

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

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SC Court of Appeals

Case No. 2017-002598

CHARLES S. BLACKMON AND SOUTH CAROLINIANS FOR RESPONSIBLE
AGRICULTURAL PRACTICES, APPELLANTS,

v.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL,
AND DAVID COGGINS BROILERS, RESPONDENTS,

CHARLES S. BLACKMON AND SOUTH CAROLINIANS FOR RESPONSIBLE
AGRICULTURAL PRACTICES, APPELLANTS,

v.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL,
AND HEATH COGGINS BROILERS, RESPONDENTS,

CHARLES S. BLACKMON AND SOUTH CAROLINIANS FOR RESPONSIBLE
AGRICULTURAL PRACTICES, APPELLANTS,

v.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL,
AND JIM YOUNG BROILERS, RESPONDENTS.

APPENDIX TO RECORD ON APPEAL

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Pages 1726-1758

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APPENDIX TO RECORD ON APPEAL
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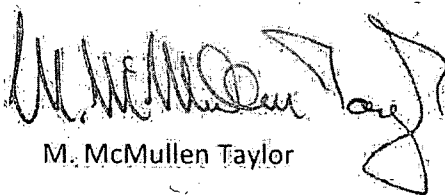
The Honorable Ralph King Anderson, III
South Carolina Chief Administrative Law Judge
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

RE: *Charles S. Blackmon and South Carolinians for Responsible Agricultural Practices v. S.C. Department of Health and Environmental Control and David Coggins Broilers*
Docket No. 17-AJ-07-0041-CC

Dear Judge Anderson:

Pursuant to your order dated February 23, 2017, enclosed for filing in the above-described contested case is the Prehearing Statement of Petitioners Charles S. Blackmon and South Carolinians for Responsible Agricultural Practices, along with a Proof of Service. By copy of this letter, the Respondents' counsel are hereby served copies of this filing.

Sincerely Yours,



M. McMullen Taylor

cc: Stephen P. Hightower, Esq.
Benjamin P. Mustian, Esq.

Robert Guild, Esq. (via electronic mail)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles S. Blackmon, and)
South Carolinians for Responsible)
Agricultural Practices,)
)
Petitioners,)
)
v.)
)
South Carolina Department of)
Health & Environmental Control,)
and David Coggins Broilers,)
)
Respondents.)

Docket No. 17-ALJ-07-0041-CC

**PREHEARING STATEMENT OF
PETITIONERS**

RE: David Coggins Broilers
DHEC Permit No. 19,886-AG: Agricultural Animal Facility
1094 Lisbon Road, Mountville, South Carolina 29370

Pursuant to an order issued March 7, 2017 by the Honorable Ralph King Anderson, III, the Petitioners hereby file their Prehearing Statement, reserving the right to amend and supplement this Prehearing Statement during the course of these proceedings:

1. The Nature of This Proceeding. This is a contested case proceeding challenging the decision by the South Carolina Department of Health and Environmental Control ("DHEC") to issue an animal agricultural permit ("Permit") to David Coggins Broilers to construct six poultry barns housing 739,000 birds per year, generating 988 tons of chicken manure annually ("Facility") in the Mountville area of Laurens County. This proposed Facility would constitute one of at least four other proposed animal agricultural permits for 24 new poultry barns in the same area as David Coggins Broilers, adding to the approximately 50 existing permitted poultry barns in the Mountville area. Petitioner Blackmon and his family own land near the Facility that they have used for agricultural, residential, and/or recreational purposes. Petitioner South Carolinians for Responsible Agricultural Practices ("SCRAP") is an unincorporated association of citizens and property owners in the Mountville area who advocate for poultry farming practices and permitting to be

compatible with the use and enjoyment of non-poultry farming property owners, and in a manner that does not impair air and water quality, emit noxious odors, or otherwise cause the quality of life in the Mountville area to deteriorate. Members of SCRAP identified in the Petition own property adjacent to or near the Facility. The Permit would authorize operation of a concentrated animal feeding operation without due regard to the adverse impact of such an operation upon public health, the air and water quality of the area, nor to the interests of Petitioners in peaceful use and enjoyment of their property.

2. Statutory Provision(s) Conferring Subject Matter Jurisdiction to the Agency and Other Applicable Statutes and Regulations. The Fourteenth Amendment of the United States Constitution; Article 1, Section 22 of the South Carolina Constitution; South Carolina Pollution Control Act, S.C. Code Ann. § 48-1-10 *et seq.*; S.C. Code Ann. § 44-1-140; DHEC Regulations 61-43; the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; and the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-310 *et seq.*
3. The Issues Presented for Determination, Including any Claims or Defenses Expected to be Raised. Whether the DHEC permit decision is arbitrary, capricious, an abuse of discretion, clearly erroneous, unsupported by substantial evidence, in violation of constitutional or statutory provisions, made upon unlawful procedure or affected by other error of law?
4. The Action Requested of the Court and a Detailed Statement of the Law which Supports the Requested Action, including Statutory and/or Case Citations. Petitioners respectfully request an order reversing the decision of the DHEC Staff and providing for the denial of the subject Permit. In the alternative, Petitioners respectfully request an order modifying the subject Permit or remanding for further proceedings. For a statement of supporting law, see paragraph 5 below.
5. A Brief Summary of the Facts to be Presented at the Hearing: Charles Blackmon owns land within approximately 582 yards of the nearest poultry houses to be managed by David Coggins Broilers under the proposed Permit. He owns a work shop within 900 yards of David Coggins Broilers' proposed poultry houses and frequently works in this shop and farms the land. The Little River, Beaverdam Creek, and Ginger Creek run through Mr.

Blackmon's property. As part of the permitting process for David Coggins Broilers' proposed Facility, Mr. Blackmon submitted documentation of a heart condition and frequent upper respiratory infections to DHEC, with no response. Mr. Blackmon breathes the air, drinks water, and uses his property and the other natural resources of the Mountville area in the vicinity of the proposed Facility.

Petitioner South Carolinians for Responsible Agricultural Practices ("SCRAP") is an unincorporated association of citizens and property owners in the Mountville area of Laurens County who advocate for poultry farming practices and permitting to be compatible with the use and enjoyment of non-poultry farming property owners, and in a manner that does not impair air and water quality, emit noxious odors, or otherwise cause the quality of life in the Mountville area to deteriorate. Members of SCRAP breathe the air, drink water, and use their property and the other natural resources of the Mountville area in the vicinity of the proposed Facility.

SCRAP Members Mary and John Basel maintain a residence for frequent recreational use that is located on land adjacent to David Coggins Broilers' property. David Coggins Broilers' proposed Facility is located within approximately 600 feet from their property line. They use and lease their land for hunting wild game with a firearm. Similarly, SCRAP Member Margaret Sparrow owns land adjacent to David Coggins Broiler's proposed Facility and this Facility is proposed to be located approximately 600 feet from her property line. She leases her land for hunting wild game with a firearm. Because S.C. Code Ann. § 50-11-356 prohibits discharging of a firearm within 900 feet of a poultry house, their leasing and hunting rights will be impaired by the proposed Facility. The Little River, Beaverdam Creek, and Ginger Creek run through their property.

