THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Chief Administrative Law Judge

Case No. 09-ALC-07-0377-CC

Duke Energy Carolinas, LLC ..... Respondent,

v.

South Carolina Department of Health and Environmental Control, South Carolina Attorney General, American Rivers, and The South Carolina Coastal Conservation League..... Defendants,

Of whom South Carolina Department of Health and Environmental Control and American Rivers and The South Carolina Coastal Conservation League are..... Appellants.

RESPONDENT'S PETITION FOR REHEARING

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Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Respondent Duke Energy Carolinas, LLC ("Duke") respectfully petitions this Court for a rehearing of Opinion No. 5062 issued December 12, 2012 ("Opinion"). The basis for this petition is that the Opinion overlooks and misapprehends key points of law. Specifically, the Court's interpretation of Regulation 61-30 effectively repeals relevant provisions of Regulation 61-101 despite the absence of the requisite express or implied intent to give such effect to Regulation 61-30. Indeed, the Court's application of the tolling provision of Regulation 61-30, for the calculation of the 180-day fee refund period, to DHEC's decision under Regulation 61-101 creates a conflict between the two regulations which would not otherwise exist. Additionally, in support of this interpretation, the Court improperly distinguishes this case from the holding in *Responsible Economic Development v. South Carolina Dep't of Health and Envtl. Control*, 371 S.C. 547, 549, 641 S.E.2d 425, 426 (2007). Finally, the Court improperly interpreted the legal effect of the DHEC staff statements to Duke regarding tolling of the 180-day time period for a fee refund provided in Regulation 61-30 and improperly characterized such statements as an agency interpretation entitled to deference by the Court.

I. THE COURT'S INTERPRETATION OF REGULATION 61-30 EFFECTIVELY REPEALS THE SUSPENSION PROVISIONS OF REGULATION 61-101 DESPITE THE ABSENCE OF AN IMPLIED OR EXPRESS REPEAL OF SUCH PROVISIONS IN EITHER THE ENVIRONMENTAL PROTECTION FUND ACT OR REGULATION 61-30.

The Court finds that Regulation 61-30 "allows for tolling as well as suspension of the time schedule" and further finds that the "tolling provisions of 61-30 are also applicable to Regulation 61-101." Opinion, p. 11. This attempt to blend the running of

the 180-day time periods in Regulation 61-101 and 61-30 effectively repeals the suspension provisions which govern the running of the 180-day time period in Regulation 61-101. Regulation 61-101 provides for very specific circumstances under which the running of the 180-day time period for review of an application for a water quality certification ("WQC") may be suspended by DHEC. These circumstances are far more narrow than those under which the running of the 180-day period is tolled under Regulation 61-30.

The Court's effort to reconcile the running of the separate 180-day time periods in these Regulations effectively negates relevant provisions of Regulation 61-101. Specifically, Section (H)(1)(c) of Regulation 61-30 tolls the running of the 180-day time period for a fee refund upon the written request of information from an applicant. Such time is tolled until DHEC receives the requested information. 24A S.C. CODE ANN. REGS. § 61-30(H)(1)(c) (Supp. 2011) Under Regulation 61-30, the 180-day time period for a fee refund is tolled as of the date on which DHEC makes the written request for information from the applicant. In contrast, Section (C) of Regulation 61-101 suspends the running of the 180-day time period for an action on a WQC application only when a DHEC request for additional information is not timely provided by the applicant according to the deadline stated in the request, DHEC determines that such information is necessary to its decision on the application, and DHEC provides the applicant with notice that the processing of the WQC application is suspended.

Obviously, the criteria for suspending a WQC application under Regulation 61-101 is much more demanding than tolling under Regulation 61-30 and requires additional consideration by DHEC on the effect of the absence of requested information.

