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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2020-000448

Pickens County, ... Respondent,

v.

South Carolina Department of Health and Environmental Control and
MRR Pickens, LLC Petitioners.

APPENDIX VOLUME II

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let the sixty day time frame to hold a review conference lapse; or (3) hold a conference and/or issue its own decision in the matter. S.C. Code Ann. §44-1-60(F). Where the DHEC Board declines in writing to conduct a final review conference, the applicant or other affected person has thirty calendar days from receipt of the DHEC Board denial to file a contested case with the ALC. S.C. Code Ann § 44-1-60(G)(1)(Supp. 2015). “The exclusive process established by Section 44-1-60 is the statutory equivalent of the judicial doctrine of exhaustion of administrative remedies...Under the statute, unless the steps prescribed are followed, beginning with the initial decision of the Department, a party may not bring a contested case before [the ALC].” *A.O. Smith Corporation*, 2016 WL at 277174, *2; citing *Ward v. State*, 343 S.C. 14, 18-19, 538 S.E.2d 245, 247 (2000)(“The general rule is that while there are several exceptions that may be applied to the judicially-imposed exhaustion requirement, those that apply to a statutory requirement are few.”)

Petitioner may argue that it should have been notified by DHEC staff of the Minor Modification Decision at the time it was made back on August 10, 2015, either by (1) mailing the decision directly to the Petitioner; and/or (2) by publicly noticing the decision through publication in a newspaper of general circulation.

A. DHEC Was Not Required to Mail the Minor Modification Decision to Petitioner because Petitioner is not an “Affected Party” who Requested Such Notice

MRR Pickens will first address Option 1: notice by direct mailing of the staff decision to Petitioner. Section 44-1-60(E) requires a party, such as Petitioner, to notify the Department in writing by certified, U.S. or electronic mail, that it is an “affected person” and wishes to be notified of any subsequent decisions relating to a permit. Since MRR Pickens was first issued Class 2 Permit LF2-00003 in 2008, Petitioner has never requested in writing that the Department notify it of any decisions relating to the permit. [Exhibit C, Att. 4; Affidavit of Joan Litton;

Para. 4 (April 15, 2016)]. Petitioners were aware - since 2008 - that Respondent MRR Pickens intended to operate a Class 2 Landfill in Pickens County. In fact, as stated in Petitioner's Prehearing Statement filed in this case, in 2008 Petitioner and Respondent MRR Pickens executed a Development Agreement to allow MRR Pickens to use the property for that purpose. See Petitioner's Prehearing Statement (July 5, 2016). Since 2008, Petitioner has never notified DHEC it wanted to be treated as an "affected person" and be notified of any future staff decisions on the permit. It does not allege that it made such a request in its filings in this case because it simply did not happen. Therefore, DHEC was not required to notify Petitioner directly by mailing of the 2015 DHEC Minor Permit Modification Decision.

This Court has addressed this exact issue in a similar situation where a party did not request DHEC provide notice of subsequent decisions on a previously issued permit. *Hubbard et al. v. SCDHEC and Shavon's Purple Lotus Body Art Boutique*, 2008 WL 2300351 (S.C.ALC)(May 2, 2008). In *Hubbard*, the Court held where notice was not requested of future staff decisions after an initial license or permit was issued, the Department was not required to give subsequent notices of renewals or otherwise treat them as an "affected party." The Court further held that a Petitioner cannot claim ignorance to avoid the requirement that it notify DHEC of its "affected party" status to trigger future notifications of permitting decisions. "Petitioners argue they were unaware that, pursuant to § 44-1-60(E), they had to notify the Department by certified mail, return receipt requested¹, that they were affected persons concerning the Department's decision. This argument lacks credibility; all citizens in this state are presumed to know the law." *Id.* at * 6; citing *Morgan v. S.C. Budget and Control Bd.*, Op. No. 4356 (S.C. Ct. App. filed Mar. 13, 2008) (Shearouse Adv. Sh. No. 12 at 56, 62) ("[C]itizens

¹ Certified mail is no longer required for notification of requests for decisions. However, notification still must be in writing and by electronic, U.S. or Certified Mail. S.C. Code Ann. § 44-1-60 (E)(l).

are presumed to know the law and are charged with exercising 'reasonable care to protect [their] interest[s].'"")

"A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review." S.C. Code Ann. § 1-23-380(A). Because Petitioner failed to timely exhaust its administrative remedies through a timely RFR to the DHEC Board, it cannot now ask the ALC to hear its appeal. *Id.* at *8 (holding the doctrine of exhaustion of administrative remedies generally requires a person seeking relief from the action of an administrative agency to pursue all available administrative remedies before seeking such relief from the courts. *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 208, 442 S.E.2d 582, 583 (1994).

B. Even if this Court finds Petitioner is an "Affected Person" Requiring Notice, Petitioner failed to file its RFR within 15 Days of DHEC's Mailing of Notice to Petitioner.

The seminal case on notice and timeliness of DHEC RFRs is *S.C. Coastal Conservation League vs S.C. Dept. of Health & Env'tl Control and S.C. State Ports Authority*, 390 S.C. 418 (S.C.S.Ct. (Nov. 15, 2010)). In that case, the South Carolina Supreme Court interpreted the requirements set forth in S. C. Code Ann. §44-1-60(E). In the *S.C. Coastal Conservation League* case, the Petitioners argued that the fifteen day time frame to file an RFR with the DHEC Board does not run until the "affected party" receives notice of the DHEC staff decision on a permit, not when notice of the staff decision is mailed to the applicant, as held by the lower courts in that case. The South Carolina Supreme Court disagreed and held that the fifteen day time frame begins to run on the day the notice is mailed to an "affected party" that has requested to be notified of the staff decision. *Id.* at 252 (2010) (holding that in situations when DHEC fails to

simultaneously notify the applicant, permittee, licensee, and affected persons, the latest date of mailing controls when the fifteen-day period begins to run).

Here, Petitioner does not qualify as an “affected party”, entitled to mailing and notice of the DHEC staff Minor Permit Modification Decision. However, in the alternative and without waiving any arguments, even if this Court were to rule Petitioner is an “affected party”, it clearly missed the fifteen day deadline of filing its RFR to the DHEC Board. Using the time frame of fifteen days after the later of mailing to the applicant and “affected party” set forth in the *Coastal Conservation League* case, DHEC staff mailed a copy of the Minor Permit Modification to MRR Pickens as applicant on August 10, 2015. [Exhibit C] DHEC staff later emailed a copy of the Minor Permit Modification to Petitioner on January 11, 2016. [Exhibit E]. Pickens County did not file its RFR until 72 days after DHEC provided it with a written copy of the Minor Permit Modification. Therefore, no matter what date you use, Pickens County exceeded the fifteen day filing deadline after mailing and thus failed to exhaust its administrative remedies.² Thus, Petitioner cannot now ask this Court hear its review because the Court lacks subject matter jurisdiction over the appeal. See *Grand Bees Dev., LLC v. SCDHEC*, 2012 WC 10841840, at *1 (S.C.Ct.App. (May 23, 2012)); citing *Great Games, Inc.*, 529 S.E.2d 6, 7 n. 5; *Allison v. W.L. Gore & Assocs.*, 714 S.E.2d 547, 549–50 (2011) (noting it is a general rule “that an appellate body may not extend the time to appeal”).

² In fact, Petitioner had actual and constructive notice of the Minor Permit Modification Decision on December 15, 2016. [Exhibits C & D]. Petitioner waited ninety nine (99) days after it met DHEC and discussed the modification, seventy two (72) days after it received a copy of and notified Respondent MRR Pickens of its knowledge of the modification, 32 days after it signed an affidavit in Court of Common Pleas attesting under oath to its knowledge of the contents of the Minor Permit Modification Decision, and 33 days after it used a copy of the Minor Permit Modification Decision as an Exhibit in a civil proceeding in South Carolina.

C. DHEC was Not Required to Public Notice the Minor Permit Modification but Even if it Was, Petitioner had Actual and Constructive Notice of the Decision in December of 2015 and failed to File its RFR Within 15 days of Mailing and Receipt of Notice. Therefore the Minor verse Major Legal Determination is Moot.

MRR Pickens will now address notice Option 2: notice by public notice and comment period back in 2015. Petitioner may try to cloud the timeliness and jurisdictional issues by arguing the Minor Permit Modification should have been treated by the Department as a "Major Modification", thus requiring public notice and comment period under 61-107.19. Although the evidence supports a finding that MRR Pickens' modification request was properly treated by DHEC as a minor one, the Court need not address this issue for the sake of ruling on Respondent MRR Pickens' Motion to Dismiss. Simply put, Petitioner was personally emailed a copy of the Minor Permit Modification Decision on January 11, 2016, Petitioner had actual and constructive notice of the Minor Permit Modification Decision on December 15, 2015 (at the latest), and Petitioner failed to file a Request for Review of the decision within the fifteen day deadline required by 44-56-60(E). Therefore, this Court lacks subject matter jurisdiction to decide whether the Minor Permit Decision should have been publicly noticed; the issue is moot.

II. PETITIONER DID NOT SERVE ITS REQUEST FOR THE CONTESTED CASE HEARING ON RESPONDENT MRR PICKENS WITHIN 30 DAYS OF NOTICE OF THE DHEC BOARD DECISION.

To date, Petitioner has failed to serve Respondent, MRR Pickens, with its Notice of a Request for a Contested Case Hearing. [Exhibit JJ]. As stated above, Pickens County's counsel, Gary R. Poliakoff, Esquire, filed an ALC form Certificate of Service with the Court on the date it filed its request. On the Certificate of Service, Petitioner swore to serving the Request for a Contested Case on MRR Pickens as a necessary party at the Trails End Charlotte Address, an

address that has not been associated with MRR Pickens for approximately eight (8) years. Rules

11(B) and (C) of the SCALCR state:

“11.B. Service of Copies of the Request. A copy of a request must also be served on each party and on the affected agency or county official, in accordance with *Rule 5*. Proof of service must be included with the request.

11.C. Time for Filing. Unless otherwise provided by statute, a request must be *filed and served* within thirty (30) days after actual or constructive notice of the agency’s determination.”

SCALCR, Rules 11(B) and (C)(2015)(emphasis added).

Rule 5 of the SCALCR states:

5. Service. Any document filed with the Court shall be served upon all parties to the proceeding. Service shall be made upon counsel if the party is represented, or if there is no counsel, upon the party. Service shall be made by delivery, *by mail to the last known address*, or as otherwise approved by the Court through administrative order. Service is deemed complete upon mailing.”

SCALCR, Rule 5 (2015)(emphasis added).

Under no circumstances can Petitioner argue that at the time of filing the Request for Contested Case Hearing, it believed MRR Pickens’ last known address to be the Trails End Charlotte Address. First, Petitioner had possession of the Minor Permit Modification Decision mailed to MRR Pickens at the Faringdon Raleigh Address and with that address on its cover page. [Exhibit B] Second, Petitioner had the Board’s denial of the RFR and final agency decision addressed to all parties, including MRR Pickens at the Faringdon Raleigh Address, as evidenced by the Certificate of Service attached thereto. [Exhibit I]. Furthermore, Petitioner is represented by experienced counsel, Gary R. Poliakoff Esq., and he is aware of MRR Pickens current address as evidenced by his use of the Faringdon Raleigh Address on a recent Notice of Deposition for Christopher Roof in this matter dated July 20, 2016. [Exhibit P; Notice of Deposition (July 20, 2016)]. Therefore, Petitioner cannot plead ignorance of the last known address of Respondent MRR Pickens for purposes of proper service.

This Court has consistently held that failure to serve a Request for a Contested Case Hearing on a party within the 30 day time frame required by Rule 11 of the SCALC strips this Court of jurisdiction and requires dismissal. *See Jacek v. S.C. Department of Employment and Workforce*, 2015 WL 3822553 (SCALC) (June 12, 2015); *Brian Tollison v. S.C. Department of Employment and Workforce*, 2014 WL 2918182 (SCALC), (June 25, 2014); *Leslie J. Landeros v. S.C. Department of Employment and Workforce*, 2013 WL 2455855 (SCALC), (May 31, 2013); *Sal Gandolfo v. S.C. Department of Employment and Workforce*, 2013 WL 1120298 (SCALC), (March 5, 2013); *Sonya Oliver v. S.C. Department of Employment and Workforce*, 2013 WL 1395689 (SCALC), (April 4, 2013); *Scott J. Willis and Pamela P. Willis vs. Horry County Assessor*, 2011 WL 2413180 (SCALC), (June 10, 2011); *Felicia Blocker vs. Richland County School District One*, 2010 WL 2604805 (SCALC), (May 25, 2010); and *Aimee C. Bemis vs. S.C. Department of Employment and Workforce*, 2012 WL 1077693 (SCALC), (March 14, 2012). The Court cannot fix or ignore failure to serve within a timeframe required by its own Rules of Procedure to allow jurisdiction. The facts are not in dispute in this case: (1) Petitioner received notice of DHEC's Final Agency Decision on April 21, 2016; (2) Pickens County filed its Request for a Contested Case Hearing with the ALC on March 19, 2016; (3) Pickens County, by its own admission, attempted to serve Respondent MRR Pickens at the incorrect address despite having actual knowledge of the "last known address" as indicated on the cover of the Minor Permit Modification, the cover letter Certificate of Service of the clerk of the DHEC Board in issuing the Final Agency Decision, and Petitioner's own Notice of Deposition. Respondent MRR Pickens was not served with Petitioner's Request for a Contested Case Hearing at its last known address – the Faringdon Raleigh Address by the 30 day deadline and to date, has not been served

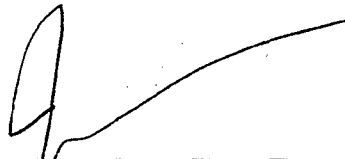
at that address or to any other address currently associated with MRR Pickens, LLC. [Exhibit J].

Therefore, this Court must dismiss this case with prejudice.

CONCLUSION

This Court does not have jurisdiction to hear this matter for the following reasons: (1) Petitioner Pickens County failed to timely file its Request for Final Review of the DHEC staff Minor Modification Decision with the DHEC Board pursuant to Section 44-1-60(E) of the South Carolina Code and thus, Petitioner did not exhaust its administrative remedies; (2) Petitioner failed to timely serve the Request for a Contested Case Hearing on Respondent MRR Pickens by mailing to MRR Pickens' last known address within 30 days of actual or constructive notice of the DHEC Board Final Agency Decision. For the reasons set forth above, MRR Pickens request the Court dismiss with prejudice Petitioner Pickens County's Request for a Contested Case Hearing.

Respectfully submitted,



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Attorneys for Respondent MRR Pickens, LLC

Columbia, South Carolina
July 29, 2016

Respondent MRR Pickens Exhibit A



Application for Permit to Construct a Solid Waste Management System
Bureau of Land and Waste Management

Submit to: Division of Mining and Solid Waste Permitting, Bureau of Land and Waste Management
SC Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201-1708
(Please Print or Type)

- I. Name of project: Highway 93 Landfill - Minor Permit Modification
- II. Physical location (Directions to project - use street names, county road numbers, etc.):
2180 Greenville Highway, Liberty, SC 29657 County: Pickens
Latitude and longitude (nearest 15 seconds) or UTM coordinates: 34°47'50" North and 82°40'30" West
- III. In accordance with Title 44, Chapter 96 of the Code of Laws of South Carolina, 1976, as amended, I hereby make application, on behalf of the party(ies) whose name(s) appears below, for a permit to construct and operate the following type of solid waste management project (describe):
Construction, Demolition, and Land Clearing Debris Landfill
- IV. Facility name, mailing address: Highway 93 Landfill, 2180 Greenville Highway, Liberty, SC 29657 Telephone number: _____
- V. Operator's name, mailing address (if different from name of facility owner): MRR Pickens, LLC
5842 Faringdon Place, Suite 1, Raleigh, NC 27609 Telephone number: (919) 436-3570
- VI. Landowner's name, mailing address (if different from name of facility or operator): same
Telephone number: _____
- VII. I have placed my signature and seal upon the documents submitted with this application, signifying that I accept responsibility for the information and/or design contained therein. Additional submittals where required will also bear my signature and seal, signifying that I accept responsibility for the information and/or design contained therein.
Engineer's name (print): Scott L. Brown, PE Signature: [Signature] No. 25687
S.C. Registration No: 25687 Registered Professional Engineer
- VIII. I have read this application and all attached documents. I agree to the requirements and conditions that are contained in it. Also, I agree to the admission of properly authorized persons at all reasonable hours for the purpose of sampling and inspection.
Name of Facility Representative (print): Christopher T. Roif Signature: [Signature]
Facility Representative's title: General Manager Date: 3/30/2015
Name of Operator Representative (print): _____ Signature: _____
(If different from facility representative)
Operator Representative's title: _____ Date: _____
Name of Landowner (print): _____ Signature: _____
(if different from facility or operator representative) Date: _____

Respondent MRR Pickens

Exhibit B



Catherine B. Heigl, Director

Promoting and protecting the health of the public and the environment

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003

Date of Issuance: November 3, 2008

Date of

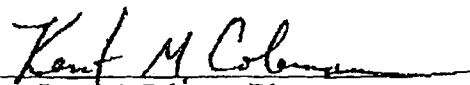
Modification: August 10, 2015

Permission is hereby granted to:

Name of Facility: Highway 93 Class 2 Landfill
Permittee: MRR Pickens, LLC
Address: 5842 Faringdon Place, Suite 1
Raleigh, NC 27609
Supervisor: Mr. Christopher T. Roof
Phone: (919) 436-3570

for the operation of a Class 2 landfill at 2180 Greenville Highway, in Pickens County located off Highway 93 near the City of Liberty, SC 29657.

This permit is issued pursuant to Sections 44-96-10 et seq., and 25A S.C. Code Regulation 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
August 10, 2015
Page 1 of 4

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

467/865

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**MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003**

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the approved design specifications, and construction plans received November 30, 2007; revised August 26, 2008, and last revised August 5, 2015, unless permit conditions state otherwise.
2. This permit is limited to the disposal of the items listed in Appendix I of R.61-107.19 and any other waste approved by the Department for disposal in a Class Two Landfill pursuant to R.61-107.19, Part IV, Section C.2.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to Jun30). Information concerning the facility's previous Fiscal Year's waste receipts is due on the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV. Subpart C.16, to the attention of:

**Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201**

4. All Appendix-I acceptable wastes must be covered at least once every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to five (5) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than five (5) acres (at the time of the certification). The certification shall be completed within sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (16,133 yd³ of soil for 5 acres with 2' thickness). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.
8. Sixty (60) days prior to starting construction of the Class Two landfill, the Permittee shall notify the Department of their selection between Option 1 (traditional Class Two landfill design), or Option 2 (alternate liner design). If the financial assurance mechanism needs to be increased, this shall be done prior to the acceptance of waste into the landfill.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit. The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.
- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- d) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

2. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Subpart E.3.

3. REPORTING

- a) The permittee shall submit to the Department the result of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following schedule:

Sampling Schedule	Results Due
November/December	January 15 (Semi-Annual)
May/June	July 15 (annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.1.a.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Ground water Section, and to the Solid Waste Consultant in Upstate Region BEHS Greenville.

4. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility; the Facility may be required to comply with R.61-107.19, Part IV, Section C.21.

Respondent MRR Pickens Exhibit C



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment

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Clerk, Board of Health
and Environmental Control

**BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
INITIAL STAFF RESPONSE TO REQUEST FOR REVIEW**

Requestor: Pickens County

Docket No. 16-RFR- 15 – Decision dated August 10, 2015, to approve a modification to Permit No. LF2-00003, Highway 93 Class 2 Landfill – Pickens County.

Office of General Counsel (“OGC”) Number: 22666

I. SUMMARY

a) Type of Decision and Description of Program

On August 10, 2015, the South Carolina Department of Health and Environmental Control (“DHEC” or “the Department”) issued a Department Decision (**Attachment 1**) approving a minor permit modification application from MRR Pickens, LLC (“MRR”) to modify its Class 2 Permit for their Highway 93 Class 2 Landfill (“Landfill”), by adding a liner system to the Landfill.

The Landfill is located at 2180 Greenville Highway, Liberty, South Carolina, in an unincorporated area of Pickens County. On November 3, 2008, the Department issued Permit No. LF2-00003 to MRR for the operation of a Class 2 landfill.

On March 30, 2015 the Department received an application from MRR for a minor permit modification to allow the installation of a liner and associated leachate collection system for a portion of the existing permitted landfill area. On August 6, 2015 the Department received a revised copy of the minor permit modification application from MRR and on August 10, 2015 the Department approved the application and issued the permit modification.

Because the Department determined that the application met the regulatory definition of a minor permit modification, a public notice and comment period was not required prior to issuance of the permit modification by the Department. (R.61-107.19 Part I, B.48.a). The Solid Waste regulations require public notice of all applications for new construction and *major* modifications of Class 2 landfills, but does not include applications for minor permit modifications. (R.61-107.19 Part I D.2.c.(1); Part IV I.2.)

This Department decision was issued on August 10, 2015, in accordance with the requirements of 8 S.C. Code Regs. 61-107.19, *SWM: Solid Waste Landfills and Structural Fills*, Parts I and IV, and became the final Agency Decision 15 days after the decision was mailed to MRR. Pickens County did not request to be notified of Department decisions as an affected person and did not file a timely request for review

by the DHEC Board ("Board") prior to the expiration of the statutory 15-day period. Further, even after being given actual notice of the Department decision some time after the decision was issued to MRR, Pickens County waited 99 days after obtaining notice of the decision before it filed, on March 23, 2016, its Request for Review ("RFR") with the Board. Because the RFR was not timely filed, the Board does not have jurisdiction to hear the RFR.

b) Parties

The applicant for the landfill permit modification is MRR Pickens, LLC. The requestor is Pickens County, who has a Host and Development Agreement with MRR Pickens.

c) Location

The Landfill is located on the south side of SC Highway 93 near its intersection with Clardy Road. The property is located in an unincorporated portion of Pickens County.

d) Relevant Chronology

November 3, 2008 – DHEC issued the original permit to MRR Pickens, LLC for the Highway 93 C&D Landfill – Permit No. LF2-00003 (**Attachment 2**).

March 30, 2015 – The Department received an application for a Minor Permit Modification to add a liner system from MRR Pickens.

June 12, 2015 – The Department sent a draft comment letter to MRR Pickens via e-mail.

July 8, 2015 – The Department sent additional comments to MRR Pickens via e-mail.

August 6, 2015 – The Department received a revised copy of the application for a Minor Permit Modification from MRR Pickens.

August 10, 2015 – The Department approved the application and issued a modified permit to add a liner system to MRR Pickens.

December 15, 2015 – Department staff met with representatives of Pickens County to discuss the Department's decision of August 10, 2015.

January 11, 2016 – Pickens County informed DHEC via a copy of a letter (**Attachment 3**) to MRR Pickens, that it had suspended MRR Pickens, LLC's land use permit because of the changes made to the Landfill permit.

April 15, 2016

MRR Pickens Hwy 93 Class 2 Landfill – RFR Staff Summary Response

Page 2 of 8

473/865

March 23, 2016 – Pickens County filed a Request for Review with the DHEC Board of the Department's decision issued to MRR on August 10, 2015.

e) Decision

S.C. Code Ann. Regs. 61-107.19, Solid Waste. Management: Solid Waste Landfills and Structural Fill ("Regulation"), is the Regulation that establishes the requirements for a Class 2 Landfill; defines a minor and major permit modification; and provides for public notice and comment for new construction and a major permit modification. The Department determined that the application from MRR was for a minor permit modification, and issued a Department decision approving the requested permit modification.

II. RELEVANT LAW

S.C. Code Ann., Section 44-1-60, (Supp. 2014), Appeals from department decisions giving rise to contested case procedures; specifically (E)(1)&(2).

8 S.C. Code Ann. Regs. 61-107.19, SWM: Solid Waste Landfills and Structural Fills ("Regulation"), specifically, Part I(B)(48)(a)&(b), which defines a minor and major permit modification.

III. JURISDICTIONAL ISSUES

Because Pickens County has not timely filed this Request for Review as outlined below, the DHEC Board does not have jurisdiction to hear this matter.

IV. RESPONSE TO EACH GROUND STATED IN THE *REQUEST FOR REVIEW*

Timeliness of the Request for Review

Pursuant to S.C. Code Ann., Section 44-1-60(E)(1)&(2) (Supp. 2014)), Pickens County's Request for Review ("RFR"), submitted to the DHEC Board on March 23, 2016, should be dismissed because the RFR was not timely filed. The Department was not required to provide notice to Pickens County of the approval of the minor modification to MRR's Landfill permit. However, the facts show that the County received actual notice of the modification approximately ninety-nine (99) days **before** it filed its RFR with the Department.

