

# Ogletree Deakins

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March 8, 2013

## VIA HAND DELIVERY

The Honorable Daniel E. Shearouse  
Clerk of Court  
South Carolina Supreme Court  
1231 Gervais Street  
Columbia, SC 29201

RECEIVED

MAR - 8 2013

S.C. Supreme Court

RE: Settlement Agreement with South Carolina Electric & Gas Co.  
Case No. 12-11-0040-CC

Dear Mr. Shearouse:

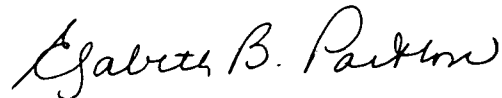
Enclosed please find an original and seven copies of a Motion for Leave to File Brief of Amici Curiae, and an original and 16 copies of a proposed Brief of Amici Curiae. Both the Motion and proposed Brief are being served on the parties today. Pursuant to Rule 240(d), we understand that no filing fee is due for a motion relating to certified questions under Rule 244.

Please file-stamp one copy of the Motion and the Brief and return the stamped copies to our courier.

Thank you for your assistance.

Sincerely,

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.



Elizabeth B. Partlow

EBP:gem  
Enclosures

The Honorable Daniel E. Shearouse  
South Carolina Supreme Court  
March 8, 2013  
Page 2

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cc: Gary Poliakoff, Esq.  
Raymond P. Mullman, Esq.  
William E. Hopkins, Jr., Esq.  
Richard H. Middleton, Jr., Esq.  
Kevin A. Dunlap, Esq.  
Steven D. Weber, Esq.

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIFICATION PURSUANT TO RULE 244, SCACR  
United States District Court for the District of South Carolina  
Joseph F. Anderson, Jr., District Court Judge

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Appellate Case No. 2012-212741

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RECEIVED

MAR - 8 2013

S.C. Supreme Court

Perrin Babb, Debbie Babb, Wayne  
Elstrom, Sarah Elstrom,  
Allan Jackson, and Kathy Jackson,

Plaintiffs,

v.

Lee County Landfill SC, LLC,

Defendant.

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**MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF OF  
NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION, SOUTH  
CAROLINA PALMETTO CHAPTER OF THE SOLID WASTE ASSOCIATION  
OF NORTH AMERICA, AMERICAN FOREST & PAPER ASSOCIATION, AND  
INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.**

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COME NOW the National Solid Wastes Management Association, the South Carolina Palmetto Chapter of the Solid Waste Association of North America, the American Forest & Paper Association, and the Institute of Scrap Recycling Industries, Inc., by and through their counsel, Ogletree, Deakins, Nash, Smoak & Stewart P.C., pursuant to rule 213 of the South Carolina Appellate Court Rules, and file this Motion for Leave To File Amicus Curiae Brief. National Solid Wastes Management Association, the South Carolina Palmetto Chapter of the Solid Waste Association of North America, the American Forest &

Paper Association, and the Institute of Scrap Recycling Industries, Inc., would respectfully show unto this Court:

1. National Solid Wastes Management Association (“NSWMA”) is a non-profit national trade association for the solid waste and recycling industry, with more than 400 members that operate in all fifty states, including South Carolina. The Association’s members in South Carolina include waste haulers who are franchisees and the owners of landfills, transfer stations, recycling centers, and other solid waste management facilities, all of whom heavily rely on the free flow of solid waste and recyclables in and across cities, counties, and states to operate their businesses.

2. The members of NSWMA consist of large publicly-traded companies and both small and large privately-owned companies, all of which share the association's mission to promote the management of waste in a manner that is environmentally responsible, efficient, profitable and ethical, while benefiting the public and protecting employees.

3. The South Carolina Palmetto Chapter of the Solid Waste Association of North America (“SWANA”) includes 137 active South Carolina members. SWANA is a non-profit national trade organization that serves solid waste and recycling professionals throughout North America. The organization is comprised of over 46 chapters in the United States and Canada with a membership of almost 8,000 individuals from all areas of the solid waste field.

4. The mission of SWANA is to advance the practice of environmentally and economically sound management of municipal solid waste. The diverse

membership is comprised of both public and private sector individuals focused on providing training and conferences in all aspects of integrated municipal solid waste management to solid waste management practitioners, executives, companies, and government organizations.