Regulation 61-101(A) expressly provides that DHEC must act on a WQC application within 180 days: "Unless otherwise suspended or specified in this regulation, the Department shall issue a proposed decision on all applications within 180 days of acceptance or [sic] an application." 25A S.C. CODE ANN. REGS. § 61-101(A)(6) (Supp. 2011) (emphasis added). Regulation 61-101 clearly establishes specific conditions under which processing of a WQC is suspended and the 180-day clock stops. Regulation 61-101 provides that DHEC may suspend its processing of the WQC application if the federal licensing agency suspends processing of the application for the license. 25A S.C. CODE ANN. REGS. § 61-101(A)(6) (Supp. 2010). Regulation 61-101(C)(4) also authorizes DHEC to suspend processing of the WQC application when the applicant fails to provide additional information requested by DHEC. However, unlike the tolling provisions in Regulation 61-30, Regulation 61-101 provides that DHEC's request for additional information suspends processing of the WQC application only when all of the following criteria are met:

First)	DHEC requests additional information and specifies a time for submittal of the additional information;
Second)	Information requested is not timely submitted to DHEC;
Third)	DHEC determines that such information is necessary to reach a decision on the application; **and**
Fourth)	DHEC gives the applicant notice that the certification is denied without prejudice or that processing is being suspended.

See 25A S.C. CODE ANN. REGS. § 61-101(C)(4) (Supp. 2010). If tolling under Regulation 61-30 is applied to the calculation of time under Regulation 61-101, then the 180-day clock under Regulation 61-101 will be stopped when only the first of the four criteria identified is partially met since the written request for information under

Regulation 61-30 need not even include a deadline for submittal of the requested information. Moreover, the second, third and fourth criteria expressly specified in the regulation will become meaningless. The application of tolling under Regulation 61-30 to the calculation of the 180-day time period in Regulation 61-101 thereby drastically alters the method for making such calculations and effectively repeals Section (C)(4) of Regulation 61-101.

Although the Court's application of tolling under Regulation 61-30 to the calculation of the 180-day period under Regulation 61-101 effectively repeals relevant provisions of Regulation 61-101 which govern suspension of DHEC's processing of a WQC application, neither the Environmental Protection Fund Act, S.C. CODE ANN. §§ 48-2-10 *et seq.* ("Fund Act"), nor Regulation 61-30 contains an express repeal of any provision of Regulation 61-101. The Court finds that the Fund Act's "plain language indicates the time schedule provided in Regulation 61-30, as well as any corresponding explanation of how to count the days in that time schedule, would be applicable to any previous regulation under which the permit is authorized." Opinion, p. 10. However, while time schedules ***for a fee refund*** under Regulation 61-30 apply to permits authorized by prior regulation, the Fund Act does not provide that a regulation promulgated pursuant to the Fund Act amends or supersedes ***permitting requirements*** promulgated under a prior regulation. Indeed, Section 48-2-70 expressly provides that the sole effect of failure to meet the time frame in Regulation 61-30 is the refund of the application fee imposed under the Regulation.

> Under each program for which a permit processing fee is established pursuant to this article, the promulgating authority also shall establish by regulation a schedule for timely action by the Department of Health and Environmental Control on permit applications under that program. These

> schedules shall contain criteria for determining in a timely manner when an application is complete and the maximum length of time necessary and appropriate for a thorough and prompt review of each category of permit applications and shall take into account the nature and complexity of permit application review required by the act under which the permit is sought. If the department fails to grant or deny the permit within the time frame established by regulation, the department shall refund the permit processing fee to the permit applicant.

S.C. CODE ANN. § 48-2-70 (2008). Neither this provision of the Fund Act nor Regulation 61-30 promulgated thereunder expressly repeals any provision of prior regulations establishing the procedural and substantive requirements governing DHEC permitting decisions.

Additionally, neither the Fund Act nor Regulation 61-30 implicitly repeals any provision of prior permitting regulations, including Regulation 61-101. "Repeals by implication are not favored by courts and to repeal a statute on account of an asserted conflict or repugnancy with another, 'the repugnancy must not only be plain, but the provisions of the two statutes must be incapable of any reasonable reconcilement; for if they can be construed so that both can stand, the Court will so construe them.'" *City of Rock Hill v. South Carolina Dep't of Health and Envtl. Control*, 302 S.C. 161, 167-68, 394 S.E.2d 327, 331-32 (1990) (quoting *Pearson v. Mills Mfg. Co.*, 82 S.C. 506, 509, 64 S.E. 407, 409 (1909)). Unquestionably, neither the Fund Act nor Regulation 61-30 is repugnant to Regulation 61-101. As discussed fully in Respondent's Brief, Regulation 61-30 and 61-101 were enacted under different enabling statutes to achieve distinctly different purposes. Regulation 61-30 is promulgated pursuant to the Fund Act. The purpose of the Fund Act is to establish a fund separate from the State's general fund to be used to defray DHEC's costs in administering certain regulatory programs, including permitting programs under the Pollution Control Act. S.C. CODE ANN. §§ 48-2-30 and -

40 (2008 and Supp. 2010). Regulation 61-30 expressly provides for the limited application of the time schedules defined therein.