The approval for the Landfill's minor permit modification application was issued on August 10, 2015. Therefore, the approval for the modification became the Department's final agency decision on August 25, 2015, 15 days after notice of the department decision was mailed to MRR. (See S.C. Code Ann., Section 44-1-60(E)(1)&(2) (Supp. 2014)). The statute provides as follows:

(1) Notice of a department decision must be sent by certified mail, returned receipt requested to the applicant, permittee, licensee, and affected persons who have requested in writing to be notified. Affected persons may request in writing to be notified by regular mail or electronic mail in lieu of certified mail. Notice of staff decisions for which a department decision is not required pursuant to subsection (D) must be provided by mail, delivery, or other appropriate means to the applicant, permittee, licensee, and affected persons who have requested in writing to be notified.

(2) The staff decision becomes the final agency decision fifteen calendar days after notice of the staff decision has been mailed to the applicant, unless a written request for final review accompanied by a filing fee is filed with the department by the applicant, permittee, licensee, or affected person.” (S.C. Code Ann., Section 44-1-60(E) (Supp. 2014)).

Notice of a Department Decision is required to be sent to the “... affected persons who have requested in writing to be notified.” S.C. Code Ann., Section 44-1-60(E)(1). Pickens County never requested that the Department provide notice of any department decision pertaining to the Highway 93 Class 2 Landfill (*see* Joan Farver Litton’s affidavit, **Attachment 4**).

Even though the Department did not provide formal notice to Pickens County at the same time that it informed MRR of the approval, the County knew as early as December 15, 2015, of the Department’s decision regarding the permit modification. During a meeting with the County on December 15, 2015, Pickens County was informed of the permit modification. (Also see Joan Farver Litton’s affidavit, **Attachment 4**). The County had then obtained actual notice of the permit modification decision that was issued by the Department. “Actual notice means all the facts are disclosed and there is nothing left to investigate.” Strother v. Lexington County Recreation Com’n, 332 S.C. 54, 504 S.E.2d 117 (1998) *citing*, Government Employees Ins. Co. v. Chavis, 254 S.C. 507, 176 S.E.2d 131 (1970). “Actual notice may be shown by direct evidence or inferred from factual circumstances.” *Ibid. citing* Southern Railway-Carolina Division v. Horne Investment Co., 233 S.C. 440, 105 S.E.2d 527 (1958). Even after the County received actual notice of the Department decision on December 15, 2015, it did not request review of the decision until March 23, 2016. Even given Pickens County’s argument that 44-1-60(E)(1) should not strictly apply, after Pickens County received actual notice of the Department decision on December 15, 2015, it would have had until December 30, 2015, to file its RFR with the Department. However, Pickens County waited over 90 days after it had obtained actual notice of the decision to file its RFR with the DHEC Board.

Pickens County failed to file the RFR within the 15 days statutory requirement and did not file until 99 days after obtaining actual notice, on December 15, 2015 of a permit

modification to the Landfill. Therefore, this RFR should be denied for lack of timeliness resulting in the DHEC Board having no jurisdiction to hear this matter.

Major Modification vs. Minor Modification

The application submitted by MRR was a minor permit modification as defined in R.61-107.19, Part I B. 48. A "modification" is defined as changes to a solid waste landfill that can be either "minor" or "major." A "minor modification" is defined as "a change that keeps the permit current with routine changes to the facility or its operations, or an administrative change." A "major modification" is "a change that substantially alters the facility or its operations, e.g. tonnage increase above 25%, any volumetric capacity increase, alternate designs that vary from the design prescribed in this regulation." Inclusion of a liner is not considered a major modification for the following reasons: 1) addition of a liner is not an alternate design of the required design criteria; (2) addition of a liner does not substantially change the operations of the landfill; and, (3) the addition of a liner does not allow the facility to accept additional waste types (i.e., Class 3 waste) or quantities of waste. Likewise, the minor permit modification does not change the existing landfill from a Class 2 to a Class 3 landfill.

In accordance with R.61-107.19, Part IV, Section D.1, the design criteria for a Class 2 Landfill requires a 2-foot separation between the landfill base grade and the seasonal high water table. If an applicant wanted to reduce the 2-foot separation requirement, then it must request an alternate design in lieu of the 2-foot separation, which would be considered a major modification. The Department does not consider the installation of the liner and associated leachate collection system an alternate design that would be a major modification requiring a public notice because the 2-foot of groundwater separation is being maintained. The installation of a liner would be voluntary and is considered an upgrade from the prescribed regulation.

Lack of Notification to the County

As stated above, since the permit modification was considered a minor modification, no notice of the application was required, and Pickens County had not requested to be notified of decisions regarding the Landfill. In addition, the Department is not required, by statute or regulation, to notice receipt of reports.

Solid Waste Management Plan

A. Prohibits Class 3 Landfills

The MRR Pickens, LLC Landfill is not permitted as a Class 3 Landfill, nor is there a proposal in place to modify it to a Class 3 Landfill. Therefore, the Department has not done a consistency review of the Pickens County Solid Waste Management Plan ("Pickens County Plan") for a new Class 3 Landfill.

B. Prohibits Special Wastes

The Pickens County Plan states that a Class 3 Landfill is designed to accept certain wastes, including incinerator ash. The Pickens County Plan does not address coal ash specifically. Furthermore, the Act does not authorize a county to include language in their Solid Waste Management Plan prohibiting wastes from a given class of landfill. The Department, through its regulations, can determine acceptable wastes for a given class of landfill. The Department does not consider disposing of a specific waste to be inconsistent with a County Solid Waste Management Plan.

Demonstration of Need

The addition of a liner does not change a Class 2 Landfill to a Class 3 Landfill. It also does not change the types of waste allowed in the Class 2 Landfill. The Department would require a new application for a Class 3 Landfill to comply with all permitting requirements listed in R.61-107.19, Parts I and V and meet all requirements of R.61-107.17, Demonstration of Need.

Contracts Between the County and MRR

Contracts between a County and a permit applicant are not a part of the Department's consideration when reviewing or issuing a permitting decision. The Department's responsibility is to follow applicable statutes and regulations in making permitting decisions.

Misrepresentations by MRR to Pickens County

The Department is unaware of the content of representations between MRR Pickens and the County.

Land Use Approval

Prior to issuing a permit for a new landfill or the expansion of an existing landfill, the Department must perform a consistency determination regarding local ordinances, including zoning. The Department determined that this Landfill was consistent with all local ordinances and issued the original permit on November 3, 2008. The approved minor modification did not require a consistency determination by the Department.

Pickens County Has Not Issued a Letter of Consistency for the Modification

Pursuant to a South Carolina Supreme Court case, counties no longer issue Letters of Consistency for any Department permitting decisions. "DHEC's practice has been to

delegate to the counties the authority to determine consistency through the counties' issuance of LOCs. We conclude this delegation of authority is impermissible." (Southeast Resource Recovery, Inc. vs. SC Department of Health and Environmental Control, 358 S.C. 402, 595 S.E.2d 468 (2008)). Therefore, permitting decisions are made by the Department and by the Department only.

On November 3, 2008, when the original permit was issued, the Department determined that the Landfill was consistent with the Pickens County Plan. The approved minor modification did not require a consistency determination of the Pickens County Plan by the Department.

Modification Was Issued in Violation of the 1999 State Solid Waste Management Plan

Prior to issuing a permit for a new landfill or the expansion of an existing landfill, the Department must perform a consistency determination regarding the State Solid Waste Management Plan (State Plan). The Department determined that this Landfill was consistent with the State Plan in 2008 and issued the original permit on November 3, 2008. The approved minor modification did not require a consistency determination of the State Plan by the Department.

Allowance of Coal Ash Would Violate Act 138 of 2016

The Landfill is not currently permitted to accept coal ash. If MRR Pickens requests to dispose of coal ash in this landfill, the Department will require MMR Pickens to comply with Act 138 of 2016 and all other applicable statutes and regulations.

Allowance of Coal Ash Would Violate US EPA Regulations and Guidelines

The Coal Combustion Residual Rule (CCR Rule) is a federal rule that became effective October 19, 2015, and requires CCR generated by electric utilities to be disposed in a landfill with specific requirements. The permit modification issued by the Department does not authorize the acceptance of coal ash and in no way relieves MRR of required compliance with federal regulations.

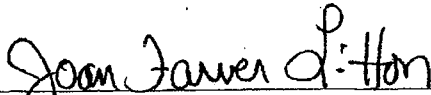
Issuance of the Modification Is in Contravention of the Needs and Desires of Pickens County and Its Citizens

The Department is tasked with making permitting decisions that are compliant with applicable statutes and regulations. The Department acted in compliance with applicable rules and regulations in issuing a minor modification of the permit for the MRR Pickens, LLC's Highway 93 Class 2 Landfill.

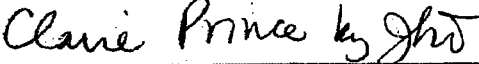
V. REQUESTED ACTION

This Request for Review should be denied because it was not filed timely. Because this matter was not timely filed, the DHEC Board has no jurisdiction to hear this RFR. The Staff's decision to issue an approval for the minor permit modification to MRR Pickens, LLC's Highway 93 Class 2 Landfill was made in compliance with applicable rules and regulations. Therefore, the Department respectfully requests that the DHEC Board deny a final review conference to Pickens County in the above-referenced matter and uphold the Staff decision.

Respectfully submitted,


Joan Farver Litton, Manager
Mining and Solid Waste Permitting,
SC DHEC


Etta R. Williams Linen, Esquire
Assistant General Counsel, SC DHEC


Claire Prince, Esquire
Special Counsel, SC DHEC

ATTACHMENT 1



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003

Date of Issuance: November 3, 2008

Date of
Modification: August 10, 2015

Permission is hereby granted to:

Name of Facility: Highway 93 Class 2 Landfill
Permittee: MRR Pickens, LLC
Address: 5842 Faringdon Place, Suite 1
Raleigh, NC 27609
Supervisor: Mr. Christopher T. Roof
Phone: (919) 436-3570

for the operation of a Class 2 landfill at 2180 Greenville Highway, in Pickens County located off Highway 93 near the City of Liberty, SC 29657.

This permit is issued pursuant to Sections 44-96-10 et seq., and 25A S.C. Code Regulation 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
August 10, 2015
Page 1 of 4

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

9500 Ruff Road • Columbia, SC 29203 • Phone: (803) 886-2283

481/865

MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the approved design specifications, and construction plans received November 30, 2007; revised August 26, 2008, and last revised August 5, 2015, unless permit conditions state otherwise.
2. This permit is limited to the disposal of the items listed in Appendix I of R.61-107.19 and any other waste approved by the Department for disposal in a Class Two Landfill pursuant to R.61-107.19, Part IV, Section C.2.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to Jun30). Information concerning the facility's previous Fiscal Year's waste receipts is due on the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV. Subpart C.16, to the attention of:

**Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201**

4. All Appendix-I acceptable wastes must be covered at least once every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to five (5) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than five (5) acres (at the time of the certification). The certification shall be completed within sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (16,133 yd³ of soil for 5 acres with 2' thickness). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.
8. Sixty (60) days prior to starting construction of the Class Two landfill, the Permittee shall notify the Department of their selection between Option 1 (traditional Class Two landfill design), or Option 2 (alternate liner design). If the financial assurance mechanism needs to be increased, this shall be done prior to the acceptance of waste into the landfill.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit. The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.
- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- d) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

2. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Subpart E.3.

3. REPORTING

- a) The permittee shall submit to the Department the result of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following schedule:

Sampling Schedule	Results Due
November/December	January 15 (Semi-Annual)
May/June	July 15 (annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.1.a.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Ground water Section, and to the Solid Waste Consultant in Upstate Region BEHS Greenville.

4. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility; the Facility may be required to comply with R.61-107.19, Part IV, Section C.21.



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

**OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003**

Permit Issued Date: November 3, 2008 Permit Effective Date: November 18, 2008

Permission is hereby granted to:

Name of Facility: Highway 93 C & D Landfill
Permittee: MRR Pickens, LLC
Address: 11743 Trails End Lane
Charlotte, NC 28078
Contact: Mr. Ronald C. Gilkerson
Phone: (704) 947-6652

for the operation of a Class 2 landfill at 2180 Greenville Highway, Liberty, South Carolina, 29657 in Pickens County located off Highway 93 at Clardy Road approximately 2,000 feet NE of the City of Liberty, SC.

This permit is issued pursuant to Sections 44-96-10 *et seq.* (Supp. 2007) and 25A S.C. Code of Regulations Section 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, P.G., Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
November 3, 2008
Page 1 of 4

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3432 • www.scdhec.gov

**MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003**

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the design specifications and construction plans received November 30, 2007; and last revised August 26, 2008, unless permit conditions state otherwise.
2. This permit is limited solely to the disposal of items listed in Appendix I of R.61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to June 30). Information concerning the facility's previous Fiscal Year's waste receipts is due in the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV. Subpart C.16, to the attention of:

**Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201**

4. All Appendix-I acceptable wastes must be covered at least every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to twelve (12) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than twelve (12) acres (at the time of the certification). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (38,720 yd³ of soil for 12 acres with 2' thickness). The certification shall have been completed within the last 60 days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.
2. Within ninety (90) days of the effective date of this permit, the Permittee shall submit a detailed Compliance Plan that describes steps to be taken in order to fully comply with all regulatory requirements of R.61-107.19 that relate to Class 2 Landfills. This Compliance Plan shall include, but not limited to, the following: a groundwater monitoring design workplan, a landfill post-closure care plan, and a landfill post-closure care cost estimate. Upon the Department's approval of said Compliance Plan, the Permittee will have six (6) months to implement the plan and will have a deadline for full compliance with R.61-107.19 of November 19, 2009.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. SPECIAL ENVIRONMENTAL PERMIT CONDITIONS

Within ninety (90) days of the effective date of this permit, the Permittee shall submit to the Department for review, a Groundwater Monitoring Design Workplan in accordance with R.61-107.19, Part IV, Section E (Groundwater Monitoring and Corrective Action). In addition, an approved groundwater monitoring system must be installed and operating prior to November 19, 2009, pursuant to R.61-107.19, Part I, Section A.6.c. Upon the Department's approval of the Groundwater Monitoring Design Workplan, permit conditions C.2, C.3 and C.4 will become effective.

2. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit.

The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.

- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- e) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

3. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine monitoring at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Part IV Subpart B.3.

4. REPORTING

- a) The Permittee shall submit to the Department the results of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following sampling schedule:

<u>Sampling Schedule</u>	<u>Results Due</u>
November/December	January 15 (Semi-Annual)
May/June	July 15 (Annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.2.A.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Groundwater Section, and to the Solid Waste Consultant in Region 2 EQC (Greenville).

5. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required comply with R.61-107.19, Part IV, Section C.21.

ATTACHMENT 2



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

November 3, 2008

CERTIFIED MAIL

Mr. Ronald C. Gilkerson, P.G.
MRR Pickens, LLC
11743 Trails End Lane
Charlotte, NC 28078

**RE: Class 2 Solid Waste Landfill Permit for
Highway 93 C&D Landfill
Permit No. LF2-00003
Location: 34° 47' 50" N, 82° 40' 30" W
Pickens County**

Dear Mr. Gilkerson:

Enclosed is a Class 2 Solid Waste Landfill Permit for the Highway 93 Construction and Demolition Landfill in Pickens County. This permit is issued under Regulation 61-107.19 *Solid Waste Management: Solid Waste Landfills and Structural Fill*. Also, enclosed is the approved landfill Engineering Report and Engineering Drawings, to be kept at the facility at all times.

The financial assurance for closure of this facility is established at three hundred thousand dollars (\$300,000) at this time. A mechanism that is acceptable to the Department must be established in the amount previously specified prior to the facility accepting waste. Please contact Pete Stevens of my staff at (803) 896-4149 for help in establishing a financial assurance mechanism that is acceptable to the Department.

This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person. This decision may be appealed by complying with the requirements described in the attached *Notice of Appeal Procedure*, provided as a courtesy by the Department.

MRR Pickens, LLC is responsible for complying with all of the conditions in the attached permit and should review each condition carefully.

November 3, 2008 letter
MRR Pickens Class 2 Landfill
Page 2 of 2

If you should have any questions, please contact Joan F. Litton of my staff at (803) 896-4264. All other questions should be directed to Bill Rampey in the Region 2 - Greenville EQC Office at (864) 241-1090.

Sincerely,



Kent M. Coleman, P.G. Director
Division of Mining and Solid Waste Management
Bureau of Land and Waste Management

KMC/TME/tme

Enclosures

cc: Bill Rampey, Region 2, Greenville EQC Office
Keith Collinsworth, P.G. Manager, Solid Waste Groundwater Section
Marty Lindler, Manager, Solid and Hazardous Waste Compliance
Jeff Herbig, P.E., B.P. Barber and Associates, Columbia, SC
BLWM File # 021212

Notice of Appeal Procedure

The following procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person.
2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393:

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201
3. The request for final review should include the following:
 - a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
 - b. a statement of any significant issues or factors the Board should consider in deciding how to handle the matter
 - c. a copy of the Department's decision or action under review
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the Department decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

October 31, 2006



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003

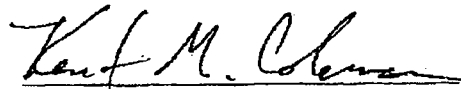
Permit Issued Date: November 3, 2008 Permit Effective Date: November 18, 2008

Permission is hereby granted to:

Name of Facility: Highway 93 C & D Landfill
Permittee: MRR Pickens, LLC
Address: 11743 Trails End Lane
Charlotte, NC 28078
Contact: Mr. Ronald C. Gilkerson
Phone: (704) 947-6652

for the operation of a Class 2 landfill at 2180 Greenville Highway, Liberty, South Carolina, 29657 in Pickens County located off Highway 93 at Clardy Road approximately 2,000 feet NE of the City of Liberty, SC.

This permit is issued pursuant to Sections 44-96-10 *et seq.* (Supp. 2007) and 25A S.C. Code of Regulations Section 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, P.G., Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
November 3, 2008
Page 1 of 4

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3432 • www.scdhec.gov

493/865

App. p.0537

MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the design specifications and construction plans received November 30, 2007; and last revised August 26, 2008, unless permit conditions state otherwise.
2. This permit is limited solely to the disposal of items listed in Appendix I of R.61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to June 30). Information concerning the facility's previous Fiscal Year's waste receipts is due in the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV. Subpart C.16, to the attention of:

**Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201**

4. All Appendix-I acceptable wastes must be covered at least every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to twelve (12) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than twelve (12) acres (at the time of the certification). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (38,720 yd³ of soil for 12 acres with 2' thickness). The certification shall have been completed within the last 60 days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.
2. Within ninety (90) days of the effective date of this permit, the Permittee shall submit a detailed Compliance Plan that describes steps to be taken in order to fully comply with all regulatory requirements of R.61-107.19 that relate to Class 2 Landfills. This Compliance Plan shall include, but not limited to, the following: a groundwater monitoring design workplan, a landfill post-closure care plan, and a landfill post-closure care cost estimate. Upon the Department's approval of said Compliance Plan, the Permittee will have six (6) months to implement the plan and will have a deadline for full compliance with R.61-107.19 of November 19, 2009.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. SPECIAL ENVIRONMENTAL PERMIT CONDITIONS

Within ninety (90) days of the effective date of this permit, the Permittee shall submit to the Department for review, a Groundwater Monitoring Design Workplan in accordance with R.61-107.19, Part IV, Section E (Groundwater Monitoring and Corrective Action). In addition, an approved groundwater monitoring system must be installed and operating prior to November 19, 2009, pursuant to R.61-107.19, Part I, Section A.6.c. Upon the Department's approval of the Groundwater Monitoring Design Workplan, permit conditions C.2, C.3 and C.4 will become effective.

2. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit.

The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.

- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- e) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

3. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine monitoring at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Part IV Subpart E.3.

4. REPORTING

- a) The Permittee shall submit to the Department the results of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following sampling schedule:

<u>Sampling Schedule</u>	<u>Results Due</u>
November/December	January 15 (Semi-Annual)
May/June	July 15 (Annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.2.A.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Groundwater Section, and to the Solid Waste Consultant in Region 2 EQC (Greenville).

5. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required comply with R.61-107.19, Part IV, Section C.21.

ATTACHMENT 3

COUNTY OF PICKENS

www.co.pickens.sc.us

Planning Commission



COMMISSION MEMBERS

BILL CATO, District 2, Chairman
WELDON CLARK, District 4, Vice Chairman
BOB BALLENTINE, District 1
JO JOHNSTON, District 3
DENNIS REINERT, District 5
BOB YOUNG, District 6

January 11, 2016

MRR Pickens, LLC
7413 Six Fork Road #358
Raleigh, NC 27615

Delivery USPS Certified Mail
91 7108 2133 2934 1312 8892

Re: Land Use Approval on Case No: LU-15-001
SCDHEC Class II Landfill

To MRR Pickens LLC,

We, the Pickens County Planning Commission (the "Commission"), are writing in regard to the above-referenced land use permit dated January 12, 2015. The approval of this permit was granted after your company appeared for a public hearing on your application for a renewal of your February 12, 2007 land use permit for a proposed C&D (now Class II) landfill off Highway 93 near Liberty, South Carolina.

In your 2007 appearance before the Commission, Mr. Ronald Gilbertson of your company characterized the type of waste for this project as "lumber, vinyl siding, concrete and brick," "grass clippings, leaves, limbs," and "storm debris." He also indicated that the life span of the project would be for "20-25 years." No mention was made of the disposal of coal combustion residuals ("CCR"), the need for a landfill liner, or plans to fill up the landfill quickly. Based in part on these representations by your company, the Planning Commission granted your land use request.

In your 2015 appearance before the Commission, Mr. Dan Moore of your company indicated that there were "no changes" from the 2007 request, and estimated that the proposed landfill would serve the citizens of the county for "50 years or more." No mention was made of the disposal of CCR. When you were specifically asked by a Commissioner about the need for a liner, Mr. Moore stated that no liner would be required. Based on these representations by your company, the Planning Commission granted your renewed use request.

We now understand from media reports that your company plans to dispose of CCR in the proposed landfill. We have also learned that your filings with SCDHEC include plans for a significantly shorter life span of the facility (5 years) and that a liner would be installed in order to comply with Class III requirements despite the fact that you repeatedly characterized this landfill as a Class II facility in all of your communications with the Commission.

These are significant deviations from the information you provided to us in 2007 and 2015. We consider these changes to be material alterations to the land use approved by the Commission, and constitute violations of your land use permit. Accordingly, pursuant to the authority granted under the Unified Development Standards Ordinance ("UDSO") Section 1504(d) and elsewhere, the Commission hereby suspends your land use permit for this project. You are directed to cease and desist any and all activities at the proposed site until such time as you have presented sufficient information to the Commission of your intention to strictly comply with our 2007 and 2015 land use approval and receive a renewal of your permit from the Commission.

Please be advised that Section 1505 of the UDSO provides that any violation of a land use approval is a misdemeanor with a punishment of a fine and/or jail time for each act or omission thereof. Also note that each and every day of a continuing violation constitutes a separate offense.

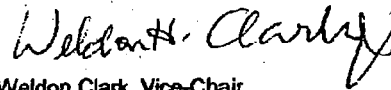
MRR Pickens, LLC
January 11, 2016
Page 2 of 2

If you have any questions about this stop work notification, or about the land use permitting process, please contact Chris Brink, Director of Community Development at 864 898 5956, or Ken Roper, County Attorney at 864 878 1577.

Sincerely,



William Cato, Chair
Pickens County Planning Commission
District 2



Weldon Clark, Vice-Chair
Pickens County Planning Commission
District 4



Robert Ballentine
Pickens County Planning Commission
District 1



Jo Johnston
Pickens County Planning Commission
District 3



Dennis Reinert
Pickens County Planning Commission
District 5



Bob Young
Pickens County Planning Commission
District 6

Cc: Pickens County Council
Senator Larry Martin
Representative Davey Hiett
SCDHEC

ATTACHMENT 4

AFFIDAVIT OF JOAN FARVER LITTON
Docket No. 16-RFR-15; Office of General Counsel # 22666

PERSONALLY appeared before me, Joan Farver Litton, who being duly sworn, deposes and says:

1. I have been employed by the South Carolina Department of Health and Environmental Control ("DHEC" or "the Department") since February 4, 1999.

2. I am currently the Manager for the Mining and Solid Waste Permitting Section in the Division of Mining and Solid Waste Management at DHEC.