SCRAP Members Jean and Don Revis own land within approximately 582 yards of the Respondent's proposed Facility. The Little River, Beaverdam Creek and Ginger Creek run through the property. They enjoy walking, hiking and fishing on their property. SCRAP Members Keith and Karen Blackmon own land within approximately 582 yards from David Coggins Broiler's proposed Facility. The Little River, Beaverdam Creek and Ginger Creek run through the property. They enjoy hiking, fishing and hunting on their property.

SCRAP Members Lorie and Eric Blackmon reside approximately .95 miles from the David Coggins Broiler's proposed Facility. They enjoy hiking, hunting and fishing on the property. The Little River, Beaverdam Creek, and Ginger Creek run through the property. SCRAP Member Mary Moses owns property 2 miles from David Coggins Broilers' proposed Facility. She enjoys hiking on her property. SCRAP Member Tina L. Moses resides 2 miles from David Coggins Broilers' proposed Facility. She enjoys hiking on her property.

The Petitioners would be injured and adversely affected by the proposed Facility in the form of harm to their health and safety, the use and enjoyment of their properties, and in their enjoyment of clean air and water and other natural resources within the Mountville area by the proposed activities of Respondent David Coggins Broilers.

On December 14, 2016, DHEC issued a permit to Respondent David Coggins Broilers for the construction and operation of six poultry broiler barns ("Facility") on Lisbon Road in Laurens County, South Carolina ("Permit"). The Facility is located near the Little River, and its tributaries, Beaverdam Creek and Ginger Creek, and other ephemeral and intermittent streams. Based upon topographic maps and aerial photographs of the location of the Facility, the Facility is located on property draining to the Little River. It appears that part of the parcel contains wetlands and areas designated by the Federal Emergency Management Agency as within the Little River floodplain.

DHEC's agricultural animal facility regulations were promulgated pursuant to the South Carolina Pollution Control Act, S.C. Code Ann. § 48-1-30 *et seq.* Under S.C. Code Reg. 61-43, 200.70(E), DHEC "shall act on all [agricultural animal] permits to prevent, so far as reasonably possible considering relevant standards under state and federal laws, an increase in pollution of the waters and air of the State from any new or enlarged sources." The word "pollution" is defined under the South Carolina Pollution Control Act as:

the presence in the environment of any substance, including, but not limited to, sewage, industrial waste, other waste, air contaminant, or any combination thereof in such quantity and of such characteristics and duration as may cause, or tend to cause the environment of the State to be contaminated, unclean, noxious, odorous, impure or degraded, or which is, or tends to be injurious to human health or welfare; or which

damages property, plant, animal or marine life or use of property; or (2) the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water." S.C. Code Ann. §48-1-10(7).

DHEC's decision to issue the Permit failed to show that it acted in a manner to reasonably prevent any waste or air contaminant that may cause or tend to cause the environment to be contaminated, unclear, noxious or odorous, tends to be injurious to human health, or damages the use of property, or alters water quality from any new or enlarged sources. Contrary to the requirements of S.C. Code Reg. 61-43, 200.70(E), DHEC's analysis of the Facility is devoid of any consideration of four other agricultural animal facility applications for agricultural animal facilities in the near vicinity, including two applications for twelve new poultry barns adjacent to this Facility. Nor does DHEC take into account how the Facility, in combination with the 50 preexisting poultry barns in the Mountville area, may degrade water and air quality, as well as damage the use of other properties in the area. The DHEC record shows failure to properly take into account the Facility's proximity to the Little River floodplain, location in the Little River watershed, impairment of the Little River, proximity to other known point source discharges and potential nonpoint sources, runoff prevention, land slope, and "down-wind receptors." See S.C. Code Reg. 61-43, 200.70(F) and 200.140(C)(2). In addition, DHEC failed to properly consider the medical concerns of Petitioner Blackmon. See S.C. Code Reg. 61-43, 200.60(F) and 200.70(F).

Downstream segments of the Little River fail to meet the state water quality standards for fecal coliform bacteria. Section §303(d) of the Clean Water Act and S.C. Code Reg. 61-68 require DHEC to develop total maximum daily loads (TMDLs) for waterbodies that are not meeting water quality standards. A TMDL identifies sources of water quality impairment, establishes the allowable loadings of pollutants for a waterbody based on the relationship between pollution sources and water quality impairments, and establishes water quality-based controls or strategies to reduce pollution and restore and maintain the quality of water resources. DHEC issued a TMDL for the Little River in 2004, which identified agricultural animal feeding facilities, including poultry farms, as a potential cause of the Little River's impairment. According to DHEC,

there are 20 existing poultry facilities within the hydrological unit 0305010909 in which the Facility is located. In addition, 12 other proposed new poultry barns are proposed to be located on the same parcel (or subdivided parcels of the original parcel) as the Coggins Facility. Even though the Little River TMDL expressly identifies poultry farms as a contributor to the impairment of the Little River, DHEC's analysis of the Facility rejects additional setbacks or requirements because agricultural animal facilities "are not considered to be contributors to the TMDL."

Under both 40 C.F.R. § 122.23(b)(1) and S.C. Code Reg. 61-43(F), the Facility is an animal feeding operation. Under the Clean Water Act, an animal feeding operation that constitutes a "concentrated animal feeding operation" are point source discharges of water pollution subject to NPDES permitting requirements if such operation meets the regulatory definition of a "large concentrated animal feeding operation." 40 C.F.R. § 122.23(b)(2); S.C. Code Reg. 61-9, 122.2(b)(4). A "large concentrated animal feeding operation" is an operation that, in relevant part, confines as many or more than 125,000 chickens for 45 days or more in any twelve-month period. *Id.* at 122.23(b)(1)(i)(A); 122.23(b)(4)(x). The Facility is permitted to confine 162,000 birds at any one time totaling 729,000 birds per year. Thus, the Facility is a large concentrated animal feeding operation subject to NPDES permitting requirements unless it meets the requirements of S.C. Code Reg. 61-9, 122.23(d)(2).

Under S.C. Code Reg. 61-9, 122.23(d)(2), large CAFOs are not required to obtain a NPDES permit if the owner or operator of a proposed facility has requested and received from DHEC a notification of determination that the CAFO has "no potential to discharge manure, litter, or process wastewater." The term "no potential to discharge" means that there is no potential for any CAFO manure, litter, or process wastewater to be added to waters of the State under any circumstance or climatic condition. *Id.* at (f)(1). (emphasis added). Discharge of manure, litter or wastewater from poultry facilities can occur from clean-out of barns, temporary manure/litter storage sites, and barn ventilation, drainage systems, and land application of manure.

Yet DHEC regulations pertaining to permitting of agricultural animal facilities declares all agricultural animal permits are to be a "no-discharge" permit, without any rationale, and without consideration of whether there is no potential for discharge under any circumstance or climatic condition. DHEC records show staff review of the permit application for the Facility as following the regulatory direction of "no-discharge" while ignoring the fact that the Facility is defined by DHEC's own regulations as a point source discharge of pollutants, and without following procedure for determining whether the Facility has met the exception for large CAFOs demonstrating "no potential to discharge." DHEC avoided imposing additional setbacks or requirements within the Permit simply because the agricultural animal facility regulations state that all such permits are "no-discharge" permits.