> "Time Schedules" In accordance with S.C. Code Sections 48-2-70 and 48-39-150, a "schedule of timely review" **for purposes of this regulation** shall begin when the applicant is notified that the application is administratively complete or within ten days of receipt of the application, whichever comes first; and end when a final decision is rendered. It will include required technical review, required public notice, and end with a final decision by the Department to issue or deny the permit. The time schedule may be tolled or extended in accordance with the conditions stipulated in Section H(1) of this regulation.

24A S.C. CODE ANN. REGS. § 61-30(B)(22) (Supp. 2011) (emphasis added). There is no doubt that the "time schedules" set forth in Regulation 61-30 are solely "for purposes of this regulation" and established in accordance with Section 48-2-70 of the Fund Act which provides for refund of fees upon DHEC's failure to process application within the time period established by regulation. Additionally, the Fund Act requires DHEC to establish a process whereby the applicant may appeal the calculation of the fee.

> A person required to pay the fees set forth in this article who disagrees with the calculation or applicability of the fee may petition the department for a hearing by submitting a petition setting forth the fee which is challenged, the grounds on which relief is sought, and the total amount of the fee due. The petition and the fee must be received by the department no later than thirty days after the due date. The hearing must be conducted in accordance with contested case provisions set forth in the Administrative Procedures Act and department regulations. If it is finally determined that the amount in dispute was improperly assessed, the department shall return the amount determined to be improperly assessed with interest not to exceed the statutory rate.

S.C. CODE ANN. § 48-2-60 (2008). Accordingly, the Fund Act provides for appeal of the calculation or application of a fee authorized by the Act only—not for an appeal of the substantive decision on a permit application. This narrow appeal provision is further evidence of the limited legislative purpose of the Fund Act.

Regulation 61-101, in contrast, was promulgated pursuant to the Pollution Control Act to satisfy Section 401 of the Clean Water Act. As Judge Thomas notes in her dissent, the requirements of the Clean Water Act "include prompt action by state agencies on requests for water quality certification, an objective important enough to warrant a legislative mandate in the Clean Water Act that unreasonable delay by a state agency in acting on such a request for water quality certification would be tantamount to a waiver by the State of its right to deny certification and thus delay the applicant's pursuit of any federal license or permit for which state water quality certification is a prerequisite." Opinion, p. 15 (citing *South Carolina Coastal Conservation League v. South Carolina Dep't of Health & Envtl. Control*, 390 S.C. 418, 430, 702 S.E.2d 246, 253 (2010), which states that Regulation 61–101 "establishes procedures and policies for implementing water quality certification requirements of Section 401 of the Clean Water Act"). Regulation 61-101 provides not only the criteria for DHEC's substantive decision on a WQC certification, but also the procedural requirements and deadlines established to conform to the statutory framework of Section 401 of the Clean Water Act.

Unquestionably, Regulation 61-101 and Regulation 61-30 are not repugnant and can be easily reconciled. The purpose of Regulation 61-101 is to establish the procedures and criteria by which DHEC makes a water quality certification decision as required by Section 401 of the Clean Water Act. The purpose of Regulation 61-30, in contrast, is to establish the procedures and criteria to carry out the purposes of the Fund Act, which authorizes the collection of application fees to be placed in a special fund separate from the State's general fund. Despite the absence of any repugnancy between Regulation 61-30 and Regulation 61-101, this Court interprets the application of the

tolling provisions of Regulation 61-30 in a manner than implicitly repeals the operation of the suspension provisions of Regulation 61-101. "Repeals by implication are not favored by courts and to repeal a statute on account of an asserted conflict or repugnancy with another, 'the repugnancy must not only be plain, but the provisions of the two statutes **must be incapable of any reasonable reconcilement**; for if they can be construed so that both can stand, the Court will so construe them.'" *City of Rock Hill v. South Carolina Dep't of Health and Envtl. Control*, 302 S.C. 161, 167-68, 394 S.E.2d 327, 331-32 (1990) (quoting *Pearson v. Mills Mfg. Co.*, 82 S.C. 506, 509, 64 S.E. 407, 409 (1909)) (emphasis added). In this case, Regulation 61-30 and 61-101 are capable of a "reasonable reconcilement." Indeed, the ALC interpreted these regulations in a manner that reconciles the differences in the calculation of time periods under each regulation and allows all provisions of both regulations to stand. Accordingly, the ALC's decision should be affirmed.

