22 MR. GOINGS: Object to the question.

23 MS. KING: Object to the form. He has
24 asked for a copy of the legislation, and
25 you said you were going to hand it to him.

1 MR. POLIAKOFF: If I can put my hands on
2 it. I don't know if I can put my hands on
3 it.

4 MS. KING: Okay.

5 MR. GOINGS: Well, let's find it. If
6 you're going to ask him about substantive
7 questions about -- under oath about the
8 legislation, at least the witness should
9 be afforded the opportunity to actually
10 read the legislation.

11 MR. POLIAKOFF: Do you have it handy?

12 MS. LINEN: I have it on my phone.

13 MR. POLIAKOFF: Can you pull it up on your
14 phone?

15 MS. LINEN: Yes.

16 BY MR. POLIAKOFF:

17 Q. We'll pull it up on a cell phone here.

18 A. Well, I can pull it up on my phone, as well, if
19 you'd like. I mean, I --

20 Q. If --

21 A. I have it. It's not that I haven't read it
22 before. I just -- if you're going to ask me specific
23 questions, I'd like to --

24 Q. Okay.

25 A. It is new. I'd like to have the language.

1 Q. Okay. Let me see if I can find it.

2 MR. GOINGS: Gary, I thought you carried
3 it around in your back pocket everywhere
4 you went.

5 MR. POLIAKOFF: I have -- I'm the most --

6 MS. KING: I would think she does.

7 MR. POLIAKOFF: -- electronically
8 ignorant, illiterate person around.

9 MR. GOINGS: That wasn't the point I was
10 making.

11 MR. POLIAKOFF: My children make fun of me
12 that I'm so -- and my staff too.

13 MS. KING: That's all right, Gary. Ethan
14 had a flip phone until about last week, so
15 -- Ethan Ware had a flip phone.

16 MR. POLIAKOFF: Oh, did he really?

17 MS. KING: Yeah.

18 THE WITNESS: As long as it keeps working.

19 MR. POLIAKOFF: We can take a break for
20 anybody who needs a bathroom break or
21 anything.

22 VIDEOGRAPHER: We're off the record at
23 4:01.

24 (BREAK FROM 4:01 PM - 4:08 PM)

25 VIDEOGRAPHER: This is video No. 4. We're

1 on the record at 4:08.

2 CONTINUATION OF CROSS-EXAMINATION

3 BY MR. POLIAKOFF:

4 Q. Mr. Coleman, before we took a break, I was
5 asking you about the new bill that was signed by the
6 governor on or about March 2nd, titled "Coal Combustion
7 Residuals Disposal." And I was asking you if it was your
8 understanding that, under this bill, coal combustion
9 residuals, also known as coal ash, can no longer be put
10 in a Class Two landfill in South Carolina.

11 A. It is my understanding that coal combustion
12 residuals can no longer be placed in a commercial Class
13 Two landfill in South Carolina.

14 Q. All right. And it actually has several things
15 that say unless it's located contiguous with the electric
16 generating unit, if it's intended to be beneficially
17 reused, if it's placed into beneficial reused -- and No.
18 4 talks about an entity that produced the electricity.

19 As far as this Class Two landfill, the Highway
20 93 Class Two landfill, call it C&D or whatever, in
21 Pickens County, is it your understanding that coal ash
22 would be prohibited under this new law in the Highway 93
23 landfill in Pickens County?

24 MR. GOINGS: Object to the question;
25 calls for a legal conclusion.

1 BY MR. POLIAKOFF:

2 Q. You can go ahead.

3 A. Yes.

4 Q. All right. Yes, meaning that coal ash would be
5 prohibited under this new bill?

6 A. From any commercial -- commercial Class Two
7 landfill --

8 Q. All right.

9 A. -- including Pickens.

10 Q. All right. The bill applies statewide. It
11 doesn't single out Pickens County or MRR or anything like
12 that, does it?

13 A. That's correct.

14 Q. Bear with me just a minute, please. I'm
15 probably about finished.

16 (OFF THE RECORD DISCUSSION)

17 MR. POLIAKOFF: That is all the questions
18 I have, subject to keeping the deposition
19 open per the judge's ruling. Thank you,
20 Mr. Coleman.

21 THE WITNESS: Uh-huh.

22 MR. POLIAKOFF: That's all the questions
23 I have today, that is. We'll reconvene
24 once all the documents are in.

25 MR. GOINGS: We are in agreement to that.

1 MS. KING: Is anybody else going after
2 Gary?

3 MR. POLIAKOFF: Matt Johnson.

4 MS. NAVARRO: Matt is reserving his
5 right.

6 MS. KING: Matt is reserving his right at
7 a later date. Amy, are you asking any
8 questions?

9 MR. POLIAKOFF: Amy?

10 MR. GOINGS: Tell her we'll agree to
11 reserve hers as well if she wants to --

12 MR. POLIAKOFF: All right. I appreciate
13 that.

14 MS. KING: I think she --

15 MS. SNYDER: No. No, I'm not going to ask
16 anything today. I'm reserving.

17 MS. KING: Okay.

18 MR. POLIAKOFF: Okay.

19 MS. KING: I just wanted to make sure
20 before we move on. And I think before you
21 finished, Gary, when we were on break, we
22 discussed MRR, and I'll let you put your
23 objection on the record.