Similarly, DHEC's assessment of what the Agricultural Animal Facility regulations refer to as "down-wind receptors" is flawed. The Department assumes, without a basis in fact, that odor-causing and/or toxic air pollutants derived from manure would not occur in dry manure systems because dry manure systems do not come into contact with liquid waste or water. Odor-causing and/or toxic pollutants from poultry farms, even those using dry manure systems, are caused by leaky waterers within barns, litter overloaded with poultry feces and urine, spoiled or moldy feed, dust from feeders and animals, uncovered manure piles or poorly managed covered manure piles, and improper disposal of dead birds. Petitioners will testify that poultry farms in the area frequently cause nauseating and foul odors, contrary to DHEC's conclusory statement that emissions should not be present in the Facility or any agricultural animal facility when a dry manure system is employed.

Further, DHEC's air quality analysis assumes that consideration of "down-wind receptors" must solely mean review of substances regulated by a promulgated air quality standard. DHEC states that most of the potential air pollutants derived from manure at animal feeding operations lack any development of an air quality standard in South Carolina; thus, the term "down-wind receptor" within S.C. Code Reg. 61-43, 200.70(11) is essentially disregarded as a decision-making criteria. However, the term "pollution"

under the S.C. Pollution Control Act is defined as "any substance, including, but not limited to, ... air contaminant, ... in such quantity and of such characteristics and duration as may cause, or tend to cause the environment of the State to be contaminated, ... noxious, odorous, impure or degraded, or which is, or tends to be injurious to human health or welfare; or which damages property, plant, animal or marine life or use of property." (emphasis added). DHEC failed to consider whether the Facility would cause or tend to cause noxious or odorous air or any substance that damages the use of Petitioners' property.

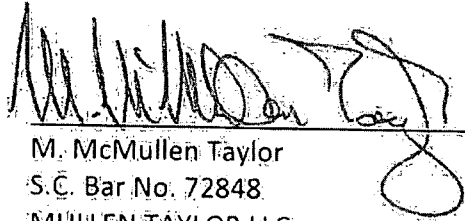
Further, contrary to S.C. Code Reg. 61-43, 200.70(F), DHEC failed to consider a relevant additional factor in determining separation distances. SCRAP members Mary and John Basel, and Margaret Sparrow, own land adjacent to the property on which the Facility is proposed to be located, that they use and lease for hunting wild game with firearms. S.C. Code Ann. § 50-11-356 prohibits discharging firearms within 900 feet of a poultry barn without permission of the owner of the poultry barn. The Permit imposes the minimum Facility setback of 400 feet from an adjacent property line. DHEC rejected consideration of S.C. Code Ann. § 50-11-356 in terms of requiring additional setbacks, which has the effect of restricting adjacent property owners from using a swath of land 500 feet wide along their property line for hunting purposes. Hunting wild game is a time-honored tradition in rural South Carolina and source of income for property owners who lease their property for hunting purposes.

6. A Summary of Any Motions Expected to be Raised at the Hearing and the Appropriate Authority Underlying the Motion. None known at this time.
7. A List of Proposed Witnesses and Exhibits. Proposed witnesses are Charles S. Blackmon, John Basel, Mary Basel, Margaret Sparrow, Jean Revis, Don Revis, Keith Blackmon, Karen Blackmon, Eric Blackmon, Lorie Blackmon, Mary Moses, Tina Moses; employees and agents of DHEC; David Coggins, Heath Coggins, Jim Young, Chris Mosley of Agri-Waste Technology, and employees or agents of David Coggins Broilers' manure broker. Proposed exhibits are those documents in the possession of DHEC constituting the administrative record upon which the proposed decision was made; records in the

possession of David Coggins Broilers and its agents and employees concerning relevant facts regarding the Facility, and the impacts of existing facilities in the area upon human health and the natural environment; topographic, aerial, tax and other maps, photographs and diagrams depicting the vicinity of the proposed Facility; any standards, best management practices or other guidance reports concerning poultry farm management; and medical records of Petitioner Blackmon and any other member of Petitioner SCRAP as relevant.

8. Estimated Length of Hearing: Three days.
9. Any Dates in the Next Ninety Days When You are Not Available for a Hearing: April 18, 26, 27, 28; May 4, 5, 11-25; June 14, 19, 20, 21, 22, 23.

Respectfully Submitted,



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Attorneys for Petitioners

March ~~24~~, 2017

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles S. Blackmon, and)
South Carolinians for Responsible)
Agricultural Practices,)
Petitioners,)

Docket No. 17-ALJ-07-0041-CC

v.)

PROOF OF SERVICE

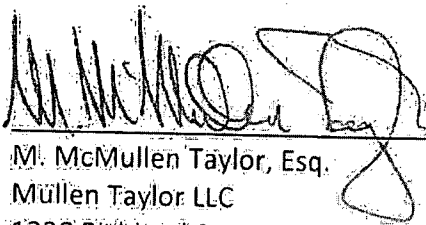
South Carolina Department of)
Health & Environmental Control,)
and David Coggins Broilers,)
Respondents.)

RE: David Coggins Broilers
DHEC Permit No. 19,886-AG: Agricultural Animal Facility
Lisbon Road, Mountsville, South Carolina 29370

I hereby certify that, on behalf of the Petitioners, I have served Petitioners' Prehearing Statement in the above-captioned matter by depositing it in the United States Mail, postage prepaid, on March 24, 2017 to the below-named attorneys of record:

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Tracey C. Green, Esq.
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March 24, 2017

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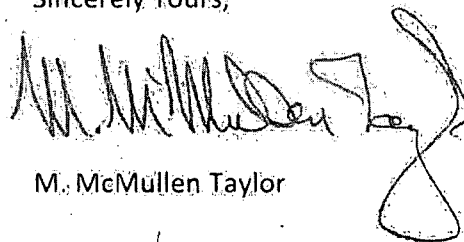
The Honorable Ralph King Anderson, III
South Carolina Chief Administrative Law Judge
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

RE: *Charles S. Blackmon and South Carolinians for Responsible Agricultural Practices v. S.C. Department of Health and Environmental Control and Heath Coggins Broilers*
Docket No. 17-AJ-07-0042-CC

Dear Judge Anderson:

Pursuant to your order dated February 23, 2017, enclosed for filing in the above-described contested case is the Prehearing Statement of Petitioners Charles S. Blackmon and South Carolinians for Responsible Agricultural Practices, along with a Proof of Service. By copy of this letter, the Respondents' counsel are hereby served copies of this filing.

Sincerely Yours,



M. McMullen Taylor

Cc: Stephen P. Hightower, Esq.
Benjamin P. Mustian, Esq.

Robert Guild, Esq. (via electronic mail)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles S. Blackmon, and)
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Petitioners,)

v.)

South Carolina Department of)
Health & Environmental Control,)
and Heath Coggins Broilers,)

Respondents.)