II. THE COURT'S APPLICATION OF THE TOLLING PROVISION OF REGULATION 61-30 TO THE CALCULATION OF THE 180-DAY TIME PERIOD UNDER REGULATION 61-101 CREATES A CONFLICT BETWEEN THE TWO REGULATION WHICH DOES NOT OTHERWISE EXIST.

Regulation 61-30 sets the time period for DHEC's decision on a WQC application at 180 days. The Court notes that the 180-day time schedule for processing a WQC application under Regulation 61-30 "mirrors Regulation 61-101's time schedule for permit review." Opinion, p. 11. The Court further notes that "many portions of Regulation 61–30's requirements and procedures regarding the application procedure mirror the requirements in Regulation 61–101." *Id.* The Court thus concludes: "Reading the statutory mandates and regulatory requirements in their plain and ordinary

sense indicates that Regulation 61–30 and 61–101 were to be read together to provide DHEC more flexibility in the processing of permits. Both of the regulations can exist without one negating the other, as Regulation 61–30 clarifies how Regulation 61–101's 180–day time period of review will be counted." *Id.* (footnote omitted). As a preliminary matter, the reference to the 180-day time frame in both Regulation 61-30 and 61-101 does not support the Court's ruling. For example, Regulation 61-101 also mandates a 60-day time period for DHEC's review of certain activities requiring a WQC. 25A S.C. CODE ANN. REGS. § 61-101(F)(4) (Supp. 2011). While Regulation 61-30 may be read to provide for greater flexibility for determining when DHEC's failure to timely process an application requires the refund of an application fee, such flexibility cannot be extended to change the required time periods for review of all WQC applications, including those subject to the 60-day time period under Regulation 61-101. The Court's reasoning is therefore flawed.

The Court's application of the "time schedule" provisions of Regulation 61-30 to Regulation 61-101 does not harmonize the two regulations, but in fact creates direct conflicts where none would otherwise exist. The most obvious conflict is the difference in the 60-day time period for certain WQC applications under Regulation 61-101 and the 180-day time period for a fee refund for all WQC applications under Regulation 61-30. Moreover, as discussed above, the Court's application of the tolling provision of Regulation 61-30 to the calculation of the 180-day time period under Regulation 61-101 renders Section (C)(4) of the Regulation meaningless. Indeed, the only means of harmonizing the two regulations to give effect to both is the ALC's interpretation. The ALC's decision harmonizes these two regulations by interpreting differing methods of

calculating the 180-time periods in a manner which gives full effect to both regulations. "It is well settled that statutes in apparent conflict should, if possible, be construed so as to allow both to stand and to give effect to each." *National Advertising Co., Inc. v. Mount Pleasant Bd. of Adjustment*, 312 S.C. 397, 400, 440 S.E.2d 875, 877 (1994). "Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative." *Hodges v. Rainey*, 341 S.C. 79, 88, 533 S.E.2d 578, 583 (2000) (citation omitted). As the ALC correctly held, any perceived dissimilarity between these regulations does not create a direct conflict because each regulation determines the applicable method for calculating the 180-day time periods for distinctly separate and unrelated purposes. The ALC thereby interprets Regulation 61-30 and 61-101 in a manner which renders both regulations fully operative and should therefore be affirmed.

Moreover, to the extent that the application of both regulations creates a conflict, Regulation 61-101 would govern the calculation of the 180-day time period required thereunder. Specific statutes are not to be considered repealed by a later general statute unless there is a direct reference to the earlier statute or the intent of the legislature to do so is explicitly implied. *Atlas Food Systems and Serv., Inc. v. Crane National Vendors Div. of Unidynamics Corp.*, 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995). As discussed *supra*, neither the Fund Act nor Regulation 61-30 contains an express or implied legislative intent to amend or supersede any provision of Regulation 61-101. Looking comprehensively at the overall purpose of both regulations, Regulation 61-101 is unquestionably the "specific" statute with respect to DHEC's substantive review of a WQC application. On the other hand, Regulation 61-30 addresses a vast number of permitting decisions to be rendered by DHEC, only one of which involves WQCs, but

does so only in the context of setting the fees and a schedule for refund of such fees. Moreover, as the Court noted, the South Carolina Supreme Court has acknowledged that Regulation 61-101 governs the water quality certification process. *See South Carolina Coastal Conservation League v. South Carolina Dep't of Health and Envtl. Control*, 390 S.C. 418, 430, 702 S.E.2d 246, 253 (2010) ("[Regulation 61-101] establishes procedures and policies for implementing water quality certification requirements of Section 401 of the Clean Water Act and requires DHEC to send notice to specific parties.").

