

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Maite D. Murphy, Circuit Court Judge

Case No. 2019-001719

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Jan 07 2021

SC Court of Appeals

Innovative Waste Management Inc., Respondent,

v.

Crest Energy Partners, GP, LLC, Dunhill Products GP, LLC, Henry Wuertz, Innovative Waste Management, Inc., Crest Energy Partners LP, Dunhill Products LP, Edward H. Girardeau, C. Russ Lloyd, Defendants, Of Whom,

Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products, LP, and Henry Wuertz, are the Appellants.

**APPELLANTS' MOTION FOR ENLARGEMENT
AND TO ALLOW SERVICE OUT OF TIME**

APPELLANTS, through undersigned counsel, hereby move this Honorable Court for an Order, pursuant to Rule 263(b), SCACR, allowing Appellants leave to serve the Record on Appeal out of time.

The Record on Appeal was due to be served on January 4, 2021, in accordance with the Court's December 7, 2020 Order granting Appellants' First Motion for Extension of Time. The Record on Appeal was actually served on January 5, 2020. A copy of the Record is being filed with the Court contemporaneously with this Motion.

In support of this Motion, the undersigned hereby respectfully avers that the believed he had compiled all documents designated to be included in the Record on Appeal prior to the New Years' holiday weekend, such that the Record could be easily completed, indexed, and served on Monday, January 4, 2021. However, when the undersigned was in the final stages of indexing and paginating the Record, it was discovered that several documents in the paper and digital files from the early stages of this case were incomplete, in that they did not include all exhibits submitted to the lower court. All motions at issue were filed by the Respondent.

The Public Index of the Dorchester Court of Common Pleas does not include digital copies of filings in this matter prior to April 2014. Therefore, the undersigned was unable to include complete copies of the Motions filed in 2013 until he was able to obtain them from the Dorchester County Clerk of Court's office on the morning of January 5, 2021. The versions obtained from the lower court were then inserted into the Record, the Record was re-indexed and paginated, and served on Respondent's Counsel as soon as was practicable.

Appellants requested that Respondent's counsel consent to accept service of the Record of Appeal one day after the date set by this Court's order. Respondent's counsel declined. See Exhibit A.

Appellants submit that there is sufficient cause to allow for the delayed service of the Record on Appeal, and further submit that Respondent could not have been prejudiced by any delayed service, given that electronic service was completed under currently applicable orders of the South Carolina Supreme Court earlier than service would have been accomplished by U.S. Mail under the otherwise applicable Appellate Court Rules,

and also because Respondent's counsel was in possession of all documents included within the Record during the period of time at issue.

For all of the reasons stated herein, Appellants respectfully request that this Honorable Court grant this Motion, and deem their service of the Record on Appeal to be timely.

RESPECTFULLY SUBMITTED:

s/ David B. Marvel
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January 6, 2021
Charleston, South Carolina

From: [Wm. Michael Gruenloh](mailto:Wm.Michael.Gruenloh)
To: [David B. Marvel](mailto:David.B.Marvel)
Cc: thomas@gruenlohlaw.com; [Fritz Jekel](mailto:Fritz.Jekel)
Subject: Re: IWM - Record on Appeal
Date: Wednesday, January 6, 2021 7:56:31 AM
Attachments: [image001.png](#)
[image003.png](#)

David-

We do not consent to your late filing.



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On Tue, Jan 5, 2021 at 5:22 PM David B. Marvel <dave@marvel.lawyer> wrote:

Gentlemen,

Happy New Year.  [Here](#) is the Record on Appeal.

This took some significant last minute effort and I had to retrieve documents from the Clerk of Court this morning because I was never initially served with complete digital copies of several early motions that were filed with the Court on our hearing days. I'm sure you provided me with paper copies of the exhibits at the hearing; I do not contest that. Please accept my apologies for the delay.

I ask that you review the record and ensure that all items you intended to be included are in fact included. If we somehow missed something, please let me know.

I also ask that you consent to my motion to serve this today, rather than yesterday. If so, I am willing to provide you with a courtesy print copy of the Record. Please let me know if that is acceptable to you as I intend to file the POS and a Motion to Accept Service out of Time tomorrow morning.

Best regards,

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