Docket No. 17-ALJ-07-0041-CC

PREHEARING STATEMENT OF
PETITIONERS

RE: Heath Coggins Broilers
DHEC Permit No. 19,876-AG: Agricultural Animal Facility
Lisbon Road, Mountville, South Carolina 29370

Pursuant to an order issued March 7, 2017 by the Honorable Ralph King Anderson, III, the Petitioners hereby file their Prehearing Statement, reserving the right to amend and supplement this Prehearing Statement during the course of these proceedings:

1. The Nature of This Proceeding. This is a contested case proceeding challenging the decision by the South Carolina Department of Health and Environmental Control ("DHEC") to issue an animal agricultural permit ("Permit") to Heath Coggins Broilers to construct six poultry barns ("Facility") in the Mountville area of Laurens County. This proposed Facility would constitute one of at least four other proposed animal agricultural permits for 24 new poultry barns in the same area as Heath Coggins Broilers, adding to the approximately 50 existing permitted poultry barns in the Mountville area. Petitioner Blackmon and his family own land near the Facility that they have used for agricultural, residential, and/or recreational purposes. Petitioner South Carolinians for Responsible Agricultural Practices ("SCRAP") is an unincorporated association of citizens and property owners in the Mountville area who advocate for poultry farming practices and permitting

to be compatible with the use and enjoyment of non-poultry farming property owners, and in a manner that does not impair air and water quality, emit noxious odors, or otherwise cause the quality of life in the Mountville area to deteriorate. Members of SCRAP identified in the Petition own property adjacent to or near the Facility. The Permit would authorize operation of a concentrated animal feeding operation without due regard to the adverse impact of such an operation upon public health, the air and water quality of the area, nor to the interests of Petitioners in peaceful use and enjoyment of their property.

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3. The Issues Presented for Determination, Including any Claims or Defenses Expected to be Raised. Whether the DHEC permit decision is arbitrary, capricious, an abuse of discretion, clearly erroneous, unsupported by substantial evidence, in violation of constitutional or statutory provisions, made upon unlawful procedure or affected by other error of law?
4. The Action Requested of the Court and a Detailed Statement of the Law which Supports the Requested Action, including Statutory and/or Case Citations. Petitioners respectfully request an order reversing the decision of the DHEC Staff and providing for the denial of the subject Permit. In the alternative, Petitioners respectfully request an order modifying the subject Permit or remanding for further proceedings. For a statement of supporting law, see paragraph 5 below.
5. A Brief Summary of the Facts to be Presented at the Hearing. Charles Blackmon owns land within approximately 2,200 feet of the nearest poultry houses to be managed by Heath Coggins Broilers under the proposed Permit. He owns a work shop within 900 yards of David Coggins Broilers' proposed poultry houses and frequently works in this shop and farms the land. The Little River, Beaverdam Creek, and Ginger Creek run through Mr.

Blackmon's property. As part of the permitting process for Heath Coggins Broilers' proposed Facility, Mr. Blackmon submitted documentation of a heart condition and frequent upper respiratory infections to DHEC, with no response. Mr. Blackmon breathes the air, drinks water, and uses his property and the other natural resources of the Mountville area in the vicinity of the proposed Facility.

Petitioner South Carolinians for Responsible Agricultural Practices ("SCRAP") is an unincorporated association of citizens and property owners in the Mountville area of Laurens County who advocate for poultry farming practices and permitting to be compatible with the use and enjoyment of non-poultry farming property owners, and in a manner that does not impair air and water quality, emit noxious odors, or otherwise cause the quality of life in the Mountville area to deteriorate. Members of SCRAP breathe the air, drink water, and use their property and the other natural resources of the Mountville area in the vicinity of the proposed Facility.

SCRAP Members Jean and Don Revis own land within approximately 2,200 feet from the Respondent's proposed Facility. The Little River, Beaverdam Creek and Ginger Creek run through the property. They enjoy walking, hiking and fishing on their property. SCRAP Members Keith and Karen Blackmon own land within approximately 2,200 feet from Green Acres' proposed Facility. The Little River, Beaverdam Creek and Ginger Creek run through the property. They enjoy hiking, fishing and hunting on their property. SCRAP Member Barbara Lee Zegen resides in her home located approximately 3,450 feet from Heath Coggins Broilers' proposed Facility. Ms. Zegen likes to hike on her property. She is very sensitive to certain odors and submitted to DHEC information documenting this medical condition. Her medical issues were dismissed by DHEC. SCRAP Members Mary and John Basel own land approximately 742 yards from Heath Coggins Broilers' proposed Facility. The Little River, Beaverdam Creek, and Ginger Creek run through their property. SCRAP Member Margaret Sparrow owns land approximately 742 yards from Heath Coggins Broilers' proposed Facility. The Little River, Beaverdam Creek, and Ginger Creek run through their property.

The Petitioners would be injured and adversely affected by the proposed Facility in the form of harm to their health and safety, the use and enjoyment of their properties, and in their enjoyment of clean air and water and other natural resources within the Mountville area by the proposed activities of Respondent Heath Coggins Broilers.

On November 30, 2016, DHEC issued a permit to Respondent Heath Coggins Broilers for the construction and operation of six poultry broiler barns ("Facility") on Lisbon Road in Laurens County, South Carolina ("Permit"). The Facility is located near the Little River, and its tributaries, Beaverdam Creek and Ginger Creek, and other ephemeral and intermittent streams. Based upon topographic maps and aerial photographs of the location of the Facility, the Facility is located on property draining to the Little River. It appears that part of the parcel contains wetlands and areas designated by the Federal Emergency Management Agency as within the Little River floodplain.

DHEC's agricultural animal facility regulations were promulgated pursuant to the South Carolina Pollution Control Act, S.C. Code Ann. § 48-1-30 *et seq.* Under S.C. Code Reg. 61-43, 200.70(E), DHEC "shall act on all [agricultural animal] permits to prevent, so far as reasonably possible considering relevant standards under state and federal laws, an increase in pollution of the waters and air of the State from any new or enlarged sources." The word "pollution" is defined under the South Carolina Pollution Control Act as:

the presence in the environment of any substance, including, but not limited to, sewage, industrial waste, other waste, air contaminant, or any combination thereof in such quantity and of such characteristics and duration as may cause, or tend to cause the environment of the State to be contaminated, unclean, noxious, odorous, impure or degraded, or which is, or tends to be injurious to human health or welfare; or which damages property, plant, animal or marine life or use of property; or (2) the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water." S.C. Code Ann. § 48-1-10(7).

DHEC's decision to issue the Permit failed to show that it acted in a manner to reasonably prevent any waste or air contaminant that may cause or tend to cause the environment to be contaminated, unclean, noxious or odorous, tends to be injurious to human health,

or damages the use of property, or alters water quality from any new or enlarged sources. Contrary to the requirements of S.C. Code Reg. 61-43, 200.70(E), DHEC's analysis of the Facility is devoid of any consideration of four other agricultural animal facility applications for agricultural animal facilities in the near vicinity, including two applications for twelve new poultry barns adjacent to this Facility. Nor does DHEC take into account how the Facility, in combination with the 50 preexisting poultry barns in the Mountville area, may degrade water and air quality, as well as damage the use of other properties in the area. DHEC failed to properly take into account the Facility's proximity to the Little River floodplain, location in the Little River watershed, impairment of the Little River, proximity to other known point source discharges and potential nonpoint sources, runoff prevention, land slope, and "down-wind receptors." See S.C. Code Reg. 61-43, 200.70(F) and 200.140(C)(2). In addition, DHEC failed to properly consider the medical concerns of Petitioners Blackmon and Zegen. See S.C. Code Reg. 61-43, 200.60(F) and 200.70(F).