Additionally, in ascertaining the purpose of a regulation, the South Carolina Supreme Court has examined the title of such regulation. *Spruill v. Richland County School Dist. 2*, 363 S.C. 61, 64, 609 S.E.2d 524, 526 (2005) ("The purpose of the regulation is reflected in its title, Withdrawing a Request for a Hearing, and the text reflects this limited application."). The purpose of Regulation 61-30 is reflected in its title, "Environmental Protection Fees." Finally, the application of the "Time Schedule" as defined therein is expressly limited to "a 'schedule for timely review' for purposes of this regulation." 24A S.C. CODE ANN. REGS. § 61-30(B)(22) (Supp. 2010). In contrast, Regulation 61-101 is entitled "Water Quality Certification" and "establishes procedures and policies for implementing State water quality certification requirements of Section 401 of the Clean Water Act, 33 U.S.C. Section 1341." 25A S.C. CODE ANN. REGS. § 61-101(A)(1) (Supp. 2010). Accordingly, to the extent that any conflict between the manner in which the 180-day time frames in Regulation 61-101 and 61-30 are calculated may be found, the provisions of Regulation 61-101 are unquestionably the more specific regulation regarding the processing of a water quality certification and would therefore be given effect.

While this Court is clearly troubled with the apparent incongruity of two DHEC regulations, both touching on water quality certifications, each with a 180-day period, it is not for the Court to fix this apparent incongruity. These are legislative rules. It is the Court's duty to interpret these rules and to give each full effect, if possible. As the ALC determined, it is possible to give each full effect, and the ALC's decision should therefore be affirmed.

III. THE SUPREME COURT RULING IN *RESPONSIBLE ECONOMIC DEVELOPMENT* GOVERNS THE INTERPRETATION OF REGULATION 61-101 AND REGULATION 61-30 IN THIS CASE.

The Court finds that *Responsible Economic Development v. South Carolina Department of Health and Environmental Control* can be distinguished from the facts in this case. However, the Court recites the holding in *Responsible Economic Development* as follows:

> *Responsible Economic* held that regulations from different enabling acts could not be applied to each other when the regulations did not reference each other and there is an absence of statutory authorization to apply the two acts and their corresponding regulations to each other.

Opinion, p. 10. Under the Court's own recitation of the holding, *Responsible Economic Development* is directly on point with the instant case. In the instant case, Regulation 61-101 and Regulation 61-30 were promulgated under two different enabling acts. Regulation 61-101 was first promulgated under the Pollution Control Act, and Regulation 61-30 was promulgated under the Fund Act. As in *Responsible Economic Development*, while the regulations may touch on common general subjects, there is no authorization in either the Pollution Control Act or the Fund Act to apply these Acts and the regulations promulgated thereunder to each other. Regulation 61-101 governs DHEC's decision on a WQC application. As such, the provisions of Regulation 61-30

cannot be applied in a manner which affects a decision on a WQC application made pursuant to the specific procedures and criteria established in Regulation 61-101.

IV. THE COURT IMPROPERLY DEFERS TO AN INTERPRETATION OF DHEC STAFF AND IMPROPERLY INTERPRETS THE LEGAL EFFECT OF THE DHEC STAFF NOTICE OF TOLLING.

The Court finds that DHEC's interpretation of its regulations is entitled to deference and cites to an October 19, 2008 letter from DHEC staff to Duke for such interpretation. The Court states:

> Additionally, DHEC explained its interpretation of the time schedule to Duke Energy in their letter dated October 19, 2008, as well as in other documents. It cited Regulation 61–30, and stated that while DHEC had 180 days to complete its action on the application, only the days on which DHEC was actively reviewing the application would be counted. DHEC maintained the clock stopped when information was requested and DHEC was awaiting a response. We give DHEC's interpretation deference because we believe it complies with the regulations' plain language.