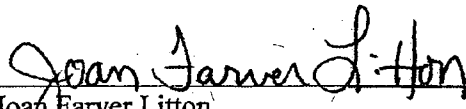
3. I am submitting this affidavit as supplemental information for the Request for Review Staff Summary Response in the matter of Pickens County's request for the DHEC Board to review the department's decision to issue an approval of the addition of a liner system to the MRR Pickens Highway 93 Class Two Landfill ("MRR Pickens"), which the Department issued to MRR Pickens on August 10, 2015.

4. I hereby affirm that Pickens County did not request to be notified of permitting decisions related to MRR Pickens, LLC's Highway 93 Class 2 Landfill, identified as Permit Number LF2-00003, prior to the Department's decision of August 10, 2015, to issue a modification for the addition of a liner system.

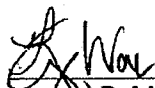
5. A meeting was held at 2600 Bull Street in Room 1425 on December 15, 2015, to discuss the Department's decision to issue the approval for the liner system (a minor modification) with representatives of Pickens County and their solid waste consultant. Those present on the County's behalf were Gerald Wilson, Director of Public Works for Pickens County; Ralph Guarino, Jr., who at the time was the acting Interim Administrator for Pickens County; and Wesley Hulsey, PG, President of Pickens County's solid waste consulting firm

Hulsey, McCormick & Wallace. Those in attendance for the Department were Justin Koon, Permitting Project Manager; Andrea Skinner, Permitting Project Manager; David Oberly II, Groundwater Project Manager; and myself, Joan Farver Litton, Manager of the Mining and Solid Waste Permitting Section. During the meeting, the Department confirmed that it had issued the decision to MRR Pickens for approval of the addition of a liner system as a minor modification to the MRR Pickens Highway 93 Class 2 Landfill; and, that decision was discussed at length during the meeting with the representatives of Pickens County.

I, Joan Farver Litton, hereby certify, under penalty of perjury, that the above-stated facts are true and correct to the best of my knowledge.


Joan Farver Litton

SUBSCRIBED AND sworn to before
me this 15th day of April, 2016.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 01/22/2018

Respondent MRR Pickens Exhibit D

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

MRR Pickens, LLC,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-39-100

**AFFIDAVIT OF
GERALD G. WILSON**

Personally appeared before me Gerald G. Wilson, who having been duly sworn, deposes and states:

1. That I am over the age of 18 years and am competent to issue this Affidavit.
2. That I am the Public Works Director for Pickens County and have served in that capacity since 2009. Prior to that I was the Solid Waste Director/Recycling Coordinator from 2002 to 2009 and prior to that I was the foreman for the Solid Waste/Recycling Department. I came to work for Pickens County in February of 1992.
3. That the Pickens County Department of Public Works includes solid waste issues, with which I am most familiar. I have been actively involved with the proposed Highway 93 C&D Landfill since early discussions between MRR and Pickens County in approximately 2007. I am qualified to issue the statements and opinions contained herein.

4. That the only valid Permit for the Highway 93 C&D Landfill is the Permit issued November 3, 2008, Permit No. LF2-00003. The Special Conditions of this Permit provide the following:

2. This permit is limited solely to the disposal of items listed in Appendix I of R. 61-107.19. **All other wastes, including animal carcasses, are prohibited from disposal in this landfill.** (emphasis added).

5. That Appendix I of said Regulation provides for four categories of waste: Construction and Demolition (C&D); Land Clearing Debris (LCD); Brown Goods (furniture, etc.); and Animal Carcasses. The limiting language stated above – “all other wastes . . . are prohibited from disposal in this landfill” – was crucial to Pickens County, and was developed after negotiations between MRR and Pickens County. Further, this limiting language is in accord with the Development Agreement between MRR and Pickens County and the Solid Waste Management Plan of Pickens County.

6. That in December of 2015, after hearing from sources other than MRR, that MRR had intentions of depositing Coal Combustion Residuals (CCR) into this C&D Landfill, I traveled to DHEC and asked questions. DHEC officials informed me that “minor modifications” had been made to the Permit, and since they were “minor,” neither DHEC nor MRR had notified Pickens County of any changes or modifications to the Permit.

7. That I made a Freedom of Information Act (FOIA) request to DHEC for documents pertaining to these changes and modifications. We have only recently learned that, without any notice to my department or to Pickens County, that MRR submitted a variety of documents to DHEC in 2014 and in 2015, regarding proposed changes and modifications, and has apparently obtained a new Permit, dated August 10, 2015, which has major changes and major modifications to the original 2008 Permit, including the following:

(A) Changes in Paragraph 2:

- (i) Eliminating the limiting language of "all other wastes . . . are prohibited."
- (ii) Adding: ". . . and any other waste approved by the Department for disposal in a Class Two Landfill pursuant to R. 61-107.19, Part IV, Section C.2."

(B) Adding provisions for a liner.

(C) Changing provisions for final cover.

(D) Other changes.

8. That the major changes and major modifications to our 2008 Permit, as reflected in the new Permit apparently issued in 2015, were never approved by Pickens County. Further, such changes (particularly regarding the elimination of the limitations on types of wastes and the addition of "other wastes") are in contravention of Pickens County's intentions and are in direct contradiction to the representations MRR made to Pickens County.

9. That neither MRR nor DHEC provided my department or Pickens County with engineering reports, documents and correspondence apparently provided by MRR to DHEC in 2014 and throughout most of 2015, regarding these major changes and major modifications. Submission of such documents and information to Pickens County is required by our Development Agreement and our Solid Waste Management Plan. Further, Mr. Dan Moore of MRR stated at the January 12, 2015 Planning Commission Meeting that such documents must be submitted to Pickens County immediately.

10. As of the time of the signing of this Affidavit, MRR has never submitted such documents relating to its requested major changes and modifications, nor the 2015 Permit, to my department or to Pickens County. Nor has DHEC formally provided such documents to us; rather, after the current recent disagreements between MRR and Pickens County commenced, I made the FOIA request to DHEC, and obtained documents. No formal Notice of these changes or modifications, nor the 2015 Permit, has been provided by MRR or DHEC or anyone.

SWORN and subscribed to before me this
17th day of February 2016.

Sheila W. Tinsley
Notary Public for South Carolina
Print Name: Sheila W. Tinsley
My Commission Expires: 11/6/2022

Gerald G. Wilson
Gerald G. Wilson

Respondent MRR Pickens

Exhibit E

Jason Anders

From: Gerald Wilson
Sent: Tuesday, March 15, 2016 3:29 PM
To: Jason Anders
Subject: FW: Question
Attachments: Highway 93 Landfill Final Permit Mod Alt Liner.pdf

Please Print

Gerald

From: Eleazer, Timothy [mailto:eleazetm@dhec.sc.gov]
Sent: Monday, January 11, 2016 3:39 PM
To: Gerald Wilson; Litton, Joan F.
Cc: Coleman, Kent M.; Koon, Justin; York, Karla A.
Subject: Re: Question

Mr. Wilson,

As requested, please find attached a copy of the August 10, 2015 permit approval.

Let me know if you should have any questions.

Tim Eleazer
Mining and Solid Waste Permitting Section
Bureau of Land and Waste Management
(803) 898-1374

From: Gerald Wilson <geraldw@co.pickens.sc.us>
Sent: Monday, January 11, 2016 1:26 PM
To: Litton, Joan F.
Cc: Coleman, Kent M.; Eleazer, Timothy; Koon, Justin
Subject: RE: Question

Joan

Thanks for the update. I also appreciate the files that were sent over last week. While reviewing the files I could not find the approval letter referenced in Kent's original press release in December. Kent stated that the permit was modified to allow the upgraded liner design on August 10, 2015. Would it be possible to get a copy of the approval letter?

Sincerely,

Gerald

Respondent MRR Pickens Exhibit F

COUNTY OF PICKENS

www.co.pickens.sc.us

Planning Commission



COMMISSION MEMBERS

BILL CATO, District 2, Chairman
WELDON CLARK, District 4, Vice Chairman
BOB BALLENTINE, District 1
JO JOHNSTON, District 3
DENNIS REINERT, District 5
BOB YOUNG, District 6

COPY

January 11, 2016

MRR Pickens, LLC
7413 Six Fork Road #358
Raleigh, NC 27615

Delivery USPS Certified Mail
91 7108 2133 2934 1312 8892

Re: Land Use Approval on Case No: LU-15-001
SCDHEC Class II Landfill

To MRR Pickens LLC,

We, the Pickens County Planning Commission (the "Commission"), are writing in regard to the above-referenced land use permit dated January 12, 2015. The approval of this permit was granted after your company appeared for a public hearing on your application for a renewal of your February 12, 2007 land use permit for a proposed C&D (now Class II) landfill off Highway 93 near Liberty, South Carolina.

In your 2007 appearance before the Commission, Mr. Ronald Gilbertson of your company characterized the type of waste for this project as "lumber, vinyl siding, concrete and brick," "grass clippings, leaves, limbs," and "storm debris." He also indicated that the life span of the project would be for "20-25 years." No mention was made of the disposal of coal combustion residuals ("CCR"), the need for a landfill liner, or plans to fill up the landfill quickly. Based in part on these representations by your company, the Planning Commission granted your land use request.

In your 2015 appearance before the Commission, Mr. Dan Moore of your company indicated that there were "no changes" from the 2007 request, and estimated that the proposed landfill would serve the citizens of the county for "50 years or more." No mention was made of the disposal of CCR. When you were specifically asked by a Commissioner about the need for a liner, Mr. Moore stated that no liner would be required. Based on these representations by your company, the Planning Commission granted your renewed use request.

We now understand from media reports that your company plans to dispose of CCR in the proposed landfill. We have also learned that your filings with SCDHEC include plans for a significantly shorter life span of the facility (5 years) and that a liner would be installed in order to comply with Class III requirements despite the fact that you repeatedly characterized this landfill as a Class II facility in all of your communications with the Commission.

These are significant deviations from the information you provided to us in 2007 and 2015. We consider these changes to be material alterations to the land use approved by the Commission, and constitute violations of your land use permit. Accordingly, pursuant to the authority granted under the Unified Development Standards Ordinance ("UDSO") Section 1504(d) and elsewhere, the Commission hereby suspends your land use permit for this project. You are directed to cease and desist any and all activities at the proposed site until such time as you have presented sufficient information to the Commission of your intention to strictly comply with our 2007 and 2015 land use approval and receive a renewal of your permit from the Commission.

Please be advised that Section 1505 of the UDSO provides that any violation of a land use approval is a misdemeanor with a punishment of a fine and/or jail time for each act or omission thereof. Also note that each and every day of a continuing violation constitutes a separate offense.

MRR Pickens, LLC
January 11, 2016
Page 2 of 2

If you have any questions about this stop work notification, or about the land use permitting process, please contact Chris Brink, Director of Community Development at 864 898 5956, or Ken Roper, County Attorney at 864 878 1577.

Sincerely,

Pickens County Planning Commission

Cc: Pickens County Council
Senator Larry Martin
Representative Davey Hiott
SCDHEC

Respondent MRR Pickens Exhibit G

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

MRR Pickens, LLC,

Plaintiff,

vs.

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

) IN THE COURT OF COMMON PLEAS

)

) THIRTEENTH JUDICIAL CIRCUIT

)

) Civil Action No.: 2016-CP-39-100

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**RESPONSE OF PICKENS COUNTY
TO PLAINTIFF MRR PICKENS, LLC'S
MOTION FOR AN EMERGENCY
PRELIMINARY INJUNCTION**

TO: PLAINTIFF AND ITS ATTORNEYS:

Pickens County hereby responds to Plaintiff's Motion for an Emergency Preliminary Injunction:

MRR Pickens, LLC (hereinafter "MRR") is not entitled to any Injunction, neither Emergency nor Preliminary nor any kind, for the following reasons:

(A) MRR has made serious material misrepresentations to Pickens County, including willful, intentional false statements, to obtain agreements and a Permit for this landfill.

(B) MRR has made serious material misrepresentations to this Court in the pursuit of this Motion, including willful, intentional and false statements, in an effort to obtain an unwarranted Injunction. In particular, the two Affidavits appended to MRR's Motion (F. Norbert Hector, Jr. And Scott L. Brown) contain intentional material misrepresentations to this Court.

(C) MRR has not exhausted its Administrative Remedies with Pickens County Planning Commission. MRR has the right to appeal the decision in question of the Planning Commission,

which it has not exercised. Nor can such an appeal process be deemed as futile. The Commission has questions that MRR thus far has failed to answer, and Pickens County and the Planning Commission believe that an appeal process has legitimate potential to be productive.

(D) No irreparable harm can be shown. Plaintiff complains primarily that it may lose income from operation of its landfill. It has sued Pickens County and the individually named members of the Planning Commission. Pickens County has assets and income and is not leaving the state or going out of business. In the extremely unlikely event that MRR should prevail in this litigation, its damages can be recovered.

(E) MRR has an adequate remedy at law. It has sued Pickens County, and in the extremely unlikely event that it should prevail in this litigation, its damages can be recovered.

(F) MRR is unlikely to succeed on the merits of this litigation. Pickens County agreed with MRR, through a Host Agreement, a Development Agreement, and revision of its Solid Waste Management Plan, for MRR to operate a landfill limited to Construction and Demolition (C&D) and Land Clearing Debris (LCD), as reflected in the Permit issued by DHEC on November 3, 2008. Pickens County is willing to honor all agreements which reflect the above, and per the limitations on waste explicitly stated in the November 3, 2008 Permit. Unfortunately, MRR has made material misrepresentations to Pickens County, which constitute fraud, misrepresentation and violations of the Unfair Trade Practices Act, for which Pickens County intends to counterclaim. Further, MRR has obtained an unlawful Permit from DHEC, dated August 10, 2015, which was obtained without any Notice to Pickens County or its affected citizens, and which has never, to date, been formally submitted to Pickens County.

(G) Pickens County is appealing the issuance of the Permit issued August 10, 2015, by DHEC, as it was obtained and in violation of Statutes and Regulations, and without any Notice to Pickens County, nor any opportunity for public comment and review. Pickens County believes that it will be successful in the appeal of said Permit.

(H) That if MRR is allowed to bring Coal Combustion Residue (CCR) into Pickens County, the irreparable harm would be to Pickens County and its citizens who reside in areas near the landfill. It is a violation of Federal and S.C. law to place CCR into a Class Two Landfill. (See Affidavits of Avner Vengosh, Ph.D., Shelley Robbins and C. Wesley Hulsey, P.G., attached). Further, a Class Three Landfill cannot legally be permitted at this time in Pickens County (admitted by MRR), due to inability to comply with Demonstration of Need requirements.

Pickens County responds to MRR's numbered paragraphs as follows:

1. That all allegations of MRR's Motion not hereafter specifically admitted or qualified are hereby denied.

2. Admits so much of paragraph 1 as would indicate that MRR obtained a valid Permit dated November 3, 2008, which limited types of wastes, and prohibited other wastes, in accord with MRR's representations at that time. Denies that MRR lawfully obtained any subsequent Permit for this landfill, and would show that the Permit apparently issued August 10, 2015 was obtained unlawfully and in violation of Statutes and Regulations, and was obtained by fraud and misrepresentation. Admits that MRR has transferred some property. Denies remainder of said paragraph.

3. Admits that Planning Commission issued a land use approval, but would show that MRR obtained the approval through material misrepresentations, fraud and unfair and deceitful trade practices. Denies the remainder of said paragraph.

4. Denies paragraph 3 in that the Permit apparently issued on August 10, 2015 was unlawfully obtained, is illegal, and must be rendered null and void. The Permit issued November 3, 2008 specifically prohibits wastes other than those specifically listed in Appendix 1 to R. 61-107.19.

5. Admits so much of paragraph 4 as would indicate that Pickens County issued a letter to MRR dated January 11, 2016, which referenced MRR's serious deviations from its prior representations, and MRR's "material alterations of the land use approved by the Planning Commission." The letter states that "You are directed to cease and desist any and all activities at the proposed site until such time as you have presented sufficient information to the Commission of your intention to strictly comply with our 2007 and 2015 land use approval and receive a renewal of your Permit from the Commission." The remainder of paragraph 4 is denied, and Pickens County craves reference to the letter of January 11, 2016 (see attached, Ex. 13).

6. Denies paragraphs 5, 6 and 7 of MRR's Motion.

7. Denies paragraph 8, and would show that MRR's non engineering firm has repeatedly reported to DHEC that it intends to change the design of this C&D Landfill to meet the requirements of a Class Three Landfill, which is prohibited in Pickens County, per DHEC and per the Pickens County Solid Waste Management Plan. As stated by MRR's consulting firm CEC to DHEC:

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

(See CEC's Work Plan for Site-Specific Hydrogeological Investigation, Aug./Sept. 2014; attached, Ex. 8).

8. Denies paragraph 9. Acceptance of CCR into a Class Two Landfill violates Federal Law and S.C. Law, and a Class Three Landfill is prohibited in Pickens County.

9. Has insufficient information on which to base a decision regarding paragraph 10 and therefore denies same and demands strict proof thereof. However, Pickens County would show that CCR waste is prohibited in Pickens County.

10. Denies paragraph 11 entirely.

11. Has insufficient information on which to base a decision regarding paragraph 12 and 13 and therefore denies same and demands strict proof thereof. However, Pickens County would show that CCR waste is prohibited in Pickens County.

12. Denies paragraph 14 in its entirety. Any further development of MRR's unlawful efforts to bring CCR into Pickens County would cause irreparable harm to Pickens County.

13. Denies paragraph 15 and would show that MRR's attempts to bring CCR into Pickens County are contrary to the material representations it has made to Pickens County for years, and deposit of CCR into a Class Two Landfill would violate Federal and State Law.

14. Denies paragraph 16 and would show that MRR is not entitled to any Injunction. Any furtherance of MRR's efforts to deposit CCR into this landfill in Pickens County would cause irreparable harm to Pickens County and its affected citizens.

15. Regarding paragraph 17, would show that MRR is not entitled to any Injunction.

**FURTHER GROUNDS OF PICKENS COUNTY'S OPPOSITION
TO MRR'S REQUEST FOR INJUNCTION**

16. Pickens County reaffirms all of its earlier allegations as fully as if repeated herein.

17. Coal Combustion Residuals (CCR) are extremely toxic and pose serious health risks to people and to the environment, and adversely affect water quality and air quality. Also, due to the serious risks of handling CCR, disposal into a Class Two Landfill, even with a liner, would be highly inappropriate. (Ex. 1, Report of Avner Vergosh, Ph.D.)

18. Deposit of CCR into a Class Two Landfill in South Carolina, even with a liner, would violate Federal Law and S.C. Law. (Ex. 2, Report of Shelley H. Robbins; Ex. 3, Affidavit of C. Wesley Hulsey; Ex. 4, Affidavit of Christopher Brink).

19. In South Carolina CCR meets the definition of "Special Waste." Per Federal Law, S.C. Law, "Special Waste" must be deposited into a Class Three, NOT a Class Two Landfill in Pickens County, as no Class Three Landfill can meet the Demonstration of Need Requirements in Pickens County (MRR concurs). Further, "Special Waste" is not allowed in any landfill in Pickens County, per the Pickens County Solid Waste Management Plan. (Ex. 7). (Also see Ex. 2, Report of Shelley H. Robbins; Ex. 3, Affidavit of C. Wesley Hulsey, P.G.; Ex. 4, Affidavit of Christopher Brink; and Ex. 5, Affidavit of Gerald G. Wilson.

20. Per Regulation 61-107.19, Part I, A. 48.:

- a. "Minor modification" means a change that keeps the permit current with routine changes to the facility or its operations, or an administrative change; and
- b. "Major modification" means a change that substantially alters the facility or its operations, e.g., tonnage increase above 25%, any volumetric capacity increase, alternate designs that vary from the design prescribed in this regulation.

When MRR met with DHEC and arranged for concurrence that MRR's changes would be "minor modifications," this purported characterization was for the purpose of avoiding the requirement for public review and public comment, which are necessary for "major modifications," per R. 61-107.19, Part IV. I. 2 (Ex. 16). However, the changes which MRR proposed from the original 2008 Permit are the addition of "alternate liner design" (no liner was referenced in the 2008 Permit); also changes from Class Two to Class Three (see CEC Reports, Exhibits 8, 9, 10); eliminating the limiting language of "all other wastes . . . are prohibited;" replacing the limiting language by adding "... and any other waste approved by the Department for disposal in a Class Two Landfill . . . ;" changing provisions for final cover, and other changes. (See 2008 Permit, Ex. 11, and 2015 Permit, Ex. 12). Per any reasonable interpretation of these Regulations, these changes constitute a "major modification," requiring public comment and public review and Notice to the County. No such Notice or public involvement occurred. The purported Permit issued August 10, 2015 is invalid, and must be rendered null and void. (See Ex. 2, Report of Shelley H. Robbins; Ex. 3, Affidavit of C. Wesley Hulsey; Ex. 4, Affidavit of Christopher Brink; and Ex. 5, Affidavit of Gerald G. Wilson).

21. That at no time was Pickens County notified that MRR was seeking these major changes and major modifications. To this date, neither DHEC nor MRR has provided formal Notice of the purported August 10, 2015 Permit. To the contrary, MRR always represented to Pickens County that this landfill would accept only C&D and LCD waste. (See Ex. 3, Affidavit of C. Wesley Hulsey; Ex. 4, Affidavit of Christopher Brink; and Ex. 5, Affidavit of Gerald G. Wilson).

22. That Pickens County relied on the representations of MRR, in proceeding with agreements and plans for this landfill, particularly MRR's repeated representations that only C&D and LCD would be accepted into this landfill. (See Exhibits 3, 4 and 5).

23. That in particular, the action of the County Planning Commission approving the land use immediately following the January 12, 2015 Planning Commission was based on, and in reliance upon, the representation of MRR at said meeting. (See Exhibits 3, 4 and 5).

24. That it has now come to light that at the January 12, 2015 Planning Commission meeting, MRR made serious and material misrepresentations. These misrepresentations included the following:

- (A) No Liner - MRR claimed that it needed no liner for this landfill. (See Ex. 6, Transcript of Planning Commission meeting of January 12, 2015, p. 14). (But see Exhibits 8, 9, and 10, wherein CEC, MRR's consulting firm, was negotiating with DHEC for changes to include a liner, throughout 2014 and much of 2015).
- (B) No change in land use details or development details from 2007 - MRR claimed that land use details and development details "are just the same as they were when we got the initial approval on the site back in 2007." (See Ex. 6, Transcript, p. 6). (But see Exhibits 8, 9, and 10, wherein CEC, MRR's consulting firm, was negotiating with DHEC throughout 2014 and much of 2015, to add a liner, and to eliminate the limiting language of the 2008 Permit, "All other wastes . . . are prohibited," and to add expansive language to allow other wastes DHEC might approve, and other changes).
- (C) Still a C&D Landfill, "exactly the same type of facility that the county is operating" - MRR stated this at the meeting. (Ex. 6, Transcript, p. 8).

(D) Also note that the existing County Landfill, soon to reach capacity and close, accepts only C&D and LCD waste. (But see Exhibits 8, 9, and 10, wherein CEC and MRR were negotiating with DHEC throughout 2014 and much of 2015, for major and serious changes and additions to this landfill. Also see Exhibit 11, the 2008 Permit; and Exhibit 12, the purported 2015 Permit).

25. Also, at the January 12, 2015 Planning Commission meeting, MRR stated that the Development Agreement between MRR and Pickens County requires MRR to provide Pickens County with all documentation with DHEC:

“... anything we submit to DHEC has to be submitted to you at the very same time we submit it to DHEC. Anything we get from DHEC has to be submitted to you all ... in a matter of a day or so. (Ex. 6, Transcript, p. 11).

(But see Exhibits 8, 9 and 10, which are complex engineering reports by CEC for MRR, all done for the purpose of changing the design of the landfill, changing the wastes that could be accepted, and other material changes. Also see Exhibits 3, 4, and 5, where in County officials report that none of these ongoing efforts by MRR to make changes were shared with the County, and further, that neither MRR nor DHEC provided the new purported Permit of August 10, 2015 to the county.

26. That the Affidavits attached to MRR's Motion for Injunction contain material and serious misrepresentations to this Court.

In particular:

(A) Affidavit of F. Norbert Hector, Jr., Managing Member of MRR:

Para. 18: “At the Planning Commission meeting, MRR never stated that it was not lining the landfill or that it was planning to restrict its

waste to Construction and Demolition/Land Clearing Debris (C&D/LCD) waste.”

(B) Affidavit of Scott L. Brown, engineering consultant for MRR:

Para. 9: “During the public meeting, neither I nor other representatives of MRR Pickens stated the company was not lining the landfill.”