Downstream segments of the Little River fail to meet the state water quality standards for fecal coliform bacteria. Section §303(d) of the Clean Water Act and S.C. Code Reg. 61-68 require DHEC to develop total maximum daily loads (TMDLs) for waterbodies that are not meeting water quality standards. A TMDL identifies sources of water quality impairment, establishes the allowable loadings of pollutants for a waterbody based on the relationship between pollution sources and water quality impairments, and establishes water quality-based controls or strategies to reduce pollution and restore and maintain the quality of water resources. DHEC issued a TMDL for the Little River in 2004, which identified agricultural animal feeding facilities, including poultry farms, as a potential cause of the Little River's impairment. According to DHEC, there are 20 existing poultry facilities within the hydrological unit 0305010909 in which the Facility is located. In addition, 12 other proposed new poultry barns are proposed to be located on the same parcel (or subdivided parcels of the original parcel) as the Coggins Facility. Even though the Little River TMDL expressly identifies poultry farms as a contributor to the impairment of the Little River, DHEC's analysis of the Facility rejects

additional setbacks or requirements in the proposed Permit to protect the water quality of the Little River watershed:

Under both 40 C.F.R. § 122.23(b)(1) and S.C. Code Reg. 61-43(F), the Facility is an animal feeding operation. Under the Clean Water Act, an animal feeding operation that constitutes a "concentrated animal feeding operation" are point source discharges of water pollution subject to NPDES permitting requirements if such operation meets the regulatory definition of a "large concentrated animal feeding operation." 40 C.F.R. § 122.23(b)(2); S.C. Code Reg. 61-9, 122.2(b)(4). A "large concentrated animal feeding operation" is an operation that, in relevant part, confines as many or more than 125,000 chickens for 45 days or more in any twelve-month period. *Id.* at 122.23(b)(1)(i)(A); 122.23(b)(4)(x). The Facility is permitted to confine over 125,000 birds for 45 days or more during any year. Thus, the Facility is a large concentrated animal feeding operation subject to NPDES permitting requirements unless it meets the requirements of S.C. Code Reg. 61-9, 122.23(d)(2).

Under S.C. Code Reg. 61-9, 122.23(d)(2), large CAFOs are not required to obtain a NPDES permit if the owner or operator of a proposed facility has requested and received from DHEC a notification of determination that the CAFO has "no potential to discharge manure, litter, or process wastewater." The term "no potential to discharge" means that there is no potential for any CAFO manure, litter, or process wastewater to be added to waters of the State under any circumstance or climatic condition. *Id.* at (f)(1). (emphasis added). Discharge of manure, litter or wastewater from poultry facilities can occur from clean-out of barns, temporary manure/litter storage sites, and barn ventilation, drainage systems, and land application.

Yet DHEC regulations pertaining to permitting of agricultural animal facilities declares all agricultural animal permits are to be a "no-discharge" permit, without any rationale, and without consideration of whether there is no potential for discharge under any circumstance or climatic condition. In reviewing and issuing the proposed Permit, DHEC followed the regulatory direction of "no-discharge" while ignoring the fact that the Facility is defined by DHEC's own regulations as a point source discharge of pollutants,

and without following procedure for determining whether the Facility has met the exception for large CAFOs demonstrating "no potential to discharge." DHEC avoided imposing additional setbacks or requirements within the Permit simply because the agricultural animal facility regulations state that all such permits are "no-discharge" permits.

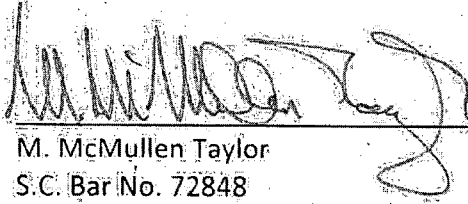
Similarly, DHEC's assessment of what the Agricultural Animal Facility regulations refer to as "down-wind receptors" is flawed. The Department assumes, without a basis in fact, that odor-causing and/or toxic air pollutants derived from manure would not occur in dry manure systems because dry manure systems do not come into contact with liquid waste or water. Odor-causing and/or toxic pollutants from poultry farms, even those using dry manure systems, are caused by leaky waterers within barns, litter overloaded with poultry feces and urine, spoiled or moldy feed, dust from feeders and animals, uncovered manure piles or poorly managed covered manure piles, and improper disposal of dead birds. Petitioners will testify that poultry farms in the area frequently cause nauseating and foul odors, contrary to DHEC's conclusory statement that emissions should not be present in the Facility or any agricultural animal facility when a dry manure system is employed.

Further, DHEC's air quality analysis assumes that consideration of "down-wind receptors" must solely mean review of substances regulated by a promulgated air quality standard. DHEC states that most of the potential air pollutants derived from manure at animal feeding operations lack any development of an air quality standard in South Carolina; thus, the term "down-wind receptor" within S.C. Code Reg. 61-43, 200.70(11) is essentially disregarded as a decision-making criteria. However, the term "pollution" under the S.C. Pollution Control Act is defined as "any substance, including, but not limited to, ... air contaminant, ... in such quantity and of such characteristics and duration as may cause, or tend to cause the environment of the State to be contaminated, ... noxious, odorous, impure or degraded, or which is, or tends to be injurious to human health or welfare; or which damages property, plant, animal or marine life or use of property." (emphasis added). DHEC failed to consider whether the Facility would cause

or tend to cause noxious or odorous air or any substance that damages the use of Petitioners' property.

6. A Summary of Any Motions Expected to be Raised at the Hearing and the Appropriate Authority Underlying the Motion. None known at this time.
7. A List of Proposed Witnesses and Exhibits. Proposed witnesses are Charles S. Blackmon, John Basel, Mary Basel, Margaret Sparrow, Jean Revis, Don Revis, Keith Blackmon, Karen Blackmon, Barbara Lee Zegen, Ross Stewart, employees and agents of DHEC; David Coggins, Heath Coggins, Jim Young, Chris Mosley of Agri-Waste Technology, and employees or agents of Heath Coggins Broilers' manure broker. Proposed exhibits are those documents in the possession of DHEC constituting the administrative record upon which the proposed decision was made; records in the possession of Heath Coggins Broilers and its agents and employees concerning relevant facts regarding the Facility, and the impacts of existing facilities in the area upon human health and the natural environment; topographic, aerial, tax and other maps, photographs and diagrams depicting the vicinity of the proposed Facility; any standards, best management practices or other guidance reports concerning poultry farm management; and medical records of Petitioners Blackmon and Zegen and any other member of Petitioner SCRAP as relevant.
8. Estimated Length of Hearing: Three days.
9. Any Dates in the Next Ninety Days When You are Not Available for a Hearing. April 18, 26, 27, 28; May 4, 5, 11-25; June 14, 19, 20, 21, 22, 23.

Respectfully Submitted,



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Attorneys for Petitioners

March ~~21~~ 24, 2017

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles S. Blackmon, and)
South Carolinians for Responsible)
Agricultural Practices,)

Petitioners,)

v.)

South Carolina Department of)
Health & Environmental Control,)
and Heath Coggins Broilers,)

Respondents.)