24 We would like to at this point ask
25 some follow up based on your line of

1 questioning with Mr. Coleman. It will be
2 short, but we would do that reserving the
3 right to ask other questions when we
4 reconvene when all the documents are
5 provided.

6 MR. POLIAKOFF: Okay. Let me -- let me --
7 thank you, Jessie.

8 Let me just state my objection is
9 that the normal course of questioning
10 would be that each attorney goes in turn.
11 And then afterward, of course, the
12 plaintiff who scheduled this deposition
13 would be entitled to do follow-ups based
14 on the questions by the various other
15 attorneys.

16 I'm going to object to you doing
17 that today since there appears to be a
18 couple of attorneys that have reserved,
19 entirely, their right to go forward.

20 Additionally, I have not thought
21 this through. I think it's not
22 appropriate to do it at this point in
23 time. So I can tell you that at some
24 point in time, I might object to your
25 asking any follow-up questions when we

1 reconvene if you've done that today.

2 MR. GOINGS: Well, if the other lawyers
3 want to go and ask their questions today,
4 they can do that, and then we can start
5 asking our follow-up. But I understand
6 that they want to save their follow-up to
7 a later date.

8 We also would like to follow up on
9 some questions after Mr. Johnson and --

10 MR. POLIAKOFF: Amy Snyder.

11 MR. GOINGS: -- and Ms. Snyder ask
12 questions, but we do have some follow-up
13 questions for the witness today based on
14 your line of questioning.

15 MR. POLIAKOFF: All right. I've stated my
16 position.

17 MR. SNYDER: Okay. And I want to join in
18 Mr. Poliakoff's objection to this because
19 I don't believe that's proper order for a
20 deposition. And I have the right by the
21 court to reserve questions on behalf of
22 the people I represent; and yeah, that
23 was pursuant to the court order.

24 So I'm choosing to do so. So really,
25 the idea that I'm not going to ask

1 questions today isn't my idea. That --
2 that was the court order that I get to do
3 that. And then I think it's appropriate
4 for any follow-up questions to come at
5 the conclusion of my -- my questions, so I
6 join in Mr. Poliakoff's objection.

7 MR. GOINGS: Okay. We'll make it easy for
8 everyone. We will just reconvene this
9 deposition at our discretion after we
10 obtain the DHEC documents and work with
11 DHEC on an acceptable date to reconvene
12 this deposition.

13 Y'all can ask your questions, and
14 then we can do our follow-up questioning
15 at the end of your line of questioning of
16 Mr. Coleman. Is that okay?

17 MS. SNYDER: Yeah.

18 MS. KING: I think that's fine.

19 MR. GOINGS: Okay. We'll do that, then.
20 Thank you so much. Have a great day.
21 We're done for today.

22 VIDEOGRAPHER: We're off the record at
23 4:15.

24
25

CERTIFICATE OF REPORTER

I, KRISTA GIBSON, COURT REPORTER AND NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT I REPORTED THE DEPOSITION OF KENT COLEMAN ON TUESDAY, MARCH 8, 2016, THAT THE WITNESS WAS FIRST DULY SWORN BY ME AND THAT THE FOREGOING 232 PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF MY VERBATIM REPORT OF SAID DEPOSITION.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED IN SAID CAUSE.

I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT WAS THEREAFTER SEALED AND DELIVERED TO ROBERT GOINGS, ESQUIRE BROOM, 914 RICHLAND STREET, SUITE A-101, COLUMBIA, SOUTH CAROLINA, WHO WILL RETAIN THIS SEALED TRANSCRIPT AND SHALL BE RESPONSIBLE FOR FILING SAME WITH THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 14TH DAY OF MARCH, 2016.

KRISTA M. GIBSON, COURT REPORTER

MY COMMISSION EXPIRES JUNE 20, 2022

VERIFICATION OF DEPONENT

I, KENT M. COLEMAN, HAVE READ THE FOREGOING DEPOSITION TESTIMONY, WHICH WAS REPORTED BY KRISTA GIBSON, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, ON MARCH 8, 2016.

I FIND THE TRANSCRIPT OF THE DEPOSITION TO BE A TRUE AND ACCURATE TRANSCRIPT ACCORDING TO MY TESTIMONY ON THAT DATE, WITH THE EXCEPTION OF _____ CORRECTIONS AS LISTED ON THE ATTACHED ERRATA SHEET, WHICH WAS COMPLETED BY ME.

KENT M. COLEMAN

DATE

E R R A T A S H E E T

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