5. The American Forest & Paper Association (“AF&PA”) is a national trade association that serves to advance a sustainable U.S. pulp, paper, packaging, and wood products manufacturing industry through fact-based public policy and marketplace advocacy. The forest products industry provides more than 25,000 jobs in the state of South Carolina, and the industry’s collective payroll in the state is approximately \$1.7 billion annually. The industry operates 124 manufacturing facilities in South Carolina, including 11 pulp, paper, and paperboard mills and 78 converted paper products facilities.

6. AF&PA member companies make products essential for everyday life from renewable and recyclable resources and are committed to continuous improvement through the industry’s sustainability initiative — Better Practices, Better Planet 2020.

7. The Institute of Scrap Recycling Industries, Inc. (“ISRI”) is the “Voice of the Recycling Industry.” With 21 chapters nationwide and headquarters in Washington, D.C., ISRI represents over 1,700 companies that process, broker, and industrially consume scrap commodities, including metals, paper, plastics, glass, rubber, electronics, and textiles. The industry has a total economic impact in South Carolina of more than \$1.7 billion, including 9,140 jobs that pay \$479.5 million in wages and state and local taxes of \$79.6 million.

8. ISRI provides education, advocacy, and compliance training, and promotes public awareness of the value and importance of recycling to the production of the world's goods and services.

9. The certified questions submitted by the District Court of South Carolina represent questions that could dramatically affect the approximate 124 pulp, paper, packaging, and wood products manufacturers and the approximate 357 owners and operators of landfills, transfer stations, recycling centers, and other solid waste management facilities, and their ability to conduct business throughout the state.

10. The above-captioned case involves important questions in the area of negligence, trespass, and nuisance. The questions for this Court include, but are not limited to, whether South Carolina recognizes a trespass cause of action based solely on invisible odors, and if so, what measure of damages apply, and whether a party may bring an independent cause of action for negligence related to such odors.

11. The Plaintiffs have sought to create causes of action, and resulting damages, that have not been recognized in South Carolina. This expansion of legal theory is beyond established precedent upon which businesses rely, and would likely result in an increase of tort claims against the state's manufacturing and waste facilities, who would be forced not only to defend these lawsuits, but also to pay any damages awarded under new legal theories. The issues in this case may alter well-principled tort law related to South Carolina industry that could prevent new business from coming to the state, threaten to have

established business leave the state, and upset the balance between the industry and surrounding public.

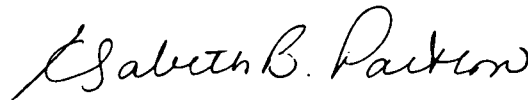
12. The submission of an amici curiae brief by the NSWMA, the South Carolina Palmetto Chapter of SWANA, AF&PA, and ISRI will assist the Court in its decision on the state-wide impact of the questions currently before this Court.

WHEREFORE, NSWMA, the South Carolina Palmetto Chapter of SWANA, AF&PA, and ISRI move this Court for leave to file an amicus brief for these certified questions.

Dated this 8<sup>th</sup> day of March 2013.

Respectfully submitted,

OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART



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Attorneys for National Solid Wastes  
Management Association, South Carolina  
Palmetto Chapter of the Solid Waste  
Association of North America, American Forest  
& Paper Association, and Institute of Scrap  
Recycling Industries, Inc.

## CERTIFICATE OF SERVICE

I do hereby certify that the foregoing **MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF OF NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION, SOUTH CAROLINA PALMETTO CHAPTER OF THE SOLID WASTE ASSOCIATION OF NORTH AMERICA, AMERICAN FOREST & PAPER ASSOCIATION, AND INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.**, has been served upon the following persons by U.S. Mail, properly addressed, and with the correct amount of postage affixed thereto:

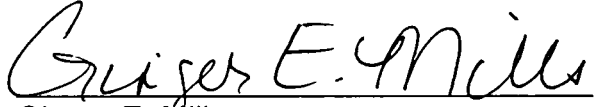
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Dated this 8<sup>th</sup> day of March 2013.

  
Ginger E. Mills

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