Para. 10: “During the public meeting, neither I nor other representatives of MRR Pickens stated that the company was planning to restrict its waste in the Class Two Landfill to Construction and Demolition/Land Clearing (C&D/LCD) waste or County generated waste.”

But see Ex. 6, Transcript of Planning Commission meeting of January 12, 2015: Page 14: MRR confirms no liner.

Page 6: MRR confirms no changes from 2007 (which limited the waste to C&D/LCD).

Page 8: MRR confirms that this remains a C&D Landfill, “the same type of facility that the County is operating.” (The County’s landfill only accepts C&D/LCD).

The above misrepresentations of MRR officials to this Court are blatant, willful and material, as were the misrepresentations to Pickens county.

CONCLUSION

Pickens County craves reference particularly to Exhibits 1, 2, 3, 4, and 5, being the Reports of Experts and knowledgeable persons, and Affidavits of County officials involved in this matter. Pickens County also craves reference to Ex. 6, the Transcript of the County Planning Commission meeting, which shows material misrepresentations made to this Court.

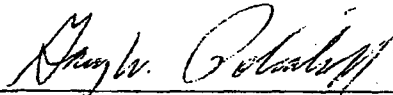
MRR is entitled to no Injunction. It has acted with deceit and with material misrepresentations. It has conspired with DHEC to issue reports and obtain a new purported Permit, through violation of Regulations. It has hidden its activity from Pickens County, the local government with whom it has a Host Agreement and Development Agreement, in violation of said Agreements and in violation of the Pickens County Solid Waste Management Plan.

MRR's Motion must be denied.

February 17, 2016

Spartanburg, SC

Respectfully submitted,



Gary W. Poliakoff
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POLIAKOFF & ASSOCIATES, P.A.
215 Magnolia Street
Post Office Box 1571
Spartanburg, South Carolina 29304
(864) 582-5472

ATTORNEY FOR PICKENS COUNTY

EXHIBITS

1. Affidavit of Avner Vengosh, Ph.D., with Report and C.V.
2. Affidavit of Shelley H. Robbins, with Report
3. Affidavit of C. Wesley Hulsey, with C.V.
4. Affidavit of Christopher Brink
5. Affidavit of Gerald G. Wilson
6. Transcript of Planning Commission Meeting of January 12, 2015
7. Solid Waste Management Plan, January 2013, excerpts
8. "Work Plan for Site-Specific Hydrogeologic Investigation," by CEC for MRR, to DHEC
- Aug./Sept. 2014, excerpts
9. "Site-Specific Hydrogeologic Investigation Report," by CEC for MRR, to DHEC - Dec.
15, 2014, excerpts
10. "Minor Permit Modification," by CEC for MRR, to DHEC, March/Aug. 2015, excerpts
11. Permit - November 3, 2008
12. Permit - August 10, 2015 (invalid)
13. Letter of County Planning Commission of January 11, 2016
14. Letter from CEC to DHEC, August 5, 2015
15. Appendix I to R. 61-107.19
16. R. 61-107.19 Part I, 48. and I. (major/minor modifications)

EXHIBIT D



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003

Date of Issuance: November 3, 2008

Date of

Modification: August 10, 2015

Permission is hereby granted to:

Name of Facility: Highway 93 Class 2 Landfill
Permittee: MRR Pickens, LLC
Address: 5842 Faringdon Place, Suite 1
Raleigh, NC 27609
Supervisor: Mr. Christopher T. Roof
Phone: (919) 436-3570

for the operation of a Class 2 landfill at 2180 Greenville Highway, in Pickens County located off Highway 93 near the City of Liberty, SC 29657.

This permit is issued pursuant to Sections 44-96-10 et seq., and 25A S.C. Code Regulation 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
August 10, 2015
Page 1 of 4

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the approved design specifications, and construction plans received November 30, 2007; revised August 26, 2008, and last revised August 5, 2015, unless permit conditions state otherwise.
2. This permit is limited to the disposal of the items listed in Appendix I of R.61-107.19 and any other waste approved by the Department for disposal in a Class Two Landfill pursuant to R.61-107.19, Part IV, Section C.2.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to Jun30). Information concerning the facility's previous Fiscal Year's waste receipts is due on the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV. Subpart C.16, to the attention of:

Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Ball Street
Columbia, South Carolina 29201

4. All Appendix-I acceptable wastes must be covered at least once every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to five (5) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than five (5) acres (at the time of the certification). The certification shall be completed within sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (16,133 yd³ of soil for 5 acres with 2' thickness). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.
8. Sixty (60) days prior to starting construction of the Class Two landfill, the Permittee shall notify the Department of their selection between Option 1 (traditional Class Two landfill design), or Option 2 (alternate liner design). If the financial assurance mechanism needs to be increased, this shall be done prior to the acceptance of waste into the landfill.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit. The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.
- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- d) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

2. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Subpart E.3.

3. REPORTING

- a) The permittee shall submit to the Department the result of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following schedule:

Sampling Schedule	Results Due
November/December	January 15 (Semi-Annual)
May/June	July 15 (annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.1.a.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Ground water Section, and to the Solid Waste Consultant in Upstate Region BBHS Greenville.

4. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility; the Facility may be required to comply with R.61-107.19, Part IV, Section C.21.

Respondent MRR Pickens

Exhibit H

BOARD:
Allen Amsler
Chairman
Mark S. Lutz
Vice Chairman
Ann B. Kirol, DDS
Secretary



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment
South Carolina Board of Health and Environmental Control

BOARD:
R. Kenyon Wells
Charles M. Joye II, PE.
L. Clarence Batts, Jr.
John O. Hutto, Sr., MD
William Lee Hewitt, III

2600 Bull Street, Columbia, South Carolina 29201 · Telephone: (803) 898-3309 · Facsimile: (803) 898-3393 · lisa.longshore@dhec.sc.gov

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: Pickens County, Requestor
Gary W. Poliakoff, Attorney for Requestor
MRR Pickens, LLC, Applicant
Etta R. Williams Linen, Attorney for Department

FROM: Lisa Lucas Longshore, Clerk

RE: Docket No. 16-RFR-15, Hwy 93 C&D Class 2 Landfill – Modification of Permit
No. LF2-00003

DATE: April 6, 2016

A Request for Final Review of the above-referenced decision was filed on March 28, 2016. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference in this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference in this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

BOARD:
Allen Amisler
Chairman

Mark S. Lutz
Vice Chairman

Ann B. Kirol, DDS
Secretary



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment
South Carolina Board of Health and Environmental Control

BOARD:

R. Kenyon Wells

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William Lee Hewitt, III

2600 Bull Street, Columbia, South Carolina 29201 Telephone: (803) 898-3309 Facsimile: (803) 898-3393 lisa.longshore@dhec.sc.gov

CERTIFICATE OF SERVICE

I, Lisa Lucas Longshore, Clerk, S.C. Board of Health and Environmental Control, with the South Carolina Department of Health and Environmental Control, hereby certify that I have this 6th day of April 2016 served the foregoing ***Acknowledgement of Request For Final Review and Notice of Procedures – Docket Nos. 16-RFR-15*** upon all parties and/or counsel of record by placing a copy of same in an envelope and depositing it in the U.S. Mail, with sufficient postage as indicated below:

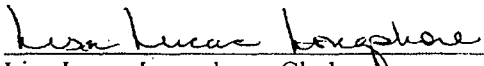
U.S. Mail

Gary W. Poliakoff, Esq.
Poliakoff & Associates
Post Office Box 1571
Spartanburg, SC 29304

MRR Pickens, LLC
5842 Fairington Place, Suite 1
Raleigh, NC 27609

Via Interagency Mail Delivery

Etta R. Williams Linen, Esquire
SCDHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201


Lisa Lucas Longshore, Clerk

April 6, 2016
Columbia, South Carolina

**BEFORE THE
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL**

In Re:

Staff Decision to Grant
Permit Modification dated
August 10, 2015

**REQUEST FOR
FINAL REVIEW
(BOARD REVIEW)**

Facility: Highway 93 C&D Landfill
Permittee: MRR Pickens, LLC
Class 2 Landfill
Permit No. LF2-00003

RECEIVED

Clark, Board of Health
and Environmental Control

16-RFE-15

Pickens County, an "affected person" pursuant to S.C. Code Section 44-1-60(E), hereby requests Final Review by the South Carolina Board of Health and Environmental Control, of the Staff Decision to grant a Permit Modification dated August 10, 2015.

1. Staff Decision at Issue:

Permit Modification to Permit No. LF2-00003, dated August 10, 2015, by Division of Mining and Solid Waste Management, Bureau of Land & Waste Management.

Attached hereto:

- Copy of the August 10, 2015 Permit Modification (issued contrary to law and which must be voided).
- Copy of the Permit issued November 3, 2008 (which is valid and remains valid as issued November 3, 2008).

2. Timeliness of this Request for Review:

(A) Pickens County is an "affected person," per S.C. Code Section 44-1-60(E), in that Pickens County is the duly qualified and approved Host Local Government in regard to Permit No. LF-2-00003, and based upon its Host Agreement and Development Agreement with the Permittee,

and based upon the Pickens County Solid Waste Management Plan, revised in 2013. The Department of Health and Environmental Control is fully aware of Pickens County's status as Host Local Government, and is fully aware of and in possession of the Host Agreement and Development Agreement in question.

(B) Pickens County requests this Review on behalf of (1) Pickens County, a governmental entity duly existing and authorized to govern; and (2) on behalf of the affected public, particularly those members of the public who reside in Pickens County, and those members of the public who reside within one mile of the Landfill in question in Pickens County and who will be immediately affected adversely by dust and ash, groundwater contamination, air pollution, decrease in property values, and other resulting problems and damages, should the purported Permit Modification of August 10, 2015 be allowed to stand.

(C) Despite its status as an "affected person," Pickens County has never, to this date, received formal Notice of the purported Permit Modification dated August 10, 2015, nor has the Department ever mailed the staff decision in question, or the Permit Modification dated August 10, 2015, to Pickens County. Pickens County only learned of such staff decision and purported Permit Modification recently, after controversies between Pickens County and the Permittee arose.

As no formal Notice to Pickens County ever occurred, nor any mailing of the staff decision or Permit Modification of August 10, 2015 by the Department to Pickens County, this Request for Final Review is timely.

To date, Pickens County has never received formal Notice or mailing of the decision in question.

(D) Illegality of the Failure to Notify Pickens County

- (1) The Permit, validly issued on November 3, 2008, was for a C&D Landfill, and which contained the following special condition:

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

The above Permit issued November 3, 2008, with the above Special Condition, is in accord with the Pickens County Solid Waste Management Plan, and is in accord with the agreements and representations between Pickens County and the Permittee.

- (2) The purported Permit Modification dated August 10, 2015 made major modifications to the original Permit, which substantially alter and change the facility and its operations, including but not limited to:

- (a) An alternate design that varies from the design prescribed in the relevant Class 2 Regulations R. 61-107.19, Parts I and IV).
- (b) An alternate design that includes the addition of a liner, which was not previously permitted (and not approved by Pickens County).
- (c) The addition of Class 3 design features to the Class 2 Landfill Permit (done for the purposes of adding wastes which were not previously approved by Pickens County, and which in fact

would violate the Pickens County Solid Waste Management Plan).

- (d) The addition of Class 3 operational features to a Class 2 Landfill Permit (also done for the purpose of adding wastes which were not previously approved by Pickens County, and which in fact would violate the Pickens County Solid Waste Management Plan).
- (e) The alternate designs of the purported Permit Modification of August 10, 2015, as well as the changes that substantially alter the facility and its operations, constitute a "Major Modification," per R. 61-107.19, Part I, B. 48.
- (f) Despite the alternate designs and the changes that substantially alter the facility and its operations, the Department characterized these changes as a "minor modification." Such characterization was in violation of R. 61-107.19, Part I, B. 48., and the result was to deprive Pickens County and the public of any Notice, any involvement in the application and in the permitting modification process, and of the right to comment and review.
- (g) Per R. 61-107.19, a "major modification" of a Permit requires Notice to "affected persons" (here, Pickens County), and to the public, and requires opportunity for public review and

comment. The failure to provide Notice to Pickens County and to the public was a further violation of relevant regulations.

- (h) That, according to MRR's engineering consultants:

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

("Site-Specific Hydrogeologic Investigation Report," prepared by MRR Pickens, LLC, by Civil & Environmental Consultants, Inc., d. 12-15-14, received by S.C. DHEC December 16, 2014).

Note: The above-referenced report, and several subsequent reports by MRR's consultant, were submitted to S.C. DHEC in 2014 and 2015, without any Notice whatsoever to Pickens County or to the public. Only recently, since controversies between Pickens County and MRR have arisen, has Pickens County learned of such reports.

- (i) That the Department and MRR apparently had meetings and discussions, regarding the changing of this Class Two Permit to meet Class Three Permit features, wherein DHEC and MRR agreed to call these changes a "minor modification"

despite the clear and unequivocal true qualification as a
“major modification.”

(j) That the apparent purpose of MRR and the Department meeting, conducting discussions, and “confirming” that this would be a “minor modification,” was to avoid Notice to Pickens County and to the public.

(k) The above actions of the Department and of the Permittee were in violation of relevant Statutes and Regulations, as referenced above.

(l) That, due to the failure of Notice and mailing, as required by relevant Statutes and Regulations, Pickens County’s Request for Review is timely.

3. Grounds for Rescinding the Staff Decision (Permit Modification of August 10, 2015):

(A) The Pickens County Solid Waste Management Plan, revised 2013, prohibits:

(i) Class Three Landfills in Pickens County. (A purpose purported Permit Modification was to add Class Three design features to a permitted Class Two Landfill).

(ii) “Special Wastes” are prohibited. (Coal Ash, a/k/a Coal Combustion Residuals (CCR), require special handling, due to propensity to create dust, and due to propensity to contain toxic substances, and propensity to contaminate groundwater and surface water, and therefore qualifies as “Special Wastes,” per S.C. Code Section 44-96-390, and per the definition

of "Special Waste" contained in the Pickens County Solid Waste Management Plan).

(B) The Department has already determined, per the Demonstration of Need Regulations, that no "Need" (as defined by the DON Regulations) exists for a Class Three Landfill in Pickens County. The efforts by the Department and MRR to add Class Three design and operational features to a permitted Class Two Landfill constitute an attempt to circumvent, and/or to render null and void, the DON Regulations.

(C) That Pickens County had determined to enter into agreements with the Permittee MRR, including a Host Agreement and other agreements, for the Permittee to operate a Landfill solely to receive Construction and Demolition (C&D) and Land Clearing Debris (LCD) wastes. The changes and modifications to the 2008 Permit violate and contravene the agreements between Pickens County and MRR, and are in contravention of MRR's continued representations to Pickens County, to the public, and to the Planning Commission.

(D) That representatives of MRR not only intentionally concealed from Pickens County and from the public its intentions and efforts to make substantial and major alterations to the agreed-upon Permit issued in 2008, but also made willful misrepresentations to Pickens County and to the Pickens County Planning Commission, regarding the nature of the landfill facility and its operations. The Department must not be a party to such misrepresentations, nor should it condone, allow, ratify or approve such misrepresentations and/or such behavior. (Proof of such continuing misrepresentations by MRR will be submitted to the Board).

(E) The Land Use Approval issued by the Pickens County Planning Commission on or about January 12, 2015, was issued in reliance upon the material misrepresentations by MRR, which

the Commission discovered in early 2016 to have been false. The Pickens County Planning Commission, in January of 2016, once it learned of the material misrepresentations by MRR, rescinded the land use approval issued January 12, 2015. NOTE: Pickens County has clarified repeatedly, and continues to emphasize, that it remains in full agreement for the Permittee to operate a C&D/LCD Landfill, in accord with the conditions of the Permit issued November 3, 2008. Further: the Pickens County Planning Commission directed the Permittee to come back before it, to answer questions and provide further information, which the Permittee has failed and refused to do. Further, the Permittee failed and refuses to exhaust available administrative remedies with the Planning Commission.

(F) That neither Pickens County nor the Pickens County Planning Commission has issued a Letter of Consistency regarding the purported Permit Modification issued August 10, 2015. Both Pickens County and the Planning Commission were kept in secrecy of the application for modification, the reports leading up to the modification, and the issuance of the modification itself.

(G) The purported Permit Modification issued August 10, 2015 was issued in violation of the 1999 State Solid Waste Management Plan, and operation of this Landfill pursuant to said purported Modification would violate the 1999 State Solid Waste Management Plan.

(H) The allowance of Coal Ash, or CCR, into this Landfill would violate recently enacted Act 138 of 2016, signed into law March 2, 2016, prohibiting disposal of Coal Ash into Class Two Landfills such as the Landfill in question, in South Carolina.

(I) The allowance of Coal Ash, or CCR, into this Landfill would violate regulations and guidelines of the United States Environmental Protection Agency.

(J) That the issuance of the purported Modification of August 10, 2015 is in contravention of the needs and desires of Pickens County and its citizens and of the public.

4. Significant Issues and Factors:

All of the above-stated Grounds are re-emphasized. The Department has acted in violation of relevant Statutes and Regulations by willfully mischaracterizing a "major modification" as a "minor." The purpose of the meetings and discussions between DHEC and MRR, and the agreement to mischaracterize the modification, was no mere issue of unimportant semantics. The purpose of such mischaracterization was to deprive Pickens County and the public of Notice, and to prevent any input and any public comment and review. Further, as stated hereinabove, Pickens County has substantive reasons to oppose this purported Modification, including the violations of its Solid Waste Management Plan, and the violations of its agreements with the Permittee, among other substantive reasons and issues.

The Department must not participate in such violations of Statutes and Regulations, and must not participate in efforts to deprive Counties, Host Local Governments, "affected persons," and/or the public, of legitimate Notice, opportunity for input, and opportunity for public comment and review.

5. Relief Requested:

(A) Pickens County requests that the purported Permit Modification issued August 10, 2015 be rescinded and be declared null and void. It is appropriate for the original Permit, issued November 3, 2008, with the Conditions issued therein at that time, to remain in full force and effect.

(B) Should the Board for any reason deny this Request for Review, Pickens County requests that the Department issue a Notice to All Host Local Governments and to All County Governments as follows:

That should any Host Local Government or County Government consider entering into a Host local Government Agreement or similar Agreement with a Landfill owner or operator, that the Host Local Government and/or County Government must be aware:

- (i) That the Department may, and will, make major modifications to a Landfill Permit, without any Notice to the Host Local Government and/or County Government and/or the public, and without any opportunity to be heard, or to provide input, or to have comment or review.
- (ii) That the Department may, and will, conduct meetings and engage in discussions with Permittees, regarding major modifications to Permits, without any Notice to the Host Local Government and/or County Government and/or the public, and without any opportunity to be heard, or to provide input, or to have comment or review.
- (iii) That the Department may, and will, characterize a "major modification" as "minor," in violation of the Regulations defining such, and that in defense of such violation, the Department may, and will, claim that the Department has the right to make permit determinations (even when the actions are unequivocally in violation of Statutes and Regulations), and that all parties must give great deference to Department determinations (even those in violation of Statutes and Regulations).

- (iv) That the Department may, and will, meet with and discuss with Permit Applicants and Permittees, ways and methods of depriving Host Local Governments, Counties and the public, of Notice and opportunity to be heard, in situations in which such Notice and opportunity are appropriate and legitimate.

Note: The above is presented as emphasis of the inappropriateness of the issuance of the purported Permit Modification, and of the inappropriateness of any approval of such Permit Modification by this Board.

5. Enclosed Herewith:

- Check for filing fee in the amount of \$100.00
- Copy of the Permit Modification issued August 10, 2015, which is the subject of this Request for Review.
- Copy of the Permit issued November 3, 2008, which is valid and should be recognized as remaining in full force and effect.

6. Pickens County requests a formal Conference and/or formal Hearing, with opportunity to present evidence and to make arguments.

7. Addresses:

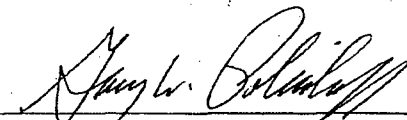
Attorneys for Pickens County:

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(864) 582-5472 (864) 582-7280 fax

Kenneth S. Roper, Esq.
ken@roperlawfirm.com
ROPER LAW FIRM, LLC
P.O. Box 246
Pickens, SC 29671
(864) 878-1577 (864) 878-1336 fax

Tom Hendricks
Interim Administrator
Pickens County
222 McDaniel Ave., Ste. B-2
Pickens, SC 29671

March 23, 2016



Gary W. Poliakov
Attorney for Pickens County



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003

Date of Issuance: November 3, 2008

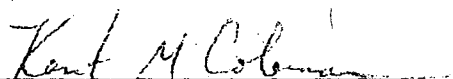
Date of
Modification: August 10, 2015

Permission is hereby granted to:

Name of Facility: Highway 93 Class 2 Landfill
Permittee: MRR Pickens, LLC
Address: 5842 Faringdon Place, Suite 1
Raleigh, NC 27609
Supervisor: Mr. Christopher T. Roof
Phone: (919) 436-3570

for the operation of a Class 2 landfill at 2180 Greenville Highway, in Pickens County located off Highway 93 near the City of Liberty, SC 29657.

This permit is issued pursuant to Sections 44-96-10 et seq., and 25A S.C. Code Regulation 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
August 10, 2015
Page 1 of 4

MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the approved design specifications, and construction plans received November 30, 2007; revised August 26, 2008, and last revised August 5, 2015, unless permit conditions state otherwise.
2. This permit is limited to the disposal of the items listed in Appendix I of R.61-107.19 and any other waste approved by the Department for disposal in a Class Two Landfill pursuant to R.61-107.19, Part IV, Section C.2.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to Jun30). Information concerning the facility's previous Fiscal Year's waste receipts is due on the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV. Subpart C.16, to the attention of:

**Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201**

4. All Appendix-I acceptable wastes must be covered at least once every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to five (5) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before **July 1** of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than five (5) acres (at the time of the certification). The certification shall be completed within sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before **July 1** of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (16,133 yd³ of soil for 5 acres with 2' thickness). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.
8. Sixty (60) days prior to starting construction of the Class Two landfill, the Permittee shall notify the Department of their selection between Option 1 (traditional Class Two landfill design), or Option 2 (alternate liner design). If the financial assurance mechanism needs to be increased, this shall be done prior to the acceptance of waste into the landfill.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

I. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit. The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.
- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- d) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

2. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Subpart E.3.

3. REPORTING

- a) The permittee shall submit to the Department the result of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following schedule:

Sampling Schedule	Results Due
November/December	January 15 (Semi-Annual)
May/June	July 15 (annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.1.a.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Ground water Section, and to the Solid Waste Consultant in Upstate Region BEHS Greenville.

4. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility; the Facility may be required to comply with R.61-107.19, Part IV, Section C.21.



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003

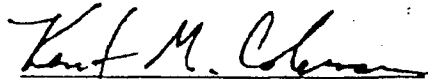
Permit Issued Date: November 3, 2008 Permit Effective Date: November 18, 2008

Permission is hereby granted to:

Name of Facility: Highway 93 C & D Landfill
Permittee: MRR Pickens, LLC
Address: 11743 Trails End Lane
Charlotte, NC 28078
Contact: Mr. Ronald C. Gilkerson
Phone: (704) 947-6652

for the operation of a Class 2 landfill at 2180 Greenville Highway, Liberty, South Carolina, 29657 in Pickens County located off Highway 93 at Clardy Road approximately 2,000 feet NE of the City of Liberty, SC.

This permit is issued pursuant to Sections 44-96-10 *et seq.* (Supp. 2007) and 25A S.C. Code of Regulations Section 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, P.G., Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
November 3, 2008
Page 1 of 4

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3432 • www.scdhec.gov

549/865

App. p.0593

MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the design specifications and construction plans received November 30, 2007; and last revised August 26, 2008, unless permit conditions state otherwise.
2. This permit is limited solely to the disposal of items listed in Appendix I of R.61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to June 30). Information concerning the facility's previous Fiscal Year's waste receipts is due in the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV. Subpart C.16, to the attention of:

**Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201**

4. All Appendix-I acceptable wastes must be covered at least every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to twelve (12) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than twelve (12) acres (at the time of the certification). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (38,720 yd³ of soil for 12 acres with 2' thickness). The certification shall have been completed within the last 60 days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.
2. Within ninety (90) days of the effective date of this permit, the Permittee shall submit a detailed Compliance Plan that describes steps to be taken in order to fully comply with all regulatory requirements of R.61-107.19 that relate to Class 2 Landfills. This Compliance Plan shall include, but not limited to, the following: a groundwater monitoring design workplan, a landfill post-closure care plan, and a landfill post-closure care cost estimate. Upon the Department's approval of said Compliance Plan, the Permittee will have six (6) months to implement the plan and will have a deadline for full compliance with R.61-107.19 of November 19, 2009.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. SPECIAL ENVIRONMENTAL PERMIT CONDITIONS

Within ninety (90) days of the effective date of this permit, the Permittee shall submit to the Department for review, a Groundwater Monitoring Design Workplan in accordance with R.61-107.19, Part IV, Section E (Groundwater Monitoring and Corrective Action). In addition, an approved groundwater monitoring system must be installed and operating prior to November 19, 2009, pursuant to R.61-107.19, Part I, Section A.6.c. Upon the Department's approval of the Groundwater Monitoring Design Workplan, permit conditions C.2, C.3 and C.4 will become effective.

2. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit.

The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.

- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- e) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

3. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine monitoring at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Part IV Subpart E.3.

4. REPORTING

- a) The Permittee shall submit to the Department the results of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following sampling schedule:

<u>Sampling Schedule</u>	<u>Results Due</u>
November/December	January 15 (Semi-Annual)
May/June	July 15 (Annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.2.A.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Groundwater Section, and to the Solid Waste Consultant in Region 2 EQC (Greenville).

5. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required comply with R.61-107.19, Part IV, Section C.21.

Respondent MRR Pickens Exhibit I

BOARD:
Allen Ansler
Chairman

Mark S. Lutz
Vice Chairman

Ann B. Kirod, DDS
Secretary



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment
South Carolina Board of Health and Environmental Control

2600 Bull Street, Columbia, South Carolina 29201 · Telephone: (803) 898-3309 · Facsimile: (803) 898-3393 · lisa.longshore@dhec.sc.gov

BOARD:
R. Kenyon Wells
Charles M. Joye II, PE.
L. Clarence Batts, Jr.
John O. Hurto, Sr., MD
William Lee Hewitt, III

April 21, 2016

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RECEIVED 4/25/2016

U.S. Mail – Certified

9214 8969 0099 9790 1404 5178 18
Gary W. Poliakoff, Esq.
Poliakoff & Associates
Post Office Box 1571
Spartanburg, SC 29304

U.S. Mail

Christopher T. Roof, Supervisor
MRR Pickens, LLC
5842 Fairington Place, Suite 1
Raleigh, NC 27609

Electronic Mail Delivery

Etta R. Williams Linen, Esquire
SCDHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201

RE: Docket No. 16-RFR-15, MRR Pickens/Hwy 93 C&D Class 2 Landfill – Modification of Permit No. LF2-00003

Dear Counsel of Record and Mr. Roof:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.

CONTESTED CASE GUIDANCE

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law

Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

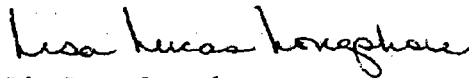
A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



Lisa Lucas Longshore
Clerk

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.



2600 Bull Street
Columbia, SC 29201

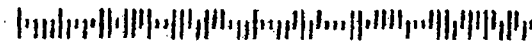
Return Service Requested

POSTAGE
01/21/2018
\$000.45

ZIP 29201
04112018331

Christopher T. Roof, Supervisor
MRR Pickens, LLC
5842 Fairington Place, Suite 1
Raleigh, NC 27609

CYY-SMP 27609



Respondent MRR Pickens Exhibit J

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Pickens County,

Petitioner,

vs.

South Carolina Department of Health
and Environmental Control and MRR
Pickens, LLC,

Respondents.

Docket No. 16-ALJ-07-0164-CC

**AFFIDAVIT OF
CHRISTOPHER T. ROOF**

Christopher T. Roof, being duly sworn deposes and says the following:

1. My name is Christopher Roof. I am of the age of majority and am of sound mind and body. This Affidavit is not being written under stress or promise of anything. I am not under the influence of drugs or alcohol at the time this Affidavit is written.
2. I am currently the General Manager of MRR Pickens, LLC and have held that position since January 24, 2007.
3. As General Manager of MRR Pickens, LLC, I am responsible for overseeing local and state permitting, development and operations of the South Carolina Department of Health and Environmental Control (DHEC) permitted Class 2 Landfill to be operated in Pickens County, South Carolina.
4. In my position as General Manager, I have always and remain the sole person responsible for reviewing all correspondence addressed to the company and received at our only office and place of business located at 5842 Faringdon Place, Suite 1, Raleigh, North Carolina 27609.
5. Since January 24, 2007, MRR Pickens, LLC has been and remains registered with the South Carolina Secretary of State as a South Carolina Domestic limited liability company, in

Good Standing, with its registered agent located at Corporation Service Company, 1703 Laurel Street, Columbia, SC 29201.

6. MRR Pickens, LLC only office and place of business is currently and has been at all times since November 1, 2014, located at 5842 Faringdon Place, Suite 1, Raleigh, North Carolina 27609.

7. To my knowledge, all correspondence from South Carolina DHEC to MRR Pickens, LLC relating to the August 10, 2015 DHEC Minor Permit Modification for its Class 2 Landfill in Pickens County (LF2-00003) has been addressed to me and sent to 5842 Faringdon Place, Suite 1, Raleigh, North Carolina 27609.

8. Prior to moving to the 5842 Faringdon Place, Suite 1, Raleigh, North Carolina, 27609 location, MRR Pickens on November 1, 2014, LLC's headquarters, office and primary place of business was located at 431 Raleigh View Road, Raleigh, North Carolina 27610.

9. From January 3, 2006 to December 22, 2007, Ronald Gilkerson worked for MRR Pickens, LLC and an affiliated company, MRR Southern, LLC.

10. Ronald Gilkerson was responsible at that time for assisting in the permitting and development of solid waste landfills to be located in South Carolina.

11. For the majority of his time working for MRR Southern, LLC and MRR Pickens, LLC, in 2006 and 2007, Ronald Gilkerson worked at a satellite office located at 11925 Sam Roper Drive, Suite C, Office 2, Charlotte, North Carolina 28269.

12. MRR Pickens, LLC closed the satellite office located at 11925 Sam Roper Drive, Suite C, Office 2, Charlotte, North Carolina when Ronald Gilkerson ceased working for MRR Southern, LLC and MRR Pickens in December of 2007.

13. For a brief period of time in 2008, Ronald Gilkerson worked as an independent consultant for MRR Southern, LLC and MRR Pickens, LLC from his home located at 11743 Trails End Lane, Charlotte, North Carolina 28078.

14. Ronald Gilkerson has not worked for MRR Pickens, LLC as an independent consultant since 2008 and was not involved in any way with August 10, 2015 Minor Permit Modification for MRR Pickens, LLC's Class 2 Landfill in Pickens County, South Carolina.

15. MRR Pickens, LLC has used the 5842 Faringdon Place, Suite 1, Raleigh, North Carolina 27609 address on all correspondence and the application to DHEC relating to the August 10, 2015 DHEC Minor Permit Modification.

16. On or around April 11, 2016, I received from the Clerk of the DHEC Board an Acknowledgement of Request for Review notifying MRR Pickens, LLC that Pickens County had filed a Request for Final Review of an August 10, 2015 Minor Permit Modification for its Class 2 Landfill in Pickens County, South Carolina, and attaching a copy of the County's Request.

17. The Acknowledgement of Request for Final Review and attached Pickens County Request for Final Review (Board Review) were sent from the Clerk of the DHEC Board to my attention at the correct address, 5842 Fairington Place, Suite 1, Raleigh, NC 27609, as indicated on the Certificate of Service attached to same.

18. On April 25, 2016, I received the decision of the South Carolina Board of Health and Environmental Control denying Pickens County's Request for Final Review (Board Review) in DHEC Board Docket No. 16-RFR-15, MRR Pickens/Hwy 93 C&D Class 2 Landfill – Modification of Permit No. LF2-00003, was dated April 21, 2006.

19. The April 21, 2016, decision of the DHEC Board denying Pickens County's Request for Final Review (Board Review) was addressed to me at MRR Pickens, LLC, 5842 Fairington Place, Suite 1, Raleigh, NC 27609.

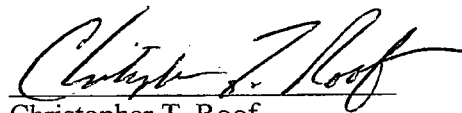
20. On May 31, 2016, I received the Notice of Assignment of the Honorable Shirley C. Robinson to the case of Pickens County vs. South Carolina Department of Health and Environmental Control and MRRR Pickens, LLC, SC Administrative Law Court (SCALC), Docket No. 16-ALJ-07-0164-CC, dated May 26, 2016, and issued by Ralph King Anderson, III, Chief Administrative Law Judge.

21. The SCALC Notice of Assignment dated May 26, 2016, was sent to my attention and addressed to MRR Pickens, LLC, 5842 Fairington Place, Suite 1, Raleigh, North Carolina 27609.

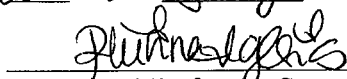
22. To date, MRR Pickens, LLC has not been served in person, by mailing, nor by any other means with a copy of Pickens County's Request for A Contested Case Hearing relating to DHEC Docket No. 16-RFR-15 at its address at 5842 Fairington Place, Suite 1, Raleigh, NC 27609.

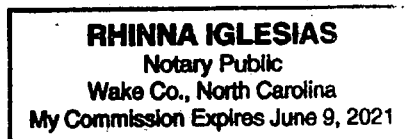
23. To my knowledge and to date, MRR Pickens, LLC has not been served in person, by mailing, or any other means at any other location relating to Pickens County's Request for a Contested Case Hearing and DHEC Docket No. 16-RFR-15.

Further affiant sayeth not.
Dated July 28th 2016.


Christopher T. Roof

Signed and sworn to before me this
28th day of July, 2016


Notary Public for the State of North Carolina
My commission expires 6/9/2021



Respondent MRR Pickens

Exhibit K

Gary W. Poliakoff
atty@gpoliakoff.com

Raymond P. Mullman, Jr.
rmullmanjr@gmail.com



Bernard B. Poliakoff
(1916-1955)

J. Manning Poliakoff
(1923-1949)

Matthew Poliakoff
(1919-1979)

May 19, 2016

VIA FEDEX

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

MAY 23 2016

DHEC
OFFICE OF GENERAL COUNSEL

Re: **Request for Contested Case Hearing**
DHEC Permit Modification dated 8/10/15

Dear Clerk's Office:

Enclosed please find Request for Contested Case Hearing along with our filing fee of \$500.00 concerning the above matter. Also enclosed is copy of the Pickens County Request for Final Review (Board Review) and DHEC letter dated April 21, 2016 declining the review.

Thank you for your consideration.

With best regards, I am

Yours very truly,

A handwritten signature in dark ink, appearing to read "Gary W. Poliakoff", written over a horizontal line.

Gary W. Poliakoff
POLIAKOFF & ASSOCIATES, P.A.

GWP/tjd

Enclosures

cc: (w/enclosures) (via U.S. Mail)
✓ S.C.D.H.E.C. Office of General Counsel
MRR Pickens, LLC
Kenneth S. Roper, Esq.
Tom Hendricks, Pickens County Interim Administrator

Courthouse Square
215 Magnolia Street, Spartanburg, South Carolina 29306
Mailing Address: P.O. Box 1571, Spartanburg, South Carolina 29304
Telephone: 864-582-5472, 864-582-8101 • Facsimile: 864-582-7280
www.gpoliakoff.com

563/865

South Carolina Administrative Law Court (SC ALC)
Request for Contested Case Hearing FORM
Mail to: 1205 Pendleton St., Suite 224, Columbia, SC 29201

Last Name: Pickens County	First:	Middle:	☐ Mr. ☐ Mrs.	☐ Miss ☐ Ms.	Docket No. (To Be Completed by ALC)
Mailing Address: 222 McDaniel Avenue, B-1			City: Pickens		State and Zip: SC 29671
Home Number:	Work Number: 864-898-5856	Cell Number:		*E-Mail Address:	

*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

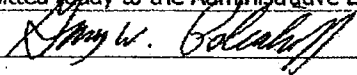
REPRESENTATION

Are you representing yourself? ☐ Yes ☒ No	
Are you represented by an Attorney? ☒ Yes ☐ No	Name of Attorney: Gary W. Poliakoff
Attorney Mailing Address: P.O. Box 1571	City, State and Zip: Spartanburg, SC 29304
Attorney Work Number and Cell Number: 864-582-5472 w; 864-205-6755 c	Attorney E-Mail Address: atty@gpoliakoff.com

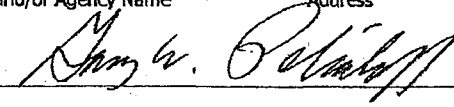
CASE INFORMATION

Name of Agency that Issued the Decision: (Example - Dept. of Revenue, Dept. of Insurance, DHEC) DHEC	
In order to have your case processed, you must attach the agency decision. Is it attached? ☒ Yes ☐ No	If no, please explain:
Date the decision was issued:	Date the decision was received: April 21, 2016
Please provide a brief statement regarding why the hearing is being requested and the relief sought: Pickens County filed a Request for Final Review (attached) with S.C.D.H.E.C., requesting that DHEC rescind a Permit Modification dated August 10, 2015, regarding Facility named Highway 93 Class 2 Landfill, for Permittee MRR Pickens, LLC, as such Permit Modification was unlawfully issued. DHEC declined review. Pickens County requests Hearing.	

Payment via ☒ Check ☐ Money Order ☐ Cash for \$
submitted today to the Administrative Law Court via (applicable filing fee pursuant to ALC Rule 71) is being
☒ U.S. Postal Service ☐ Hand-delivery

 X Your Signature or Signature of Attorney	Date May 19, 2016

PROOF OF SERVICE (MUST BE COMPLETED)

Your Name: Gary W. Poliakoff		Date: 5/19/16	City: Spartanburg State: SC
I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing on all other parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):			
S.C.D.H.E.C.	Office of General Counsel	2600 Bull Street	
Name and/or Agency Name	Address	City, State and Zip	
MRR Pickens, LLC	11743 Trails End Lane	Charlotte, NC 28078	
Name and/or Agency Name	Address	City, State and Zip	
 X Your Signature or Signature of Attorney		Date May 19, 2016	

Attention: All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website www.scalc.net or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.

**BEFORE THE
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL**

In Re:

Staff Decision to Grant
Permit Modification dated
August 10, 2015

**REQUEST FOR
FINAL REVIEW
(BOARD REVIEW)**

Facility: Highway 93 C&D Landfill
Permittee: MRR Pickens, LLC
Class 2 Landfill
Permit No. LF2-00003

Pickens County, an "affected person" pursuant to S.C. Code Section 44-1-60(E), hereby requests Final Review by the South Carolina Board of Health and Environmental Control, of the Staff Decision to grant a Permit Modification dated August 10, 2015.

1. Staff Decision at Issue:

Permit Modification to Permit No. LF2-00003, dated August 10, 2015, by Division of Mining and Solid Waste Management, Bureau of Land & Waste Management.

Attached hereto:

- Copy of the August 10, 2015 Permit Modification (issued contrary to law and which must be voided).
- Copy of the Permit issued November 3, 2008 (which is valid and remains valid as issued November 3, 2008).

2. Timeliness of this Request for Review:

(A) Pickens County is an "affected person," per S.C. Code Section 44-1-60(E), in that Pickens County is the duly qualified and approved Host Local Government in regard to Permit No. LF-2-00003, and based upon its Host Agreement and Development Agreement with the Permittee,

and based upon the Pickens County Solid Waste Management Plan, revised in 2013. The Department of Health and Environmental Control is fully aware of Pickens County's status as Host Local Government, and is fully aware of and in possession of the Host Agreement and Development Agreement in question.

(B) Pickens County requests this Review on behalf of (1) Pickens County, a governmental entity duly existing and authorized to govern; and (2) on behalf of the affected public, particularly those members of the public who reside in Pickens County, and those members of the public who reside within one mile of the Landfill in question in Pickens County and who will be immediately affected adversely by dust and ash, groundwater contamination, air pollution, decrease in property values, and other resulting problems and damages, should the purported Permit Modification of August 10, 2015 be allowed to stand.

(C) Despite its status as an "affected person," Pickens County has never, to this date, received formal Notice of the purported Permit Modification dated August 10, 2015, nor has the Department ever mailed the staff decision in question, or the Permit Modification dated August 10, 2015, to Pickens County. Pickens County only learned of such staff decision and purported Permit Modification recently, after controversies between Pickens County and the Permittee arose.

As no formal Notice to Pickens County ever occurred, nor any mailing of the staff decision or Permit Modification of August 10, 2015 by the Department to Pickens County, this Request for Final Review is timely.

To date, Pickens County has never received formal Notice or mailing of the decision in question.

(D) Illegality of the Failure to Notify Pickens County

- (1) The Permit, validly issued on November 3, 2008, was for a C&D Landfill, and which contained the following special condition:

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

The above Permit issued November 3, 2008, with the above Special Condition, is in accord with the Pickens County Solid Waste Management Plan, and is in accord with the agreements and representations between Pickens County and the Permittee.

- (2) The purported Permit Modification dated August 10, 2015 made major modifications to the original Permit, which substantially alter and change the facility and its operations, including but not limited to:

- (a) An alternate design that varies from the design prescribed in the relevant Class 2 Regulations R. 61-107.19, Parts I and IV).
- (b) An alternate design that includes the addition of a liner, which was not previously permitted (and not approved by Pickens County).
- (c) The addition of Class 3 design features to the Class 2 Landfill Permit (done for the purposes of adding wastes which were not previously approved by Pickens County, and which in fact

would violate the Pickens County Solid Waste Management Plan).

- (d) The addition of Class 3 operational features to a Class 2 Landfill Permit (also done for the purpose of adding wastes which were not previously approved by Pickens County, and which in fact would violate the Pickens County Solid Waste Management Plan).
- (e) The alternate designs of the purported Permit Modification of August 10, 2015, as well as the changes that substantially alter the facility and its operations, constitute a "Major Modification," per R. 61-107.19, Part I, B. 48.
- (f) Despite the alternate designs and the changes that substantially alter the facility and its operations, the Department characterized these changes as a "minor modification." Such characterization was in violation of R. 61-107.19, Part I, B. 48., and the result was to deprive Pickens County and the public of any Notice, any involvement in the application and in the permitting modification process, and of the right to comment and review.
- (g) Per R. 61-107.19, a "major modification" of a Permit requires Notice to "affected persons" (here, Pickens County), and to the public, and requires opportunity for public review and

comment. The failure to provide Notice to Pickens County and to the public was a further violation of relevant regulations.

- (h) That, according to MRR's engineering consultants:

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

("Site-Specific Hydrogeologic Investigation Report," prepared by MRR Pickens, LLC, by Civil & Environmental Consultants, Inc., d. 12-15-14, received by S.C. DHEC December 16, 2014).

Note: The above-referenced report, and several subsequent reports by MRR's consultant, were submitted to S.C. DHEC in 2014 and 2015, without any Notice whatsoever to Pickens County or to the public. Only recently, since controversies between Pickens County and MRR have arisen, has Pickens County learned of such reports.

- (i) That the Department and MRR apparently had meetings and discussions, regarding the changing of this Class Two Permit to meet Class Three Permit features, wherein DHEC and MRR agreed to call these changes a "minor modification"

despite the clear and unequivocal true qualification as a
“major modification.”

- (j) That the apparent purpose of MRR and the Department meeting, conducting discussions, and “confirming” that this would be a “minor modification,” was to avoid Notice to Pickens County and to the public.
- (k) The above actions of the Department and of the Permittee were in violation of relevant Statutes and Regulations, as referenced above.
- (l) That, due to the failure of Notice and mailing, as required by relevant Statutes and Regulations, Pickens County’s Request for Review is timely.

3. Grounds for Rescinding the Staff Decision (Permit Modification of August 10, 2015):

- (A) The Pickens County Solid Waste Management Plan, revised 2013, prohibits:
 - (i) Class Three Landfills in Pickens County. (A purpose purported Permit Modification was to add Class Three design features to a permitted Class Two Landfill).
 - (ii) “Special Wastes” are prohibited. (Coal Ash, a/k/a Coal Combustion Residuals (CCR), require special handling, due to propensity to create dust, and due to propensity to contain toxic substances, and propensity to contaminate groundwater and surface water, and therefore qualifies as “Special Wastes,” per S.C. Code Section 44-96-390, and per the definition

of "Special Waste" contained in the Pickens County Solid Waste Management Plan).

(B) The Department has already determined, per the Demonstration of Need Regulations, that no "Need" (as defined by the DON Regulations) exists for a Class Three Landfill in Pickens County. The efforts by the Department and MRR to add Class Three design and operational features to a permitted Class Two Landfill constitute an attempt to circumvent, and/or to render null and void, the DON Regulations.

(C) That Pickens County had determined to enter into agreements with the Permittee MRR, including a Host Agreement and other agreements, for the Permittee to operate a Landfill solely to receive Construction and Demolition (C&D) and Land Clearing Debris (LCD) wastes. The changes and modifications to the 2008 Permit violate and contravene the agreements between Pickens County and MRR, and are in contravention of MRR's continued representations to Pickens County, to the public, and to the Planning Commission.

(D) That representatives of MRR not only intentionally concealed from Pickens County and from the public its intentions and efforts to make substantial and major alterations to the agreed-upon Permit issued in 2008, but also made willful misrepresentations to Pickens County and to the Pickens County Planning Commission, regarding the nature of the landfill facility and its operations. The Department must not be a party to such misrepresentations, nor should it condone, allow, ratify or approve such misrepresentations and/or such behavior. (Proof of such continuing misrepresentations by MRR will be submitted to the Board).

(E) The Land Use Approval issued by the Pickens County Planning Commission on or about January 12, 2015, was issued in reliance upon the material misrepresentations by MRR, which

the Commission discovered in early 2016 to have been false. The Pickens County Planning Commission, in January of 2016, once it learned of the material misrepresentations by MRR, rescinded the land use approval issued January 12, 2015. NOTE: Pickens County has clarified repeatedly, and continues to emphasize, that it remains in full agreement for the Permittee to operate a C&D/LCD Landfill, in accord with the conditions of the Permit issued November 3, 2008. Further: the Pickens County Planning Commission directed the Permittee to come back before it, to answer questions and provide further information, which the Permittee has failed and refused to do. Further, the Permittee failed and refuses to exhaust available administrative remedies with the Planning Commission.

(F) That neither Pickens County nor the Pickens County Planning Commission has issued a Letter of Consistency regarding the purported Permit Modification issued August 10, 2015. Both Pickens County and the Planning Commission were kept in secrecy of the application for modification, the reports leading up to the modification, and the issuance of the modification itself.

(G) The purported Permit Modification issued August 10, 2015 was issued in violation of the 1999 State Solid Waste Management Plan, and operation of this Landfill pursuant to said purported Modification would violate the 1999 State Solid Waste Management Plan.

(H) The allowance of Coal Ash, or CCR, into this Landfill would violate recently enacted Act 138 of 2016, signed into law March 2, 2016, prohibiting disposal of Coal Ash into Class Two Landfills such as the Landfill in question, in South Carolina.

(I) The allowance of Coal Ash, or CCR, into this Landfill would violate regulations and guidelines of the United States Environmental Protection Agency.

(J) That the issuance of the purported Modification of August 10, 2015 is in contravention of the needs and desires of Pickens County and its citizens and of the public.

4. Significant Issues and Factors:

All of the above-stated Grounds are re-emphasized. The Department has acted in violation of relevant Statutes and Regulations by willfully mischaracterizing a "major modification" as a "minor." The purpose of the meetings and discussions between DHEC and MRR, and the agreement to mischaracterize the modification, was no mere issue of unimportant semantics. The purpose of such mischaracterization was to deprive Pickens County and the public of Notice, and to prevent any input and any public comment and review. Further, as stated hereinabove, Pickens County has substantive reasons to oppose this purported Modification, including the violations of its Solid Waste Management Plan, and the violations of its agreements with the Permittee, among other substantive reasons and issues.

The Department must not participate in such violations of Statutes and Regulations, and must not participate in efforts to deprive Counties, Host Local Governments, "affected persons," and/or the public, of legitimate Notice, opportunity for input, and opportunity for public comment and review.

5. Relief Requested:

(A) Pickens County requests that the purported Permit Modification issued August 10, 2015 be rescinded and be declared null and void. It is appropriate for the original Permit, issued November 3, 2008, with the Conditions issued therein at that time, to remain in full force and effect.