Docket No. 17-ALJ-07-0042-CC

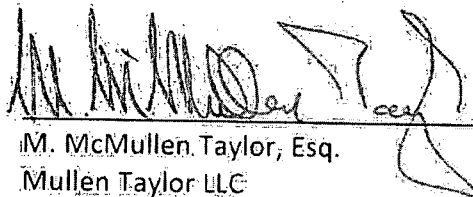
PROOF OF SERVICE

RE: Heath Coggins Broilers
DHEC Permit No. 19,876-AG Agricultural Animal Facility
Lisbon Road, Mountsville, South Carolina 29370

I hereby certify that, on behalf of the Petitioners, I have served Petitioners' Prehearing Statement in the above-captioned matter by depositing it in the United States Mail, postage prepaid, on March 24, 2017 to the below-named attorneys of record:

Benjamin P. Mustian, Esq.
Mitchell Willoughby, Esq.
Tracey C. Green, Esq.
WILLOUGHBY & HOEFER, P.A.
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Columbia, South Carolina 29202-8416

Stephen P. Hightower, Esq.
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March 24, 2017

VIA HAND DELIVERY

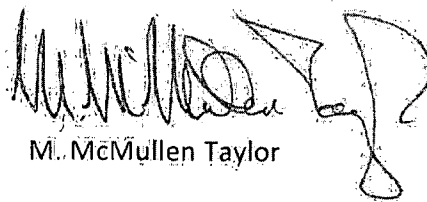
The Honorable Ralph King Anderson, III
South Carolina Chief Administrative Law Judge
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

RE: *Charles S. Blackmon and South Carolinians for Responsible Agricultural Practices v. S.C. Department of Health and Environmental Control and Jim Young Broilers*
Docket No. 17-AJ-07-0039-CC

Dear Judge Anderson:

Pursuant to your order dated February 23, 2017, enclosed for filing in the above-described contested case is the Prehearing Statement of Petitioners Charles S. Blackmon and South Carolinians for Responsible Agricultural Practices, along with a Proof of Service. By copy of this letter, the Respondents' counsel are hereby served copies of this filing.

Sincerely Yours,



M. McMullen Taylor

cc: Stephen P. Hightower, Esq.
Benjamin P. Mustian, Esq.

Robert Guild, Esq.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles S. Blackmon, and)
South Carolinians for Responsible)
Agricultural Practices,)

Petitioners,)

v.)

South Carolina Department of)
Health & Environmental Control,)
and Jim Young Broilers,)

Respondents.)

Docket No. 17-ALJ-07-0039-CC

PREHEARING STATEMENT OF
PETITIONERS

RE: Jim Young Broilers
DHEC Permit No. 19,889-AG: Agricultural Animal Facility
Lisbon Road, Mountville, South Carolina 29370

Pursuant to an order issued March 7, 2017 by the Honorable Ralph King Anderson, III, the Petitioners hereby file their Prehearing Statement, reserving the right to amend and supplement this Prehearing Statement during the course of these proceedings:

1. The Nature of This Proceeding: This is a contested case proceeding challenging the decision by the South Carolina Department of Health and Environmental Control ("DHEC") to issue an animal agricultural permit ("Permit") to Jim Young Broilers to construct six poultry barns housing 1,069,200 birds per year, generating 1,449 tons of chicken manure annually ("Facility") in the Mountville area of Laurens County. This proposed Facility would constitute one of at least four other proposed animal agricultural permits for 24 new poultry barns in the same area as Jim Young Broilers, adding to the approximately 50 existing permitted poultry barns in the Mountville area. Petitioner Blackmon and his family own land near the Facility that they have used for agricultural, residential, and/or recreational purposes. Petitioner South Carolinians for Responsible Agricultural Practices ("SCRAP") is an unincorporated association of citizens and property owners in the Mountville area who advocate for poultry farming practices and permitting to be

compatible with the use and enjoyment of non-poultry farming property owners, and in a manner that does not impair air and water quality, emit noxious odors, or otherwise cause the quality of life in the Mountville area to deteriorate. Members of SCRAP identified in the Petition own property adjacent to or near the Facility. The Permit would authorize operation of a concentrated animal feeding operation without due regard to the adverse impact of such an operation upon public health, the air and water quality of the area, nor to the interests of Petitioners in peaceful use and enjoyment of their property.

2. Statutory Provision(s) Conferring Subject Matter Jurisdiction to the Agency and Other Applicable Statutes and Regulations. The Fourteenth Amendment of the United States Constitution; Article 1, Section 22 of the South Carolina Constitution; South Carolina Pollution Control Act, S.C. Code Ann. § 48-1-10 *et seq.*; S.C. Code Ann. § 44-1-140; DHEC Regulations 61-43; the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; and the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-310 *et seq.*
3. The Issues Presented for Determination, Including any Claims or Defenses Expected to be Raised. Whether the DHEC permit decision is arbitrary, capricious, an abuse of discretion, clearly erroneous, unsupported by substantial evidence, in violation of constitutional or statutory provisions, made upon unlawful procedure or affected by other error of law?
4. The Action Requested of the Court and a Detailed Statement of the Law which Supports the Requested Action, including Statutory and/or Case Citations. Petitioners respectfully request an order reversing the decision of the DHEC Staff and providing for the denial of the subject Permit. In the alternative, Petitioners respectfully request an order modifying the subject Permit or remanding for further proceedings. For a statement of supporting law, see paragraph 5 below.
5. A Brief Summary of the Facts to be Presented at the Hearing. Petitioner Charles Blackmon owns land within .81 miles of the nearest poultry houses to be managed by Jim Young Broilers under the proposed Permit. He owns a work shop on this property and frequently works in this shop and farms the land. The Little River, Beaverdam Creek, and Ginger Creek run through Mr. Blackmon's property. As part of the permitting process for

Respondent's proposed Facility, Mr. Blackmon submitted documentation of a heart condition and frequent upper respiratory infections to DHEC, with no response.

Petitioner South Carolinians for Responsible Agricultural Practices ("SCRAP") is an unincorporated association of citizens and property owners in the Mountville area of Laurens County who advocate for poultry farming practices and permitting to be compatible with the use and enjoyment of non-poultry farming property owners, and in a manner that does not impair air and water quality, emit noxious odors, or otherwise cause the quality of life in the Mountville area to deteriorate. Members of SCRAP breathe the air, drink water, and use their property and the other natural resources of the Mountville area in the vicinity of the proposed Facility.

SCRAP Members Mary and John Basel maintain a residence for frequent recreational use that is located on land adjacent to Jim Young Broilers' property. Jim Young Broilers' proposed Facility is located within approximately 600 feet from their property line. They use and lease their land for hunting wild game with a firearm. Similarly, SCRAP Member Margaret Sparrow owns land adjacent to Jim Young Broilers' proposed Facility and this Facility is proposed to be located approximately 600 feet from her property line. She leases her land for hunting wild game with a firearm. SCRAP Member Ross Stewart also owns property adjacent to Jim Young Broilers' property. Jim Young Broilers' proposed Facility is located within approximately 400 feet from his property line. He uses and leases his land for hunting wild game with a firearm. Because S.C. Code Ann. § 50-11-356 prohibits discharging of a firearm within 900 feet of a poultry house, their leasing and hunting rights will be impaired by the proposed Facility. The Little River, Beaverdam Creek, and/or Ginger Creek run through their property.