Opinion, p. 11. As a preliminary matter, deference to an agency interpretation is limited to cases in which the meaning and intent of a statute or regulation is truly doubtful. *See Davidson v. Eastern Fire & Casualty Ins. Co.*, 245 S.C. 472, 477-78, 141 S.E.2d 135, 137-38 (1965). The Court's reliance on deference to the agency in support of its holding shows that there is no plain and unambiguous intent in Regulation 61-30 to supersede the suspension provisions of Regulation 61-101. As discussed *supra*, such intent is clearly required to apply the tolling provisions in Regulation 61-30 to Regulation 61-101 in a manner which effectively repeals the suspension provisions therein. Moreover, a statement made by DHEC staff in a communication to an applicant does not constitute an agency interpretation of a regulation entitled to deference by a court interpreting the regulation. The Supreme Court has held that the courts should give deference to the policy decisions and regulatory interpretations of an agency, but not to interpretations

and decisions of agency staff. *See S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, 363 S.C. 67, 75, 610 S.E.2d 482, 486 (2005) (holding that the circuit improperly deferred to a staff interpretation of an undefined term in a regulation, but should have deferred only to interpretations of the Coastal Zone Management Appellate Panel of the Department's Office of Ocean and Coastal Resource Management (OCRM)). Accordingly, the staff explanation of the tolling of the 180-day time period under Regulation 61-30 is not an agency interpretation entitled to deference by the Court.

Even if such statements were an agency interpretation entitled to deference, which they are not, the statements by DHEC staff do not even purport to interpret the provisions of the regulation governing suspension of the processing of a WQC application. As the Court notes, DHEC staff referenced Regulation 61-30 and advised Duke on the manner in which DHEC was counting the days under Regulation 61-30. Indeed, DHEC staff correctly explains the operation of the tolling provision under Regulation 61-30: "the clock stopped when information was requested and DHEC was awaiting a response." *Id.* However, while this accurately explains tolling under Regulation 61-30, it does not in any manner suggest that such tolling has the effect of suspending the WQC application processing under Regulation 61-101. Indeed, as Judge Thomas notes in her dissent, "Regulation 61-101 does not authorize DHEC to suspend processing during the interval between the time it requests more information and the deadline that it gives the applicant when it makes the request." Opinion, p. 14. Instead, "the processing of an application for water quality certification is suspended only after the applicant has failed to meet the given deadline for submitting additional requested

information and DHEC has notified the applicant about the suspension." *Id.* Moreover, as Judge Thomas further notes, DHEC did not thereafter suspend processing of Duke's WQC application: "DHEC's own actions, then, show it did not suspend the processing of Duke's application according to Regulation 61–30.H.1.c; rather, it continued to review it actively after it requested supplemental information." Opinion, p. 16. Accordingly, even if the communications from DHEC staff to Duke were an agency interpretation, such interpretation is limited to DHEC's interpretation of the tolling pursuant to Regulation 61-30—not the suspension under Regulation 61-101.

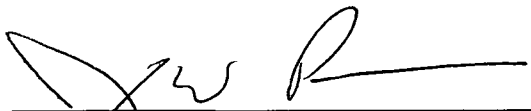
Finally, as discussed more fully in Respondent's Brief and contrary to the statement by DHEC staff, DHEC was fully aware of the requirements for suspension of its review of a WQC application under Regulation 61-101. On April 12, 2008, the ALC issued its final decision in *South Carolina Department of Transportation v. South Carolina Department of Health and Environmental Control and Friends of Congaree Swamp*, 2008 WL 1934476, 1 (Apr. 12, 2008 S.C.A.L.C). (A copy is this decision is attached to Brief of Respondent as Exhibit A). In that case, the ALC held that the processing of the WQC certification at issue had never been suspended because DHEC failed to suspend the processing and provide the applicant with notice of suspension pursuant to the requirements of Regulation 61-101. *Id.* at 12. The ALC issued this ruling less than two months prior to Duke's submittal of its WQC application. Accordingly, to the extent that the October 19, 2008 letter might be construed as the agency's interpretation of the provisions governing suspension of a WQC application, DHEC's statement of that interpretation would be in direct conflict with the ALJ's interpretation of the requirements for suspension of a WQC application under Regulation

61-101.

CONCLUSION

For the forgoing reasons, Respondent respectfully requests that this Court grant its Petition for Rehearing and affirm the ALC's decision granting summary judgment to Respondent.

Respectfully submitted,



January 10, 2013

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