(B) Should the Board for any reason deny this Request for Review, Pickens County requests that the Department issue a Notice to All Host Local Governments and to All County Governments as follows:

That should any Host Local Government or County Government consider entering into a Host local Government Agreement or similar Agreement with a Landfill owner or operator, that the Host Local Government and/or County Government must be aware:

- (i) That the Department may, and will, make major modifications to a Landfill Permit, without any Notice to the Host Local Government and/or County Government and/or the public, and without any opportunity to be heard, or to provide input, or to have comment or review.
- (ii) That the Department may, and will, conduct meetings and engage in discussions with Permittees, regarding major modifications to Permits, without any Notice to the Host Local Government and/or County Government and/or the public, and without any opportunity to be heard, or to provide input, or to have comment or review.
- (iii) That the Department may, and will, characterize a "major modification" as "minor," in violation of the Regulations defining such, and that in defense of such violation, the Department may, and will, claim that the Department has the right to make permit determinations (even when the actions are unequivocally in violation of Statutes and Regulations), and that all parties must give great deference to Department determinations (even those in violation of Statutes and Regulations).

- (iv) That the Department may, and will, meet with and discuss with Permit Applicants and Permittees, ways and methods of depriving Host Local Governments, Counties and the public, of Notice and opportunity to be heard, in situations in which such Notice and opportunity are appropriate and legitimate.

Note: The above is presented as emphasis of the inappropriateness of the issuance of the purported Permit Modification, and of the inappropriateness of any approval of such Permit Modification by this Board.

5. Enclosed Herewith:

- Check for filing fee in the amount of \$100.00
- Copy of the Permit Modification issued August 10, 2015, which is the subject of this Request for Review.
- Copy of the Permit issued November 3, 2008, which is valid and should be recognized as remaining in full force and effect.

6. Pickens County requests a formal Conference and/or formal Hearing, with opportunity to present evidence and to make arguments.

7. Addresses:

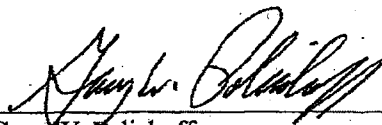
Attorneys for Pickens County:

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atty@gpoliakoff.com
Raymond P. Mullman
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Pickens, SC 29671
(864) 878-1577 (864) 878-1336 fax

Tom Hendricks
Interim Administrator
Pickens County
222 McDaniel Ave., Ste. B-2
Pickens, SC 29671

March 23, 2016



Gary W. Poliakoff
Attorney for Pickens County



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003

Date of Issuance: November 3, 2008

Date of
Modification: August 10, 2015

Permission is hereby granted to:

Name of Facility: Highway 93 Class 2 Landfill
Permittee: MRR Pickens, LLC
Address: 5842 Faringdon Place, Suite 1
Raleigh, NC 27609
Supervisor: Mr. Christopher T. Roof
Phone: (919) 436-3570

for the operation of a Class 2 landfill at 2180 Greenville Highway, in Pickens County located off Highway 93 near the City of Liberty, SC 29657.

This permit is issued pursuant to Sections 44-96-10 et seq., and 25A S.C. Code Regulation 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
August 10, 2015
Page 1 of 4

**MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003**

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the approved design specifications, and construction plans received November 30, 2007; revised August 26, 2008, and last revised August 5, 2015, unless permit conditions state otherwise.
2. This permit is limited to the disposal of the items listed in Appendix I of R.61-107.19 and any other waste approved by the Department for disposal in a Class Two Landfill pursuant to R.61-107.19, Part IV, Section C.2.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to Jun30). Information concerning the facility's previous Fiscal Year's waste receipts is due on the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV. Subpart C.16, to the attention of:

**Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201**

4. All Appendix-I acceptable wastes must be covered at least once every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to five (5) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than five (5) acres (at the time of the certification). The certification shall be completed within sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (16,133 yd³ of soil for 5 acres with 2' thickness). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.
8. Sixty (60) days prior to starting construction of the Class Two landfill, the Permittee shall notify the Department of their selection between Option 1 (traditional Class Two landfill design), or Option 2 (alternate liner design). If the financial assurance mechanism needs to be increased, this shall be done prior to the acceptance of waste into the landfill.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit. The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.
- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- d) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

2. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Subpart E.3.

3. REPORTING

- a) The permittee shall submit to the Department the result of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following schedule:

Sampling Schedule	Results Due
November/December	January 15 (Semi-Annual)
May/June	July 15 (annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.1.a.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHBC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Ground water Section, and to the Solid Waste Consultant in Upstate Region BEHS Greenville.

4. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required to comply with R.61-107.19, Part IV, Section C.21.



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003

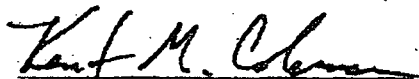
Permit Issued Date: November 3, 2008 Permit Effective Date: November 18, 2008

Permission is hereby granted to:

Name of Facility: Highway 93 C & D Landfill
Permittee: MRR Pickens, LLC
Address: 11743 Trails End Lane
Charlotte, NC 28078
Contact: Mr. Ronald C. Gilkerson
Phone: (704) 947-6652

for the operation of a Class 2 landfill at 2180 Greenville Highway, Liberty, South Carolina, 29657 in Pickens County located off Highway 93 at Clardy Road approximately 2,000 feet NE of the City of Liberty, SC.

This permit is issued pursuant to Sections 44-96-10 *et seq.* (Supp. 2007) and 25A S.C. Code of Regulations Section 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, P.G., Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
November 3, 2008
Page 1 of 4

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3432 • www.scdhec.gov

MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the design specifications and construction plans received November 30, 2007; and last revised August 26, 2008, unless permit conditions state otherwise.
2. This permit is limited solely to the disposal of items listed in Appendix I of R.61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to June 30). Information concerning the facility's previous Fiscal Year's waste receipts is due in the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV. Subpart C.16, to the attention of:

Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Ball Street
Columbia, South Carolina 29201

4. All Appendix-I acceptable wastes must be covered at least every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to twelve (12) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than twelve (12) acres (at the time of the certification). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (38,720 yd³ of soil for 12 acres with 2' thickness). The certification shall have been completed within the last 60 days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.
2. Within ninety (90) days of the effective date of this permit, the Permittee shall submit a detailed Compliance Plan that describes steps to be taken in order to fully comply with all regulatory requirements of R.61-107.19 that relate to Class 2 Landfills. This Compliance Plan shall include, but not limited to, the following: a groundwater monitoring design workplan, a landfill post-closure care plan, and a landfill post-closure care cost estimate. Upon the Department's approval of said Compliance Plan, the Permittee will have six (6) months to implement the plan and will have a deadline for full compliance with R.61-107.19 of November 19, 2009.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. SPECIAL ENVIRONMENTAL PERMIT CONDITIONS

Within ninety (90) days of the effective date of this permit, the Permittee shall submit to the Department for review, a Groundwater Monitoring Design Workplan in accordance with R.61-107.19, Part IV, Section E (Groundwater Monitoring and Corrective Action). In addition, an approved groundwater monitoring system must be installed and operating prior to November 19, 2009, pursuant to R.61-107.19, Part I, Section A.6.c. Upon the Department's approval of the Groundwater Monitoring Design Workplan, permit conditions C.2, C.3 and C.4 will become effective.

2. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit.

The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.

- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- e) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

3. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine monitoring at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Part IV Subpart E.3.

4. REPORTING

- a) The Permittee shall submit to the Department the results of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following sampling schedule:

<u>Sampling Schedule</u>	<u>Results Due</u>
November/December	January 15 (Semi-Annual)
May/June	July 15 (Annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.2.A.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Groundwater Section, and to the Solid Waste Consultant in Region 2 EQC (Greenville).

5. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required comply with R.61-107.19, Part IV, Section C.21.

BOARD:
Allen Amster
Chairman

Mark S. Lutz
Vice Chairman

Ann B. Kirol, DDS
Secretary



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment
South Carolina Board of Health and Environmental Control

2600 Bull Street, Columbia, South Carolina 29201 · Telephone: (803) 898-3309 · Facsimile: (803) 898-3393 · lisa.longshore@dhec.sc.gov

BOARD:

R. Kenyon Wells

Charles M. Joye II, PE.

L. Clarence Batts, Jr.

John O. Hutto, Sr., MD

William Lee Hewitt, III

April 21, 2016

U.S. Mail – Certified

9214 8969 0099 9790 1404 5178 18

Gary W. Poliakoff, Esq.

Poliakoff & Associates

Post Office Box 1571

Spartanburg, SC 29304

U.S. Mail

Christopher T. Roof, Supervisor

MRR Pickens, LLC

5842 Fairington Place, Suite 1

Raleigh, NC 27609

Electronic Mail Delivery

Etta R. Williams Linen, Esquire

SCDHEC – Office of General Counsel

2600 Bull Street

Columbia, SC 29201

RE: Docket No. 16-RFR-15, MRR Pickens/Hwy 93 C&D Class 2 Landfill – Modification of Permit No. LF2-00003

Dear Counsel of Record and Mr. Roof:

The South Carolina Board of Health and Environmental Control will not conduct a Final Review Conference on the above-referenced matter.

CONTESTED CASE GUIDANCE

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law

Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

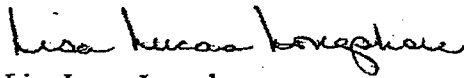
A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



Lisa Lucas Longshore
Clerk

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

Respondent MRR Pickens

Exhibit L



Real Estate Lookup

Print

Close

Parcel Information
Parcel ID
01934118

Account
NC CORP

Parent
01934118

Previous
01934118
Owner(s)
Owner Name
GREENWAY WASTE SOLUTIONS LLC

Mailing Address
19109 W CATAWBA AVE STE 118

City/State
CORNELIUS NC 28031
Legal Information
Legal
PTR 1&2 M25-912

Municipality
MECKLENBURG COUNTY-UNINCORPORATED

Date Annexed
Special District
FIRE SERVICE D

Fire District
HUNTERVILLE RURAL

Acreage
15.897
Total Parcel Assessment

Building	Land	Features	Total	Exemptions	Year Approved	Review Date	Amount
424600	443400	30100	898100				

Sales Information

Sale	Price	Stamps	Qualify	VI	Type	Legal Ref.	Grantor
Sep 19 2014		1640	MULTIPARCEL	IMP	MULT LISTING	29456-673	GILKERSON, RONALD C
Sep 19 2014			MULTIPARCEL	IMP	MULT LISTING	29456-657	GILKERSON, RONALD C
Feb 16 2001	0			IMP		11936-800	

Land Use

Use	Units	Type	Neighborhood	Assessment
R122	15.9	AC	B901	443400

Building Information

Bldg	Description	Type	Year	Property Location
1	Single-Fam	RES	1993	11743 TRAILS END LN UNINC

Bldg	Story	Units	Total SqFt	Heated SqFt	Foundation	Ext. Wall	Grade	Value
1	2.0 STORY	1	5576	4618	CRAWL SPACE	ALUM,VINYL -	GOOD 06	424600

Bldg	Heat	Fuel	Fire Place	AC	Fixtures	Bedrooms	Full Baths	3/4 Baths	1/2 Baths
1	AIR-DUCTED	GAS	1 - FP4	AC-CENTRAL	0	4	3	0	2

Sub Area

Bldg	Description	Size
1	PORCH - OPEN - FINISHED	360
1	BASE (FIRST FLOOR)	2262
1	GARAGE - FINISHED	598
1	UPPER STORY - FINISHED	2356

Depreciation

Bldg	Physical	Functional	Economic	Special	Override
1	AV - 11.00%	- 0.00%	- 0.00%	- 0.00%	- 0.00%

Special Features & Yard Items

Bldg	Built	Type	Quantity	Units	Value
1	1993	DECK	1	168.00000	900
1	2004	POOL-CONC.	1	392.00000	11600
1	1993	TERRACE	1	200.00000	1800
1	2004	SHELTER	1	200.00000	4400
1	2004	BARN	1	1200.00000	11400

Notes

Tax Year	Notes	Note Date

Value Changes

Notice Date	Tax Year	Reason	Changed To	Deferred
Feb 8 2011	2011	Countywide Revaluation	610500	0
Jul 7 2005	2005	Remodeled and/or New Addition	364200	0
Jul 7 2005	2005	Remodeled Improvements and/or New Additi	364200	0
Jan 17 2003	2003	Countywide Revaluation	353000	0
Apr 2 2001	2001	Division of Land and/or New Parcel	348610	
Apr 2 2001	2001	Division of Real Estate and/or New Parce	348610	

Respondent MRR Pickens

Exhibit M

Bill Search Special Assessment Search Delinquent Bill Search Personal Property Search

New Search

Search By

Street Name

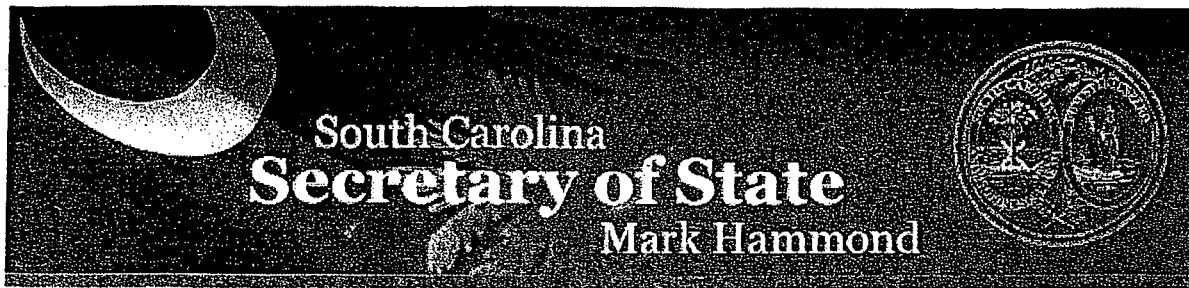
Trails End

Go

e.g. Tryon **NOT** 123 N Tryon Street

[Page 24 of 30] First.. 19 20 21 22 23 24 25 26 27 28 29 ..					
Bill #	Old Bill #	Parcel #	Name	Location	Bill Flags
<u>0001490594-2014-2014-0000-00</u>		<u>01934118</u>	GILKERSON, RONALD C	11743 TRAILS END LN UNINCORPORATED	
<u>0001490594-2013-2013-0000-00</u>		<u>01934118</u>	GILKERSON, RONALD C	11743 TRAILS END LN UNINCORPORATED	
<u>0001490594-2012-2012-0000-00</u>		<u>01934118</u>	GILKERSON, RONALD C	11743 TRAILS END LN UNINCORPORATED	
<u>0007647759-2012-2012-0000-00</u>		<u>01934107</u>	C D MANAGEMENT COMPANY LLC	11743 TRAILS END LN UNINCORPORATED	
<u>0002739669-2011-2011-0000-00</u>			GILKERSON, RONALD CRAIG	11743 TRAILS END LN UNINCORPORATED	
<u>0001490594-2011-2011-0000-00</u>		<u>01934118</u>	GILKERSON, RONALD C	11743 TRAILS END LN UNINCORPORATED	
<u>0001490579-2010-2010-0000-00</u>		<u>01934107</u>	C D MANAGEMENT COMPANY LLC	11743 TRAILS END LN UNINCORPORATED	OWNERSHIP TRANSFER
<u>0002739669-2010-2010-0000-00</u>			GILKERSON, RONALD CRAIG	11743 TRAILS END LN UNINCORPORATED	
<u>0001490594-2010-2010-0000-00</u>		<u>01934118</u>	GILKERSON, RONALD C	11743 TRAILS END LN UNINCORPORATED	
<u>0001490579-2009-2009-0000-00</u>		<u>01934107</u>	GILKERSON, RONALD C	11743 TRAILS END LN UNINCORPORATED	
<u>0001490594-2009-2009-0000-00</u>		<u>01934118</u>	GILKERSON, RONALD C	11743 TRAILS END LN UNINCORPORATED	
<u>0001490579-2008-2008-0000-00</u>		<u>01934107</u>	GILKERSON, RONALD C	11743 TRAILS END LN UNINCORPORATED	
<u>0001490594-2008-2008-0000-00</u>		<u>01934118</u>	GILKERSON, RONALD C	11743 TRAILS END LN UNINCORPORATED	
<u>0007246866-2012-2012-0000-00</u>			HAMMILL, WILLIAM WALLACE	11745 TRAILS END LANE UNINCORPORATED	
<u>0001490580-2007-2007-0000-00</u>	20070684519	<u>01934108</u>	MULLIGAN, RAYMOND C	11745 TRAILS END LANE UNINCORPORATED	

Respondent MRR Pickens Exhibit N

**MRR PICKENS, LLC**

Note: This online database was last updated on 7/27/2016 3:08:03 AM.
See our Disclaimer.

DOMESTIC / FOREIGN:	Domestic
STATUS:	Good Standing
STATE OF INCORPORATION / ORGANIZATION:	SOUTH CAROLINA Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	CORPORATION SERVICE COMPANY
ADDRESS:	1703 LAUREL STREET
CITY:	COLUMBIA
STATE:	SC
ZIP:	29201
SECOND ADDRESS:	

FILE DATE:	01/24/2007
EFFECTIVE DATE:	01/24/2007
DISSOLVED DATE:	//

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Agent	12/06/2007	CHG AGTS ADD CORPORATION SERVICE COMPANY	/
Domestic LLC	01/24/2007	AT WILL	

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

Physical Address: Edgar Brown Building - 1205 Pendleton Street Suite 525 Columbia, SC 29201
Mailing Address: SC Secretary of State's Office 1205 Pendleton Street Suite 525 Columbia, SC 29201

Respondent MRR Pickens Exhibit O

ORIGINAL

RECEIVED 5/31/2016

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Pickens County,

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control and MRR Pickens,
LLC,

Respondents.

NOTICE OF ASSIGNMENT
(Contested Case)

DOCKET NO. 16-ALJ-07-0164-CC

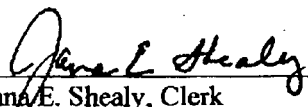
NOTICE IS GIVEN that a request for a contested case hearing was filed on May 20, 2016. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2015), the **Honorable Shirley C. Robinson**, Administrative Law Judge, has been assigned to preside in this matter. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550.

Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scalc.net.

A copy of any document or any other item filed with the Court shall be sent to all other parties at the time of filing. If a mailing address changes, or if an address is incorrect, the Court must be notified immediately of the correct address.

This the twenty-sixth day of May, 2016.

Ralph King Anderson, III
Chief Administrative Law Judge

By: 

Jana E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

FILED

MAY 26 2016

SC ADMIN. LAW COURT

595/865

Respondent MRR Pickens Exhibit P

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Pickens County,

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control and MRR Pickens,
LLC,

Respondents.

Docket No.: 16-A1J-07-0164-CC

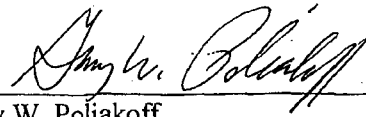
NOTICE OF DEPOSITIONS

**TO: DEFENDANTS SOUTH CAROLINA DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL AND MRR PICKENS, LLC AND THEIR
ATTORNEYS:**

YOU WILL PLEASE TAKE NOTICE that in accordance with Rule 30 of the South Carolina Rules of Civil Procedure, the undersigned Attorney for the Plaintiff will take, or cause to be taken, before a Notary Public, the discovery deposition of the person(s) named below on the date and time listed below at the location(s) listed below, at which time and place you are notified to appear and take such part in the examination as you may be advised as shall be fit and proper. This deposition will be recorded by stenographic means. Plaintiff will provide a court reporter.

<u>Deponent</u>	<u>Date & Time</u>	<u>Location</u>
Chris Roof	August 15, 2016 - 10:00 a.m.	5842 Faringdon Place, Suite 1 Raleigh, NC, or, if such location is not available, at a designated location in Raleigh, NC
Joan Litton	August 16, 2016 - 10:00 a.m.	SCDHEC Headquarters, Bull Street, Columbia, SC, or, if such location is not available, at a designated location in Columbia, SC

July 20, 2016



Gary W. Poliakoff
atty@gpoliakoff.com
Raymond P. Mullman
POLIAKOFF & ASSOCIATES, P.A.
P.O. Box 1571
Spartanburg, SC 29304
(864) 582-5472 (864) 582-7280 fax

Kenneth S. Roper, Esq.
ken@roperlawfirm.com
ROPER LAW FIRM, LLC
P.O. Box 246
Pickens, SC 29671
(864) 878-1577 (864) 878-1336 fax

ATTORNEYS FOR PICKENS COUNTY

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Pickens County,

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control and MRR Pickens,
LLC,

Respondents.

Docket No.: 16-A1J-07-0164-CC

**PETITIONER'S MEMORANDUM
IN OPPOSITION TO
MRR PICKENS, LLC'S
MOTION TO DISMISS**

Petitioner Pickens County, responding in opposition to SCDHEC's Motion to Dismiss, would respectfully show:

I. Background

In 2007 and 2008 MRR Pickens, LLC and Pickens County had discussions and negotiations regarding development of a Construction and Demolition ("C&D") and Land Clearing Debris ("LCD") Landfill to be located in Pickens County. By 2008 MRR and Pickens County had entered into a Host Agreement and a Development Agreement regarding such development. Per said Agreements Pickens County was MRR's Host and its Development Partner.

On November 3, 2008 DHEC issued Permit No. LF2-00003 to MRR for "Highway 93 C&D Landfill," for the operation of a Class Two Landfill at 2180 Greenville Highway, off Highway 93 near Liberty, in Pickens County. Said 2008 Permit included seven (7) Special Conditions, including the following:

A. Special Conditions

1. The Permittee shall adhere to the design specifications and construction plans received November 30, 2007; and last revised August 26, 2008, unless permit conditions state otherwise.
2. This permit is limited solely to the disposal of items listed in Appendix I of R. 61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill. (emphasis added). (2008 Permit, Ex. 1 to MRR's Motion to Dismiss).

Pickens County and MRR were in complete accord with the terms of the 2008 Permit, particularly including the Special Conditions referenced above. The 2008 Permit was in accord with the agreements between MRR and Pickens County, and in accord with MRR's representations to Pickens County.

In accord with the 2008 Permit, Pickens County issued the Pickens County Solid Waste Management Plan (SWMP), per S.C. Code Sec. 44-96-80. The Pickens County SWMP prohibited "Special Wastes" (defined by S.C. Code Sec. 44-96-390) and prohibited any Class Three Landfill in Pickens County. (S.C. Code Sec. 44-96-290(F) requires consistency with SWMP's and local ordinances.)

For the years 2008 to 2014, MRR delayed proceeding with development of the Landfill, informing DHEC each year that the economic downturn warranted postponement of development, and requesting and obtaining extensions.

As best as Pickens County can presently determine, the actions leading to the current controversy began in 2014, when MRR and DHEC conducted a series of meetings and discussions, with no notice or information to MRR's Host and Development Partner Pickens County. MRR

submitted a series of lengthy, detailed engineering plans which proposed significant design changes in the Landfill and to the 2008 Permit, including the addition of a liner and a leachate storage pond (design features not applicable to C&D/LCD Landfills), and other design changes and features applicable to Class Three Landfills, and operational changes. The engineering reports and plans were submitted by MRR's engineering consultant, Civil & Environmental Consultants, Inc. ("CEC"). None of these engineering reports were provided to Pickens County, either by MRR or DHEC or anyone.

According to MRR's consultant CEC:

During recent meetings between MRR and DHEC, it was confirmed that a modification of the Class Two Landfill Permit to meet the requirements of R. 61-107.19 Part V Class Three Landfills would require a minor permit modification.
(Petitioner's Ex. 1).

In essence, MRR in 2014 and the first half of 2015 was proposing serious design changes and alternate designs, to the 2008 Permit and to this Landfill. These design changes included changing the 2008 Class Two Permit to meet the requirements of Class Three Landfills. These design changes unquestionably met the definition of "major" modification, per R. 61-107.19, Part 1., B. 48. Yet MRR and DHEC had discussions and meetings, to the exclusion of MRR's Host and Development Partner Pickens County, and agreed to characterize these unequivocally "major" modifications as "minor." Such characterization was erroneous and in violation of R. 61-107.19, Part 1., B. 48 (a) and (b).

Based upon this erroneous classification by DHEC of the modification as "minor," DHEC and MRR avoided any Notice to the public or to Pickens County. A "major" modification requires detailed Notice to the Public (including a detailed newspaper ad, opportunity for comment and

review, opportunity for public hearing, etc.), and Notice to adjacent landowners, which specifically includes Pickens County, per relevant regulations. No Notice of any kind was provided to the public, or to adjacent landowners.

Without any Notice to the public, adjacent landowners, or to Pickens County, DHEC issued a purported Permit Modification on August 10, 2015. Said Permit Modification made major changes to the Landfill, including an alternate design and substantive operational changes. Nor did DHEC or MRR, after issuance of the purported Permit Modification of August 10, 2015, ever provide Notice to the public, or to adjacent landowners. To this day, the required Notice to the public (including the newspaper ad, etc.) has never been provided, nor has there been any Notice to all adjacent landowners.¹

Due to the utter and complete failure of Notice to the public or to adjacent landowners, as is required by the Regulations, this Permit Modification is null and void, having never been properly obtained.