SCRAP Members Jean and Don Revis own land within approximately .81 miles from the Respondent's proposed Facility. The Little River, Beaverdam Creek and Ginger Creek run through the property. They enjoy walking, hiking and fishing on their property. SCRAP Members Keith and Karen Blackmon own land within approximately .81 miles from Jim Young Broilers' proposed Facility. The Little River, Beaverdam Creek and Ginger Creek run through the property. They enjoy hiking, fishing and hunting on their property.

SCRAP Member Barbara Lee Zegen resides in her home located 1,768 feet from Jim Young Broilers' proposed Facility. Ms. Zegen likes to hike on her property. She is very sensitive to certain odors and submitted to DHEC information documenting this medical condition. Her medical issues were dismissed by DHEC.

The Petitioners would be injured and adversely affected by the proposed Facility in the form of harm to their health and safety, the use and enjoyment of their properties, and in their enjoyment of clean air and water and other natural resources within the Mountville area by the proposed activities of Respondent Jim Young Broilers.

On December 21, 2016, DHEC issued a permit to Respondent Jim Young Broilers for the construction and operation of six poultry broiler barns ("Facility") on Lisbon Road in Laurens County, South Carolina and for land application of manure generated from the poultry ("Permit"). The Facility is located near the Little River, and its tributaries, Beaverdam Creek and Ginger Creek, and other ephemeral and intermittent streams. Based upon topographic maps and aerial photographs of the location of the Facility and manure application locations, the Facility and land application locations are located on property draining to the Little River. It appears that part of the parcel contains wetlands and areas designated by the Federal Emergency Management Agency as within the Little River floodplain.

DHEC's agricultural animal facility regulations were promulgated pursuant to the South Carolina Pollution Control Act, S.C. Code Ann. § 48-1-30 *et seq.* Under S.C. Code Reg. 61-43, 200.70(E), DHEC "shall act on all [agricultural animal] permits to prevent, so far as reasonably possible, considering relevant standards under state and federal laws, an increase in pollution of the waters and air of the State from any new or enlarged sources." The word "pollution" is defined under the South Carolina Pollution Control Act, as:

the presence in the environment of any substance, including, but not limited to, sewage, industrial waste, other waste, air contaminant, or any combination thereof in such quantity and of such characteristics and duration as may cause, or tend to cause the environment of the State to be contaminated, unclean, noxious, odorous, impure or degraded, or which is, or tends to be injurious to human health or welfare; or which

damages property, plant, animal or marine life or use of property; or (2) the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water." S.C. Code Ann. § 48-1-10(7).

DHEC's decision to issue the Permit failed to show that it acted in a manner to reasonably prevent any waste or air contaminant that may cause or tend to cause the environment to be contaminated, unclear, noxious or odorous, tends to be injurious to human health, or damages the use of property, or alters water quality from any new or enlarged sources. Contrary to the requirements of S.C. Code Reg. 61-43, 200.70(E), DHEC's analysis of the Facility is devoid of any consideration of four other agricultural animal facility applications for agricultural animal facilities in the near vicinity, including two applications for twelve new poultry barns adjacent to this Facility. Nor does DHEC take into account how the Facility, in combination with the 50 preexisting poultry barns in the Mountville area, may degrade water and air quality, as well as damage the use of other properties in the area. The DHEC record shows failure to properly take into account the Facility's proximity to the Little River floodplain, location in the Little River watershed, impairment of the Little River, proximity to other known point source discharges and potential nonpoint sources, runoff prevention, land slope, and "down-wind receptors." See S.C. Code Reg. 61-43, 200.70(F) and 200.140(C)(2). In addition, DHEC failed to properly consider the medical concerns of Petitioners Blackmon and Zegen. See S.C. Code Reg. 61-43, 200.60(F) and 200.70(F).

Downstream segments of the Little River fail to meet the state water quality standards for fecal coliform bacteria. Section §303(d) of the Clean Water Act and S.C. Code Reg. 61-68 require DHEC to develop total maximum daily loads (TMDLs) for waterbodies that are not meeting water quality standards. A TMDL identifies sources of water quality impairment, establishes the allowable loadings of pollutants for a waterbody based on the relationship between pollution sources and water quality impairments, and establishes water quality-based controls or strategies to reduce pollution and restore and maintain the quality of water resources. DHEC issued a TMDL for the Little River in 2004, which identified agricultural animal feeding facilities, including

poultry farms, as a potential cause of the Little River's impairment. According to DHEC, there are 20 existing poultry facilities within the hydrological unit 0305010909 in which the Facility is located. In addition, 12 other proposed new poultry barns are proposed to be located on the same parcel (or subdivided parcels of the original parcel) as the Young Facility. Even though the Little River TMDL expressly identifies poultry farms as a contributor to the impairment of the Little River, DHEC's analysis of the Facility rejects additional setbacks or requirements because agricultural animal facilities "are not considered as a contributor to the TMDL."

Under both 40 C.F.R. § 122.23(b)(1) and S.C. Code Reg. 61-43(F), the Facility is an animal feeding operation. Under the Clean Water Act, an animal feeding operation that constitutes a "concentrated animal feeding operation" are point source discharges of water pollution subject to NPDES permitting requirements if such operation meets the regulatory definition of a "large concentrated animal feeding operation." 40 C.F.R. § 122.23(b)(2); S.C. Code Reg. 61-9, 122.2(b)(4). A "large concentrated animal feeding operation" is an operation that, in relevant part, confines as many or more than 125,000 chickens for 45 days or more in any twelve-month period. *Id.* at 122.23(b)(1)(i)(A); 122.23(b)(4)(x). The Facility is permitted to confine 237,000 birds at any one time totaling 1,069,200 birds per year. Thus, the Facility is a large concentrated animal feeding operation subject to NPDES permitting requirements unless it meets the requirements of S.C. Code Reg. 61-9, 122.23(d)(2).

Under S.C. Code Reg. 61-9, 122.23(d)(2), large CAFOs are not required to obtain a NPDES permit if the owner or operator of a proposed facility has requested and received from DHEC a notification of determination that the CAFO has "no potential to discharge manure, litter, or process wastewater." The term "no potential to discharge" means that there is no potential for any CAFO manure, litter, or process wastewater to be added to waters of the State under any circumstance or climatic condition. *Id.* at (f)(1). (emphasis added). Discharge of manure, litter or wastewater from poultry facilities can occur from clean-out of barns, temporary manure/litter storage sites, and barn ventilation, drainage systems, and land application of manure.

Yet DHEC regulations pertaining to permitting of agricultural animal facilities declares all agricultural animal permits are to be a "no-discharge" permit, without any rationale, and without consideration of whether there is no potential for discharge under any circumstance or climatic condition. DHEC records show staff review of the permit application for the Facility as following the regulatory direction of "no-discharge" while ignoring the fact that the Facility is defined by DHEC's own regulations as a point source discharge of pollutants, and without following procedure for determining whether the Facility has met the exception for large CAFOs demonstrating "no potential to discharge." DHEC avoided imposing additional setbacks or requirements within the Permit simply because the agricultural animal facility regulations state that all such permits are "no-discharge" permits.

Similarly, DHEC's assessment of what the Agricultural Animal Facility regulations refer to as "down-wind receptors" is flawed. The Department assumes, without a basis in fact, that odor-causing and/or toxic air pollutants derived from manure would not occur in dry manure systems because dry manure systems do not come into contact with liquid waste or water. Odor-causing and/or toxic pollutants from poultry farms, even those using dry manure systems, are caused by leaky waterers within barns, litter overloaded with poultry feces and urine, spoiled or moldy feed, dust from feeders and animals, uncovered manure piles or poorly managed covered manure piles, and improper disposal of dead birds. Petitioners will testify that poultry farms in the area frequently cause nauseating and foul odors, contrary to DHEC's conclusory statement that emissions should not be present in the Facility or any agricultural animal facility when a dry manure system is employed.

Further, DHEC's air quality analysis assumes that consideration of "down-wind receptors" must solely mean review of substances regulated by a promulgated air quality standard. DHEC states that most of the potential air pollutants derived from manure at animal feeding operations lack any development of an air quality standard in South Carolina; thus, the term "down-wind receptor" within S.C. Code Reg. 61-43, 200.70(11) is essentially disregarded as a decision-making criteria. However, the term "pollution"

under the S.C. Pollution Control Act is defined as "any substance, including, but not limited to, ... air contaminant, ... in such quantity and of such characteristics and duration as may cause, or tend to cause the environment of the State to be contaminated, ... noxious, odorous, impure or degraded, or which is, or tends to be injurious to human health or welfare; or which damages property, plant, animal or marine life or use of property." (emphasis added). DHEC failed to consider whether the Facility would cause or tend to cause noxious or odorous air or any substance that damages the use of Petitioners' property.

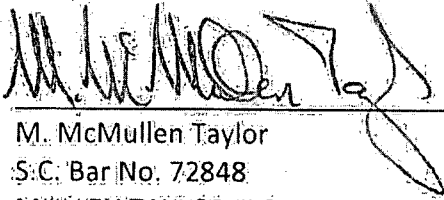
Further, contrary to S.C. Code Reg. 61-43, 200.70(F), DHEC failed to consider a relevant additional factor in determining separation distances. SCRAP members Mary and John Basel, Margaret Sparrow, and Ross Stewart own land adjacent to the property on which the Facility is proposed to be located, that they use and lease for hunting wild game with firearms. S.C. Code Ann. § 50-11-356 prohibits discharging firearms within 900 feet of a poultry barn without permission of the owner of the poultry barn. The Permit imposes the minimum Facility setback of 400 feet from an adjacent property line. DHEC rejected consideration of S.C. Code Ann. § 50-11-356 in terms of requiring additional setbacks, which has the effect of restricting adjacent property owners from using a swath of land 500 feet wide along their property line for hunting purposes. Hunting wild game is a time-honored tradition in rural South Carolina and a source of income for property owners who lease their property for hunting purposes.

6. A Summary of Any Motions Expected to be Raised at the Hearing and the Appropriate Authority Underlying the Motion. None known at this time.
7. A List of Proposed Witnesses and Exhibits. Proposed witnesses are Charles S. Blackmon, John Basel, Mary Basel, Margaret Sparrow, Ross Stewart, Jean Revis, Don Revis, Keith Blackmon, Karen Blackmon, Barbara Lee Zegen; employees and agents of DHEC; David Coggins, Heath Coggins, Jim Young, Chris Mosley of Agri-Waste Technology, and employees or agents of Jim Young Broilers' manure broker. Proposed exhibits are those documents in the possession of DHEC constituting the administrative record upon which the proposed decision was made; records in the possession of Jim Young Broilers and its

agents and employees concerning relevant facts regarding the Facility, and the impacts of existing facilities in the area upon human health and the natural environment; topographic, aerial, tax and other maps, photographs and diagrams depicting the vicinity of the proposed Facility; any standards, best management practices or other guidance reports concerning poultry farm management; and medical records of Petitioners Blackmon and Zegen and any other member of Petitioner SCRAP as relevant.

8. Estimated Length of Hearing: Three days.
9. Any Dates in the Next Ninety Days When You are Not Available for a Hearing: April 18, 26, 27, 28; May 4, 5, 11-25; June 14, 19, 20, 21, 22, 23.

Respectfully Submitted,



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Attorneys for Petitioners

March 21, 2017

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles S. Blackmon, and)
South Carolinians for Responsible)
Agricultural Practices,)

Petitioners,)

v.)

South Carolina Department of)
Health & Environmental Control,)
and Jim Young Broilers,)

Respondents.)

Docket No. 17-AJ-07-0039-CC

PROOF OF SERVICE

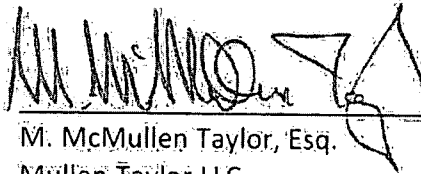
RECEIVED
AUG 07 2018
SC Court of Appeals

RE: Jim Young Broilers
DHEC Permit No. 19,889-AG: Agricultural Animal Facility
Lisbon Road, Mountsville, South Carolina 29370

I hereby certify that, on behalf of the Petitioners, I have served Petitioners' Prehearing Statement in the above-captioned matter by depositing it in the United States Mail, postage prepaid, on March 24, 2017 to the below-named attorneys of record:

Benjamin P. Mustian, Esq.
Mitchell Willoughby, Esq.
Tracey C. Green, Esq.
WILLOUGHBY & HOEFER, P.A.
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S.C. Dept. of Health and Environmental Control
Office of General Counsel
2600 Bull Street
Columbia, South Carolina 29201



M. McMullen Taylor, Esq.
Mullen Taylor LLC
1230 Richland Street
Columbia, South Carolina 29201

CONTRACT FOR PURCHASE OF WASTE

L & M Litter Brokers, Broker Permit No. 19,463-AG will purchase agricultural waste (manure, litter, compost) from David R Cassius Facility, Producer, located in Laurens County and identified by SC DHEC Operating Permit No. _____.

Purchase price will be based upon services rendered and/or agreed to price at date of clean out.

Broker will provide necessary equipment and services to remove waste from the facility. Upon removing the waste, Broker accepts all waste utilization responsibilities ensuring the waste is handled, transported, stored, and/or applied in a manner consistent with SC DHEC Regulations 61-43, thus, relieving the Producer of this responsibility.

The Producer will furnish, to the Broker, waste analysis information obtained no earlier than two (2) months before the date of clean out. Waste will be analyzed for:

- A. Nutrients (on a dry weigh basis)
 - Total Kjeldahl Nitrogen
 - Total Inorganic Nitrogen
 - Total Ammonia Nitrogen and Total Nitrate Nitrogen
 - Potassium as K₂O
 - Calcium Carbonate equivalency (if waste is alkaline stabilized)
- B. Constituents (on a dry weight basis)
 - Arsenic
 - Copper
 - Zinc

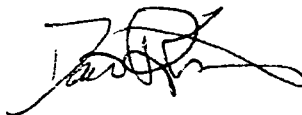
Calcium Carbonate equivalency and Arsenic analysis are not required if producer gives documentation to show these additives are not present in the waste.

Other Provisions:

Agreed to by:



Broker



6-1-16

Date Producer

_____ Date

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SC Court of Appeals

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