Pickens County filed a Request for Review with DHEC. DHEC declined any review. Pickens County then timely filed this appeal to the Administrative Law Court. Pickens County has standing to assert this appeal, on behalf of its citizens and residents, which are members of the public and which are adjacent landowners.

II. Evidence Available in the Case to Date

Per Reg. 61-107.19, Part 1., B. 48:

¹ In mid-December, 2015, several staff of Pickens County, having heard rumors of major changes, requested documents and met with DHEC, receiving some documents and information regarding the modification. Yet no Notice to the public, or to all adjoining landowners, and no formal Notice to Pickens County, nor any mailing, has occurred.

- a. Minor modifications means a change that keeps the permit current with routine changes to the facility or its operations, or an administrative change; and
- b. Major modification means a change that substantially alters the facility or its operations, e.g., tonnage increase above 29%, any volumetric capacity increase, **alternate designs** that vary from the design prescribed in this regulation. (emphasis added).

The modifications from the 2008 Permit, proposed in 2014 and 2015 by MRR, and embodied in the purported 2015 Permit Modification, include the following:

- the addition of alternate liner design (no liner was included in the 2008 Permit). (See Ex. 1 to DHEC's Motion to Dismiss, 2008 Permit and 2015 Permit Modification).
- changes from Class Two to Class Three characteristics (see CEC Reports, Petitioner's Exhibits 1, 2, and 3).
- changes eliminating the limiting language of "all other wastes . . . are prohibited." (See Ex. 1, to DHEC's Motion to Dismiss, 2008 Permit and 2015 Permit Modification).
- changes replacing the 2008 restrictions on waste streams to allow "any other waste approved by the Department for disposal in a Class Two Landfill" (See Ex. 1 to DHEC's Motion to Dismiss, 2008 Permit and 2015 Permit Modification).
- changes to provisions for final cover. (See Ex. 1 to DHEC's Motion to Dismiss, 2008 Permit and 2015 Permit Modification).

The modifications from the 2008 Permit can only be reasonably interpreted as “major,” per the regulatory definition. The Department’s agreement with MRR to characterize these modifications as “minor” was erroneous and in violation of the regulations.

Both the 2008 Permit and the purported 2015 Permit Modification were issued and signed by Kent M. Coleman, then Director of the Division of Mining and Solid Waste Management, Bureau of Land and Waste Management at DHEC. In a related case pending in Common Pleas Court, MRR Pickens, LLC v. Pickens County, et al., Mr. Coleman was deposed on March 8, 2016, with counsel for MRR and DHEC present. At the time of his deposition Mr. Coleman was still the Director and in position to speak to the 2008 Permit and the purported 2015 Permit Modification, in his capacity as DHEC Director.

Mr. Coleman provided sworn testimony in his deposition (Petitioner’s Ex. 4) as follows:

- Coleman admits that the Department must follow the language of relevant statutes and regulations. (Ex. 4, p. 98, L. 14 - p. 99, L. 4).
- Coleman admits that the definition of “major modification,” in the relevant regulation; includes “alternate designs.” (Ex. 4, p. 102, L. 11 - p. 103, L. 6; p. 103, LL. 20-21).
- Coleman admits that in the definition of “minor modifications,” there is no inclusion of “alternate designs.” (Ex. 4, p. 103, LL. 7-10).
- Coleman admits that he previously, in a letter signed by him on August 10, 2015 accompanying the purported Permit Modification, characterized the

modification as an "alternate liner design: and as a "design change." (Ex. 4, p. 103, L. 20 - p. 105, L. 2² and Ex. 5, Coleman letter of August 10, 2015).

- Coleman admits that the purported Permit Modification was a "design change." (Ex. 4, p. 105, LL. 3-16).
- Coleman admits that this was a "new design." (Ex. 4, p. 110).
- Coleman admits that "design change" falls under the definition of "major modification," and is not included in the definition of "minor modification," per the relevant regulation. (Ex. 4, p. 105, LL. 17-21).
- Coleman admits that "major modification" includes "design changes," and that this is a design change. (Ex. 4, pp. 128-129).
- Coleman admits that a "major modification" requires notice to affected persons, adjacent landowners, concerned parties, local governments and the public.
- Coleman admits that, for major modifications, there should be mailing of Notice to the County. (Ex. 4, p. 126).
- Coleman admits that, per relevant statute; the term "affected persons" includes local governments and host local governments. (Ex. 4, p. 106, LL. 4-12).
- Coleman admits that when the Department determines a proposed change to be a "major modification," that "... we would have followed our normal

² In the deposition transcript, the Court Reporter erroneously typed "alternate ladder design," instead of "alternate liner design." Mr. Coleman's letter of August 10, 2015, Ex. 6 to his deposition, states "alternate liner design." (Ex. 5 to this Memorandum).

process, which would include [Notice to] adjacent owners, concerned parties, local governments.” (Ex. 4, p. 106, LL. 13-22).

- Coleman admits that, for the 2015 Permit change, there was no notice provided to Pickens County or to the Public. (Ex. 4, p. 106, L. 23 - p. 107, L. 3).
- Coleman admits that if there is a “major modification,” the public is supposed to receive notice. (Ex. 4, p. 107, LL. 4-19).

Mr. Coleman also testified:

Q. . . . And again, this was a design change; that is, a change from ‘08 to 2015 was a design change as you stated in your letter. Isn’t it?

A. Yes.

Q. And design change, again, is mentioned under the definition of “major modification” but not under the definition of “minor modification?”

A. Yes.

(Ex. 4, p. 107, L. 20 - p. 108, L. 2).

Q. . . . In addition to the “design change,” I made notes today as you were answering Ms. King’s question. In answers to Ms. King’s question one time today, you said this was a “new design for the landfill.” Is that a fair statement?

A. Yeah, I mean it is.

Q. Okay.

A. It was a new design.

Q. And I wrote down also a quote earlier today when your answer to Ms. King's questions that this was "Essentially the same design as a Class Three."

A. Yes, I recall saying that, yes.

Q. All right. And that is basically the change from the '08 to the 2015 modification was essentially the same design as a Class Three. Is that right?

A. Yes, uh-huh.

Q. So in other words, what we're doing is changing a Class Two by adding Class Three features. It became essentially the same design as a Class Three.

(objection).

A. The design became very similar to a Class Three, yes.

Q. Okay. And you agree, I wrote this down, "Alternate designs would be a major modification," is that correct?

A. That's what the definition says, yes.

Q. Okay. Yeah, and another thing I wrote down earlier today, "If it substantially alters," if it substantially alters the facility or the operations, then it's a major modification, isn't it?

A. Yes.

(Ex. 4, p. 109, L. 25 - p. 111, L. 7).

Mr. Coleman also admitted that the 2008 Permit was limited solely to the wastes listed in Appendix 1 to R. 61-107.19, and included the Special Condition, "All other waste, including animal carcasses, are prohibited from disposal in this landfill." Mr. Coleman also admitted that such

restrictive language concerning authorized wastes was removed in the purported 2015 Modification. (Ex. 4, p. 114, L. 14 - p. 117, L. 2).

Mr. Colman also admitted:

- That C&D landfills are not required to have liners. (Ex. 4, p. 191).
- That he would not expect a liner for a C&D landfill. (Ex. 4, p. 199).
- That the addition of a liner to a Class Two Landfill would be “unusual,” as Class Two Landfills usually do not have liners. (Ex. 4, p. 211).
- That, if approved, this would be the first commercial Class Two Landfill in South Carolina to have a liner. (Ex. 4, p. 210).
- That he knew that MRR was considering placing coal ash into this landfill when it applied for the Permit Modification. (Ex. 4, p. 189).
- That coal ash was not allowed or acceptable under the 2008 Permit. (Ex. 4, p. 221).
- That, per recently enacted S.C. Code § 58-27-255 (Act 138 of 2016), Coal Combustion Residuals (coal ash) can no longer be placed into a Class Two Landfill in South Carolina.
- That MRR’s Permit Modification Application asks to accept “certain special wastes” into this Class Two Landfill. (Ex. 4, p. 165).
- That “Special Wastes,” per statute, must be placed in Class Three, not Class Two, Landfills, in South Carolina. (Ex. 4, p. 167).
- That it would be illegal in South Carolina to deposit “Special Waste” into this landfill in Pickens County. (Ex. 4, p. 168).

The changes to the 2008 Permit meet the definition of "major" modification. The Department erroneously characterized them as "minor," in violation of R. 67-107.19, Part 1, B. 48. (a) and (b). The effect of this mischaracterization was that no Notice of any kind was ever provided to the public, and no Notice of any kind was ever provided to adjacent landowners.³

The Regulations **require** Notice to the public and a period for comment and review, coupled with opportunity for a public hearing, when a "major modification" is being proposed. Notice to adjacent landowners is also required.

To this day, no Notice to the public, nor any period for comment and review, nor any Notice to adjoining landowners, as is required by R. 61-107.19, Part 1, D. 2, c. has been provided. The changes to the 2008 Permit are "major" modifications. The proposed Permit Modification is not valid, unless and until there has been Notice to the public and opportunity for comment and review, and opportunity to request a public hearing.

R. 61-107.19, Part 1, D. 2. c. provides the following:

c. Notice of Filing Permit Application.

- (1) Notice of all applications submitted to the Department for the initial construction and major modifications of Class Two and Class Three landfills shall be published by the applicant once in a newspaper of general circulation in the area of the proposed landfill project. Notice for Class Two landfill application shall be published as provided in Part IV, Section H. 3. . . .

³ While DHEC apparently argues that documents were handed to some County staff, after staff requested them, in December of 2015, no Notice was ever provided to the public, and no Notice of any kind was ever provided to all adjacent landowners. There are multiple adjacent landowners in addition to the County.

(2) All Notices shall contain the following:

- (a) Name and address of the applicant;
- (b) The location of the proposed activity to include the county, roads and crossroads . . . ;
- (c) The nature of the proposed activity;
- (d) A description of the proposed site or a description of the proposed major modification;
- (e) An explanation of the type(s) of waste that will be accepted;
- (f) Department locations (Central Office and appropriate Regional Office) where a copy of the permit application or draft permit, as appropriate, can be viewed during normal working hours;
- (g) The Department's address and contact name for submittal of comments and inquiries;
- (h) The approximate tonnage/year expected for disposal at the landfill; and,
- (i) The proposed life of the landfill.

(3) The Department will send a notice of receipt of the permit application by regular mail to all adjoining landowners of the proposed landfill.

(d) . . .

(e) Notice of Draft Permit. For Class Two and Class Three Landfills, the Department will publish a notice when the draft permit is ready for review for all new landfills and for major modifications as determined by the Department. This notice will be published in a newspaper of general circulation in the area of the proposed landfill and will be sent to affected persons who have asked to be notified. The notice will list locations where a copy of the draft permit can be reviewed. The public will have a 30-day period to review the draft permit and submit comments to the Department, pursuant to the Administrative Procedures Act, S.C. Code Section 1-23-10 et seq.

(f) Public Hearings for Draft Permits.

- (1) The Department will conduct a public hearing upon receipt of requests in writing by ten (10) persons or by a governmental subdivision or agency or by an association having not less than ten members.
- (2) A request for a public hearing must be mailed (postmarked) to the Department during the 30 day comment period and shall be based on technical reasons relating to siting, design, or operation of the landfill. The Department will send a notice acknowledging receipt of a request for a public hearing to the applicant and to the person(s) requesting a hearing within 15 days following receipt of the request. The

Department will publish a notice of the time, date and location of the hearing.

- (g) Notice of Department Decision on the Permit. After close of the public comment period on the draft permit and the public hearing, if held, the Department will issue a Department Decision. Notice of the Department Decision will be sent by certified mail, return receipt requested, to the applicant. Notice of the Department's decision will be sent by regular mail, unless certified mail is requested, to affected persons who have asked to be notified, to all persons who commented in writing to the Department, and to all persons who attended the public hearing, if held.

... The Department will also publish notice of the Department Decision in a newspaper of general circulation in the area of the proposed activity. The Department's notice will include instructions on how to request a final review conference and the time frame for filing such a request.

Also, R. 61-107.19, Part IV, H. Permit Application Requirements also applies to "modification" of a Class Two Landfill. No distinction in Part IV. H. is provided for "major" or "minor" modification; rather, it applies to "modification" of a Class Two landfill (i.e., all modifications). Required in Part IV. H. are Determination of Need and a Consistency (with State and local Solid Waste Management Plans and local ordinances Determination, and a Disclosure Statement (to include names and addresses of contiguous landowners) and other requirements. Most of these requirements have not been met.

In particular, R. 61-107.19, Part IV. H. includes the following:

3. Public Notice. When the submittal is administratively complete, the Department will notify the applicant in writing. Within 15 days of receipt of Notification from the Department, the applicant shall publish notice of the permit application pursuant to Part 1., Section D. 2. of this regulation, and submit an affidavit of publication of the public notice in the newspaper to the Department.

The "applicant" is MRR Pickens, LLC. No such notice was published nor was any affidavit of publication provided. Again, the above provision applies to any and all "modification" of a Class Two Permit.

Further, R. 61-107.19, Part IV., I. 2. Permit Conditions and Review, includes the following:

2. Prior to issuance of permits for major modifications, as determined by the Department, and for new construction, the Department will make the draft permit available for public review and comment pursuant to Part 1, Section D of this regulation.

Nor was there compliance with the above.

It is reiterated that R. 61-107.19, Part IV. H. Permit Application Requirements applies to all modifications of a Class Two Landfill Permit, (regardless of whether such is "major" or "minor"). The arguments of DHEC regarding its characterization as a "minor" modification are of no avail to the requirements of Part IV. H. As noted above, the Public Notice requirements applicable to the applicant (MRR) were never met. No Public Notice by the applicant was ever accomplished. Nor was there any publication in the newspaper, nor any affidavit of publication of the Public Notice

provided to the Department. Aside from any arguments of "major" or "minor," the applicant failed in its required duties of Public Notice in Part IV. H. 3. And DHEC failed to require the affidavit of publication. The validity of the purported 2015 Modification fails due to the utter and complete failure of compliance with these requirements.

As for the regulatory provisions applicable to "major" modifications, the following failures and violations of the Regulations have occurred:

Per R. 61-107.19, Part 1., D. 2. c.:

- (1) No publication in a newspaper of the application for modification.
- (2) Complete failure of all contents of any notice.
- (3) No notice mailed to all adjoining landowners of the application.

Per R. 61-107.19, Part 1., D. 2. e.:

- (1) No publication of the notice of the draft permit in a newspaper.
- (2) No list of locations where a copy of the draft permit can be viewed was provided.
- (3) No 30-day period for the public to review the draft permit was provided.
- (4) No opportunity for the public to submit comments was provided.

Per R. 61-107.19, Part 1., D. 2. f.:

- (1) No opportunity for submission of requests for a public hearing was provided.
- (2) No opportunity for a public hearing was provided.

Per R. 61-107.19, Part 1., D. 2. g.:

- (1) No notice of the Department's decision was provided to the public.
(No opportunity for the public to request anything).
- (2) No publication of the Department Decision in a newspaper.
- (3) No instructions provided to the public regarding request of a final review conference.

Per R. 61-107.19, Part IV. I. Permit Condition and Review:

Regarding Part IV. I., there was a complete and utter failure of compliance, as the provision applies both to "major modifications" and for "new construction." Regardless of DHEC's flawed claims concerning "major" or "minor" modification, this Notice provision applies to "new construction." First, prior to August 10, 2015, the landfill had not yet been constructed (MRR had requested and obtained extensions repeatedly from 2008 to 2015 to delay construction). Second, the substantial design changes provided in the 2015 Modification called for construction of a liner and other features not provided for in the 2008 Permit. Under any reasonable reading of Part IV. I., the 2015 Modification provided for "new construction." The Notice requirements, and period for public review and comment, were ignored and never provided.

In the present Administrative Law Court case no discovery has been produced. (Pickens County has submitted Notices to Depose Christopher Roof of MRR and Joan Litton of DHEC, and has issued Interrogatories, Requests for Production of Documents and Requests to Admit to DHEC and MRR; both DHEC and MRR have asked to postpone discovery while the Motions to Dismiss

are pending). However, in a related case in Common Pleas Court, MRR Pickens, LLC v. Pickens County, et al. (Including the five individually named members of the County Planning Commission, all of which were sued by MRR for \$25 Million), some documents and Affidavits have been produced, which are relevant to the current Motions. Provided herewith are the following:

- (A) Petitioner's Exhibits 1, 2, and 3 - Reports of MRR's engineering consultants, CEC, which were submitted to DHEC on behalf of MRR in 2014 and 2015, without any Notice to the public, to adjacent landowners or to Pickens County. These are engineering reports, in support of MRR's proposed modifications. Each of these Exhibits contains the following statement:

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

Exhibit 1 also states:

The permitted facility has not been constructed, and is currently a heavily wooded area with limited access of overgrown, unimproved dirt roads

Also, noting that the 2008 Permit was for a Class Two Landfill, Ex. 1 states:

To satisfy the Class Three Landfill requirements, MRR engaged Civil & Environmental Consultants, Inc. (CEC) . . . to provide additional data for a permit modification.

Note: Kent M. Coleman identified these documents – Exhibits 1, 2, and 3 to this Memorandum,

as having been submitted by MRR to DHEC. (Ex. 4, Coleman depo., pp. 118, 135-137, 155-158, and 161-163).

(B) Exhibit 6 - Affidavit of C. Wesley Hulsey, P.G. Mr. Hulsey is a licensed Professional Geologist who has provided various services to Pickens County, including landfill-related engineering/geological work. Please see his sworn statements, including paragraph 4, which states that the addition of a liner and the changes to the Permit "all constitute a "major modification," which requires public review and public comment (which was not done), as opposed to MRR's attempted mischaracterization as a "minor modification." Also see his sworn statements regarding the failure of Consistency with the Pickens County Solid Waste Plan, the prohibition on "Special Waste" in Pickens County (which includes coal ash, or CCR), and the violations and failures of public review and public comment.

(C) Ex. 7 - Affidavit of Christopher Brink. Mr. Brink is the Director of the Pickens County Department of Community Development, also known as "Planning Director" for Pickens County. Please see Mr. Brink's sworn statements regarding the misrepresentations by MRR (including MRR's denial that a liner would be needed, which representation by MRR was made in early January of 2015, when MRR was submitting engineering reports to add a liner, with no notice to the County). Please also see paragraphs 10, 11, 12, and 13 regarding MRR's requests for the major modifications, which were never disclosed to Pickens County, and the failures of Notice.

- (D) Ex. 8 - Affidavit of Gerald G. Wilson. Mr. Wilson is the Public Works Director for Pickens County. Please see his sworn statements regarding MRR's requests for major modifications which were hidden from Pickens County, and the failures of Notice.
- (E) Ex. 9 - Report and Affidavit of Avner Vengosh, Ph.D. Dr. Vengosh is an eminently qualified Professor of Geochemistry and Water Quality at Duke University. Please see his Report and Affidavit concerning the inappropriateness of coal ash, or CCR, in this Class Two Landfill in Pickens County.
- (F) Ex. 10 - Affidavit and Report of Shelley H. Robbins. Ms. Robbins is a regulatory consultant, experienced and knowledgeable in solid waste management and regulations. Please see her Report and Affidavit concerning the proposed changes to the landfill as constituting "major modification," and the requirements for public review and comment, and the failures of providing public review and comment. Also see her statements regarding regulatory violations and the inappropriateness of MRR's attempted changes to the design and operation of this landfill.
- (G) Ex. 11 - Pickens County Solid Waste Management Plan (portions) - Please see provisions prohibiting "Special Waste" being deposited into Pickens County (p. 18) and the exclusion of Class Three Landfills in Pickens County (p. 12).
- (H) Host Agreement between MRR and Pickens County, 2008.

(I) Development Agreement between MRR and Pickens County, 2008.

In summary, the proposed changes to the 2008 Permit, by any reasonable reading of the relevant regulations, and as admitted by DHEC Director Kent M. Coleman, constitute a "major modification." The requirements of Public Notice of the proposed changes, Public Notice of the Draft Permit and Public Notice of the final Department Decision were never followed. No such Notices took place, and the public was deprived of any opportunity for review and comment, any opportunity for Public Hearing, and other requirements. Further, aside from DHEC's flawed position that these "major" modifications were "minor," there was absolute non-compliance with R. 61-107.19 H. (requiring the applicant to provide Public Notice for all modifications), and with R. 61-107.19, I. 2., requiring notice, public review and comment for "new construction." The public and all adjacent landowners have never been afforded the Regulatory requirements of any of the three (3) separate Public Notices (proposed changes; draft permit; and final Department Decision), nor opportunity for Public Review and Comment, nor opportunity for Public Hearing. The proposed 2015 Permit Modification is fatally flawed, and of no validity.

III. Pickens County is Appearing on Behalf of the Public, Adjoining Landowners, Affected Parties, and the County

In this case Pickens County is appearing on behalf of the public (particularly those members of the public in Pickens County residing in close proximity to this landfill; on behalf of adjoining landowners; on behalf of Affected Parties, and on behalf of Pickens County and its citizens and residents, taxpayers and property owners. (See. Ex. 15, Affidavit of Christopher Brink of August 17, 2016; Ex. 16, Affidavit of Robert L. Traber; Ex. 17, Affidavit of Matthew S. Stone; Ex. 18, Affidavit of Randolph E. Revis, Sr., by P.R. Randy Martin; Ex. 19, Affidavit of Tony Charping; and Ex. 20, Affidavit of Randall King.

As reflected in Ex. 15, Affidavit of Christopher Brink, the County is appearing on behalf of all of the aforementioned parties. The Affidavits of Traber, Stone, Revis, Charping and King (Exhibits 16-20), show that these are adjoining landowners and members of the public, in close proximity to this landfill. These persons, as stated in their Affidavits, received no Notice of proceedings (in particular, no newspaper publications or mailings of the Application for Permit Modification, the Draft Permit, the final Department Decision, or any other relevant proceedings, and were kept entirely in the dark regarding the major modifications being proposed. Thus, they had no opportunity for review or comment, or to object, or to request a hearing, or to be heard in any manner. As stated in these Affidavits, all of these parties will be adversely affected by such Modification, and would have participated and objected had they been given the opportunity. All of these parties wish to have Pickens County appear and advocate on their behalf.

IV. Legal Argument

The proposed changes to the 2008 Permit include alternate design, new design, design changes, and substantial changes in operation. The proposal is to add Class Three (Municipal Solid Waste and Special Waste) design features to a Class Two (Construction and Demolition/Land Clearing Debris) Landfill. (See Ex. 14, 2008 Permit with Appendix I - Acceptable Wastes). In essence, the Class Two Permit was being changed to meet the characteristics of Class Three Landfills. (See Ex. 4, Coleman depo., and Exhibits 1, 2, 3 - CEC Reports). The effect of mischaracterizing the changes as "minor" was that the public and all adjoining landowners were deprived of three (3) separate required Notices (proposed changes, draft permit, and final Department Decision), and deprived of any opportunity for public review and comment, any opportunity for a Public Hearing, and any opportunity to request review of the Department Decision.

The issue in this case is one of fundamental due process being denied to the public (particularly members of the public residing in close proximity), adjoining landowners, and Pickens County (on behalf of its citizens and residents, taxpayers and property owners), none of which received Notice, newspaper publication, mailings, or any opportunity to comment or participate.

In a Motion to Dismiss, the burden is on the party seeking the dismissal.

The trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing the motion. Hooper v. Ebenezer Senior Services & Rehab. Ctr., 386 S.C. 108, 687 S.E.2d 29 (2009).

Because dismissal is such a drastic remedy, it should be cautiously invoked to ensure that a litigant is not properly deprived of a trial. Helena Chem. Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631, 594 S.E.2d 455 (2004), and Hooper v. Ebenezer, *supra*.

Equitable Tolling

Equitable Tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it. Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness.

The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other. Equitable tolling may be applied where it is justified under all the circumstances.

Hooper v. Ebenezer, 386 S.C. 108, 115-117, 687 S.E.2d 29, 32-33 (2009).

"The requirements of due process include notice and an opportunity to be heard in a meaningful way, and judicial review." Ogburn-Matthews v. Loblolly Partners, 332 S.C. 551, 562, 505 S.E.2d 598, 603 (Ct. App. 1998). Also see Stono River Envtl. Ass'n. v. South Carolina Dept.

of Health and Env'tl. Control, 305 S.C. 90, 406 S.E.2d 340 (1991). Further, due process is protected in the South Carolina Constitution, Art. 1, § 22.

The Ogburn-Matthews case further noted that, to prove the existence of a denial of due process in an administrative proceeding, a party must show that it was substantially prejudiced. Here, Petitioner and MRR and DHEC were all in accord in 2008 with the 2008 Permit for a Construction and Demolition (C&D) Landfill. The major modifications, attempted without Notice or opportunity for Public Hearing and subsequent proceedings, all deprived the public, all adjacent landowners and Pickens County of due process. All are substantially prejudiced by this transformation of a C&D Class Two Landfill into basically a Landfill with Class Three design features, which will allow Special Wastes, such as coal ash/CCR, into Pickens County whose Solid Waste Management Plan excludes such, and which Plan disallows Class Three Landfills. Ogburn-Matthews, 332 S.C. at 561, 505 S.E.2d at 603. Also see Palmetto Alliance, Inc. v. South Carolina Public Service Comm'n., 282 S.C. 430, 319 S.E.2d 695 (1984).

Further, in Leventis v. South Carolina Dept. of Health and Env'tl. Control, 340 S.C. 118, 530 S.E.2d 643, (S.C. App. 2000), the Court recognized that it would overturn agency decisions in a number of circumstances, including those when the agency action is made upon unlawful procedure, affected by other error of law, is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or if arbitrary or capricious or characterized by abuse of discretion. Also, see S.C. Code Ann. § 1-23-380(A)(6) (Supp. 1998); and Ballenger v. South Carolina Dept. of Health and Env'tl. Control, 331 S.C. 247, 500 S.E.2d 183 (Ct. App. 1998). In Leventis, the Court stated "...we expressly disapprove of the ex parte procedure utilized by DHEC and Laidlaw . . .," but found that prejudice to the Plaintiff had been removed. In the case at hand, all of the above-

stated circumstances apply, and the public, all adjacent landowners and Pickens County remain severely prejudiced.

Even if DHEC's position, that Pickens County received, informally, a copy of relevant documents long after issuance by DHEC, the evidence shows that the public and all adjacent landowners have never been provided with multiple required Notices, opportunity for review and comment, opportunity for Public Hearing, or other due process rights and requirements.

Further, Footnote 14 to the Leventis decision is informative and relevant: "... Therefore, we hold DHEC was required to satisfy the notice requirements for a public hearing. See 1-23-110(A)(3)(c) (Supp. 1993). Furthermore, DHEC's failure to provide adequate Notice ... excused Sierra Club from requesting a hearing." Leventis, 340 S.C. at 118, 530 S.E.2d at 643.

In Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) the Court stated that the Due Process clause demands "Notice reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Also, S.C. Const. Art. 1., § 22 states, "No person shall be finally bound by a judicial or quasi judicial decision of an administrative agency affecting private rights except in due notice and an opportunity to be heard"

In Webster v. Clanton, 259 S.C. 387, 391, 192 S.E.2d 214, 216 (1972) our Supreme Court stated:

It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights.

Also see Brown v. Malloy, 345 S.C. 113, 546 S.E. 195 (Ct. App. 2001).

An administrative board must follow its own rules and regulations. Triska v. Dept. of Health and Env'tl. Control, 292 S.C. 190, 355 S.E.2d 531 (1987). The obligation of such a body to follow its own rules and regulations is founded in principles of administrative law. Ogburn-Matthews v. Loblolly Partners, 505 S.E.2d 598, 332 S.C. 551 (1998). The requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. Stono River Env'tl. Protection Ass'n. v. South Carolina Dept. of Health and Env'tl. Control, 305 S.C. 90, 406 S.E.2d 340 (1991). Judicial review assures a determination that the agency action has a factual basis. South Carolina Wildlife Fed'n. v. South Carolina Coastal Council, 296 S.C. 187, 371 S.E.2d 521 (1988). These fundamental requirements have been clearly mandated by our Constitution and our Supreme Court to comport with due process. Stono River, Id.

The agency is acting in a quasi-judicial capacity when fulfilling its role in this administrative setting. Stono River, Id. "Clearly, contestants are entitled to opportunity to be heard by the Agency; that is, to submit their position and their comments for consideration by the Agency, with opportunity to respond to opposing views before a final determination is made. This, in turn, requires notice that the Agency action is pending and access to the information which has been submitted to the Agency for review. S.C. Const., Art. 1, § 22; Ogburn-Matthews, Id.

In the present case, the Public, all adjoining landowners, and Pickens County all have serious interest in the major changes which DHEC and MRR seek to make to the 2008 Permit. The 2008 Permit was strictly limited to Construction and Demolition (C&D) and Land-Clearing Debris (LCD) wastes (wastes listed in Appendix I to R. 61-107.19; per the 2008 Permit "All other wastes, including animal carcasses are prohibited"). The changes would allow "Special Waste," (defined by S.C. Code Sec. 44-96-390), which are disallowed under the Pickens County Solid Waste

Management Plan. (See Exhibits 6, 7, 8, 9, 10, 11). S.C. Code Sec. 44-96-290(F) requires Consistency with local Solid Waste Management Plans. Further, the Pickens County Solid Waste Management Plan excludes Class Three Landfills. The waste envisioned by MRR, with the purported 2015 Modification, would vastly exceed the C&D/LCD wastes approved in the 2008 Permit, and would allow "Special Wastes" and wastes such as coal ash (a/k/a Coal Combustion Residuals, or CCR), which are significantly more problematic for adjoining landowners, the public and the County. (See Ex. 9, Report and Affidavit of Avner Vengosh, Ph.D., and Ex. 10, Report and Affidavit of Shelley H. Robbins). Such intended wastes create serious and toxic effects from dust and ash, which are carried by wind from transport trucks and from the fill area to neighboring properties, and contaminate soil, surface water and groundwater, and create other problems, including property devaluation. Adjacent landowners are severely adversely affected, as are members of the public who live in the area.

Pickens County has standing to bring this action on behalf of the Public, all adjoining landowners, and the County itself. Substantial rights of all of these are affected. Pickens County, as the local government, has citizens and residents of the public, and citizens and residents as adjoining landowners, who are directly affected. Further the issues of dust and ash, and contamination of the air, soil, surface water and groundwater in the area in which the transport trucks travel, and in the area of the landfill, are of serious concern and produce serious adverse effects to the public, all adjoining landowners, and Pickens County. The injuries to be suffered by the public, all adjoining landowners and Pickens County, include use and enjoyment of their properties, the adverse effects of dust and ash, the contamination of the air, soil, surface water and groundwater, property values, and enjoyment of the surrounding areas.

V. Need for Discovery Related to the Motion to Dismiss and for Full Hearing by this Court

Petitioner Pickens County has heretofore in this action served Notices of Depositions, to depose Christopher Roof of MRR and Joan Litton of DHEC, and has served Interrogatories, Requests for Production of Documents, and Requests to Admit, on both DHEC and MRR. Both DHEC and MRR requested to reschedule the noticed depositions to which Petitioner consented. Further, both DHEC and MRR have requested to postpone discovery.

Petitioner does not object to the requests of MRR and DHEC to postpone discovery compliance regarding issues that go strictly to the merits of this case. However, Petitioner is in need of reasonable discovery regarding issues pertinent to their Motion to Dismiss, to include: issues of determination of "major" modification and whether the changes are "major" pursuant to regulation; proof of lack of Notice; proof of prejudice to the public, to all adjoining landowners and to the County; communications between MRR and DHEC regarding the agreement to characterize the modifications as "minor," and any issues regarding standing (if standing becomes challenged).

Petitioner would show that, in many aspects, this Motion to Dismiss is akin to a Motion for Summary Judgment. Reasonable discovery, as to the issues pertinent to the Motion, is necessary. Further, Petitioner respectfully submits that a full hearing before this Court, to include all factual matters related to this Motion, is necessary.

MRR's Claim That it was not "Served" with Petitioner's Request for Contested Case Hearing

MRR has attempted to create an issue where none exists, and where no prejudice can be shown (nor was any prejudice even alleged by MRR). MRR certainly received a copy of the Request for Contested Case Hearing Form, and it timely filed its Prehearing Statement in this Court, and has fully participated in all matters thus far in this Court.

Service of the Request for Contested Case Hearing was effective for the following reasons:

A. The Service Address Stated on the Request for Contested Case Hearing is MRR's Address Shown on the 2008 Permit.

As stated on the face of its 2008 Permit (Ex. 14) issued by DHEC, MRR's address at that time was 11743 Trails End Lane, Charlotte, NC 28078. Petitioner recognizes that the address on the 2015 Permit Modification is Faringdon Place in Raleigh. The use of the 2008 Permit address was simple error by the undersigned or his staff, which simply retrieved the address from the original permit.

Exigent circumstances (discussed further below) existed as of May 19, 2016 when this Form was mailed. (See Ex. 21, Affidavit of Gary W. Poliakoff). There was no intent to deprive MRR of its ability to fully participate. Certainly, MRR received the Request for Contested Case Hearing in time for MRR to fully respond and to participate in all matters before this Court.

B. Exigent Circumstances as of Time of Filing

As of the time of filing of the Request for Contested Case Hearing (May 19, 2016) exigent circumstances existed regarding the undersigned. Please see Exhibit 21 (Affidavit of Gary W. Poliakoff, Attorney for Pickens County), which describes the severe, life-threatening injuries of his 13 year old daughter in May of 2016, her admission to Greenville Memorial Hospital in critical condition, her surgeries and ordeals in the Pediatric Intensive Care

Unit (PICU), and her hospitalization from May 8 to 31, 2016 (23 days). As of the time of mailing of the Request for Contested Case Hearing Form, May 19, the undersigned's daughter was still in the Pediatric Intensive Care Unit.

The retrieval of MRR's address from the 2008 Permit instead of the 2015 Modification was simple error, by either the undersigned or his staff. At the time of the signing of the Form on May 19, the undersigned was spending nearly all of his time at the PICU at Greenville Memorial Hospital with his daughter, returning to his office in Spartanburg only sporadically. The normal level of vigilance regarding such matters at that time was compromised due to said circumstances. (See Ex. 21, Affidavit).

Certainly, there was no intent to deprive MRR of any ability to participate in these proceedings. This was simple error, causing no prejudice or harm to MRR or anyone.

C. No Prejudice to MRR can be Shown

MRR alleges no prejudice resulting from the incorrect address on the Form. Nor can any prejudice legitimately be shown.

MRR has fully and timely responded and participated thus far in all proceedings before this Court. MRR complains that the address was stated wrongly on the Form mailed May 19, 2016. Yet a mere 13 days after this mailing, on June 1, 2016, MRR filed its Notice of Appearance (Ex. 23), informing this Court that three attorneys were appearing. Thereafter, this

Court requested Prehearing Statements, which MRR and all parties timely filed.

Prior to the May 19, 2016 mailing of the Form, which is the subject of MRR's objections, MRR had been fully apprised of the actions taken by DHEC in response to Petitioner's Request for Final Review. (See MRR's Exhibit H, DHEC's Acknowledgment of Request for Final Review, with its Certificate of Service dated April 6, 2016 (with attachments including Pickens County's Request for Final Review); and MRR's Exhibit C, DHEC's Initial Staff Response to Request for Review, dated April 15, 2016, with attachments).

No prejudice was alleged by MRR. Nor can any prejudice be legitimately shown.

(D) Multiple Addresses of MRR

MRR, through its Affidavit of General Manager Christopher T. Roof (Ex. J to MRR's Motion to Dismiss), lists the following addresses of MRR since 2007:

- (1) 11925 San Roper Dr., Charlotte, NC
- (2) 11743 Trails End Lane, Charlotte, NC
- (3) 431 Raleigh View Rd., Raleigh, NC
- (4) 5842 Faringdon Place, Raleigh, NC

Additionally, MRR has also used the following addresses:

- (5) 7413 Six Forks Rd., Raleigh, NC

(Per Exhibits 1, 2 and 3 of Petitioner's Memo -
address shown for MRR on the engineering reports).

(6) 214 North Tyger St., Charlotte, NC

(Per Exhibit 22, MRR Articles of Incorporation)

(7) 5000 Thurmond Mall Blvd., Columbia, SC

(Per Exhibit 22 - Registered Agent address)

(8) 1703 Laurel St., Columbia, SC

(Per Exhibit 22 - Registered Agent address)

Despite having at least eight different addresses in nine years, MRR complains of the use of a wrong address. Yet it can show no prejudice of any kind, and it has fully appeared, responded and participated in all matters in this Court.

As stated above, the retrieval of the address from the original Permit was simple error, and caused no problems or prejudice.

(E) Legal Authorities Regarding the Service of Process Issue Raised by MRR

It is clear that MRR had sufficient Notice of Petitioner's Request for Contested Case Hearing Form that it quickly and timely filed its Notice of Appearance (Ex. 23), and timely filed its Prehearing Statement, and fully participated in all matters pending in this Court.

Where it is established that a defendant has actual notice of the lawsuit and the plaintiff has substantially complied with the service requirements, motions to dismiss for insufficiency of service have been denied.

Lewis v. Avis Rent-A-Car System, Inc., 1996 WL 684457 (E.D.La. 1996).

The primary function of Rule 4 is to "provide a mechanism for bringing notice of the commencement of an action to defendant's attention" Wright & Miller, Federal Practice and Procedure, § 1063, at 225 citing in Durant v. Traditional Investments, Ltd., 1990 WL 33611 (S.D.N.Y. 1990).

"The liberal amendment of process policy of Rule 4(h) indicates that when a defendant receives actual notice of a lawsuit brought against him, technical imperfections with service will rarely invalidate the service." S.E.C. v. Tome, 833 F.2d 1086 (2nd Cir. 1987), citing Wright & Miller, *supra*, § 1088, at 31-32. See also Gottfried v. Frankel, 818 F.2d 485, 493 (6th Cir. 1987). ("It should be noted that Rule 4 is a flexible rule which principally requires sufficient notice to the party of claims brought against it, and **dismissal is not appropriate unless the party has been prejudiced.**" (emphasis added).

"As other courts have suggested, one circumstance which we may consider in evaluating the sufficiency of notice is whether the alleged inadequacies in the notice prejudiced the (defendant)." People of State of Illinois ex. Rel. Hartigan v. Peters, 871 F.2d 1336, 1340 (7th Cir. 1989).

When the error in the summons goes to form rather than substance, amendment pursuant to Rule 4(h) should be freely granted. Durant, *supra*.

It is important to note that MRR, in its first substantive pleading in this Court, i.e., its Prehearing Statement, failed to make any mention of any alleged defect in service of process. In doing so it waived any such defense.

It is well settled that lack of personal jurisdiction is a privileged defense that can be waived by failure to assert it timely. Neirbo Co. v. Bethlehem Corp., 308 U.S. 165, 60 S.Ct. 154, 84 L.Ed. 167 (1939).

In Unisun Ins. v. Hawkins, 537 S.E.2d 559 (2000), the South Carolina Court of Appeals discussed waiver as it relates to affirmative defenses such as service of process. The Unisun Court relied on Garner v. Houch, 435 S.E.2d 847 (1993), which held that a party who fails to properly raise the defense of insufficient service of process under Rule 12 waives any issues or defenses regarding service, including a statute of limitations defense.

MRR can show no prejudice resulting from the retrieval of its address from its own original Permit. Further, it waived any objection to service of process when it fully submitted its Prehearing Statement to this Court on July 5, 2016, and made no reference of any kind to any alleged defect in service.

MRR's position on this issue of alleged defect in notice is ironic. This case substantially deals with the failure of MRR and DHEC to provide regulatory-required published Notice and mailings, to the public, to adjoining landowners, and to "affected parties" including Pickens County, all of which MRR casually dismisses with an argument of "constructive notice" to several county staff members. (See MRR's Memo in support of Motion to Dismiss, pp. 2-4 and 9-11). In this matter the public, adjoining landowners, and "affected parties" including Pickens County, have been entirely deprived of

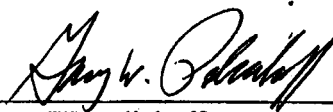
any notice and of any ability to participate in the legal process. MRR,
through this alleged defect, can show no prejudice of any kind.

VI. Conclusion

For the reasons stated above, MRR's Motion to Dismiss must be denied; or in the alternative,
reasonable discovery pertinent to this Motion must be allowed prior to this Court's determination.

Respectfully submitted,

August 18, 2016



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ATTORNEYS FOR PICKENS COUNTY

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Pickens County,	)	
	)	
Petitioner,	)	Docket No. 16-ALJ-07-0164-CC
	)	
vs.	)	RESPONDENT MRR PICKENS, LLC'S
	)	REPLY TO PETITIONER'S RESPONSE
South Carolina Department of Health	)	IN OPPOSITION TO MOTION TO
and Environmental Control and MRR	)	DISMISS AND MOTION FOR STAY
Pickens, LLC,	)	
	)	
Respondents.	)	
	)	

NOW COMES Respondent MRR Pickens, LLC ("MRR Pickens"), by and through counsel, and submits this Reply to Petitioner's Response in Opposition to Motion to Dismiss and Motion to Stay ("Petitioner's Response") filed by Petitioner Pickens County ("Petitioner") on August 18, 2016. In Petitioner's Response, it does not refute the grounds for dismissal raised by MRR Pickens in its Motion to Dismiss: timeliness and lack of service. Rather, Petitioner attempts to try the merits of its case, raise issues that have nothing to do with the decision on appeal, and ignore the simple fact that this Court lacks subject matter jurisdiction to hear its case. Furthermore, the "equitable" remedies raised by Petitioner are not appropriate in a case where jurisdiction does not lie and are not otherwise applicable here. Simply put, Petitioner (and the public) have not and will not be deprived due process and this case does not warrant the extreme measure of equitable tolling.

ADDITIONAL BACKGROUND

In November of 2007, MRR Pickens applied for a permit to operate a Class 2 Landfill from the South Carolina Department of Health and Environmental Control (DHEC) on property

located at 2180 Greenville Highway, Liberty, South Carolina, Pickens County (the "Highway 93 Class 2 Landfill"). On September 19, 2008, DHEC issued a draft permit for the Highway 93 Class 2 Landfill. [Exhibit A; Draft Permit (Sept. 19, 2008)]. On or about that same day, DHEC public noticed the draft permit in the Easley Progress and The Pickens Sentinel. [Exhibit B; Public Notice (Sept. 19-24, 2008)]. In addition to publishing the draft permit in the local newspapers, DHEC sent notice to Adjacent Landowners, Pickens County and others on its mailing list by memorandum dated September 19, 2008. [Exhibit C; Public Notice to Adjacent Landowners (Sept. 19, 2008)]. At the end of the public comment period, on November 3, 2008, DHEC staff issued Solid Waste Permit LF2-00003 to MRR Pickens for the Highway 93 Class 2 Landfill (the "Highway 93 Permit"). [Exhibit D; Permit LF2-00003 (Nov. 3, 2008)]. A property owner in the area, GB Enterprises, timely requested Final Board Review before the Board of Health and Environmental Control on November 11, 2008. Neither the Movants nor Petitioner Pickens County filed a request for Board Review or asked to be notified of any future decisions relating to Highway 93 Permit. [Ex. 16-20, Affidavits of Movants filed with Petitioners' Memorandum in Opposition to MRR Pickens, LLC's Motion to Dismiss (Aug. 18, 2016); Affidavit of Joan Litton, para. 4 (April 16, 2016)¹]. Four months later, on March 10, 2009, GB Enterprises voluntarily dismissed its Request for Board Review with prejudice. [Exhibit E; Notice of Dismissal (March 10, 2009)].

On March 30, 2015, MRR Pickens applied for a minor modification to the Highway 93 Permit, requesting the option to install a liner and associated leachate collection system ("Minor Permit Modification"). On August 10, 2015, the Department staff issued the Minor Permit Modification by mailing the decision to MRR Pickens, allowing the company the option to

¹ Note Movants' Motion to Intervene was filed by "ATTORNEYS FOR PICKENS COUNTY". See Motion to Intervene at 3. Moreover, Movants' Motion to Intervene improperly relies upon affidavits used in support of a filing of Petitioner Pickens County.

install a liner and associated leachate collection system. DHEC's Initial Staff Resp. to RFR (Apr. 15, 2016).

PROCEDURAL HISTORY

On July 29, 2016, MRR Pickens by counsel, and pursuant to Rules 11, 19, and 38 and of the Administrative Law Court Rules (SCALCR), Rule 12(b)(1) of the South Carolina Rules of Civil Procedure ("SCRCP"), and S.C. Code Ann. §§44-1-60(A)-(E), moved for dismissal with prejudice of Petitioner Pickens County's Request for a Contested Case Hearing on the grounds the Court lacks subject matter jurisdiction because: (1) the Petitioner did not file its Request for Final Review to the Board of DHEC within the statutorily required fifteen day time frame; and (2) the Petitioner failed to serve MRR Pickens with its Request for a Contested Case Hearing within thirty days of actual or constructive notice of the DHEC Board's Final Agency Decision as required by Rule 11 of the SCALCR. On that same date, MRR Pickens filed a Motion to Stay Discovery until a final decision from the Court on its Motion to Dismiss. On August 18, 2016, Petitioner filed its Response in Opposition to MRR Pickens' Motion to Dismiss and Motion to Stay Discovery. MRR Pickens replies to Petitioner's Response as follows:

ARGUMENT

I. PETITIONER FAILS TO PROVIDE ANY LEGAL BASIS TO RESURRECT ITS PLEADING FROM RESPONDENT'S MOTION TO DISMISS

Petitioner's Response fails to provide any legal or factual support to overcome MRR Pickens' Motion to Dismiss pursuant to Rules 11, 19 and 38 of the Rules of the Administrative Law Court ("ALC" or "Court") and Rule 12(b)(1), SCRCP.

A. Petitioner does not deny missing the statutory deadline after receiving actual notice of the Minor Permit Modification.

Pursuant to S.C. Code Ann. §44-1-60(E)(2), a DHEC decision becomes the final agency decision, if a request for final review is not made within 15 calendar days after the staff decision is mailed to the applicant and any affected person **who has previously asked in writing to be notified of decisions**. S.C. Code Ann. §44-1-60(E)(2)(emphasis added); see also *South Carolina Coastal Conservation League v. South Carolina Dept. of Health & Envtl. Control*, 380 S.C. 349, 364, 669 S.E.2d 899, 906 (Ct.App.2008), cert. granted (Sept 3, 2009), reh'g denied (Dec. 19, 2008). If DHEC mails the notice to the affected person on a later date than the notice to the permittee or applicant, than the date of mailing to the affected person is the date the 15 day clock begins to run for that person. *Id.* “[C]ompliance with statutory time periods for filing appeals is a prerequisite for an appellate entity to have jurisdiction to hear an appeal.” *Coastal Conservation*, 380 S.C. at 376, citing *Botany Bay Marina, Inc. v. Townsend*, 296 S.C. 330, 334, 372 S.E.2d 584, 586-587 (1988), *overruled on other grounds by Woodard v. Westvaco Corp.*, 319 S.C. 240, 460 S.E.2d 393 (1995).

First, Petitioner does not dispute that it received notice of the Highway 93 landfill Permit in 2008. In fact, On September 19, 2008, DHEC issued a draft permit for the Highway 93 Class 2 Landfill. [Exhibit A]. On or around that same day, DHEC public noticed the draft permit in the Easley Progress and The Pickens Sentinel. [Exhibit B]. In addition to publishing the draft permit in the local newspapers, DHEC sent notice to Adjacent Landowners, Pickens County and others on its mailing list by memorandum dated September 19, 2008. [Exhibit C]. At the end of the public comment period, on November 3, 2008, DHEC staff issued Solid Waste Permit LF2-00003 to MRR Pickens for the Highway 93 Class 2 Landfill (the “Highway 93 Permit”). [Exhibit D].

Second, Petitioner admits it is not an “affected person” relating to future decisions relating to the Highway 93 Landfill Permit by admitting it did not request notice in writing of any decisions relating to the permit after receiving public notice of its application and issuance in 2008. Ex. 16 to Pet.’s Resp., Aff. of Chris Brink, para. 20. Therefore, Petitioner is not an “affected person” and DHEC was not required to give Petitioner actual notice of the Minor Permit Modification involved in this case.

Third, Petitioner admits it received actual notice in December of 2015 and again on January 11, 2016. Pet.’s Response, pp. 4, fn. 1; Ex. 15, Aff. of Chris Brink, para. 21 (Aug. 18, 2016). Therefore, there is no alternative conclusion but to find that Petitioner missed the 15 day deadline to file a RFR with the DHEC Board after receiving actual notice.

This Court cannot excuse Petitioner’s late filing because timeliness is a jurisdictional issue set forth by statute. *Grand Bees Dev., LLC v. S. Carolina Dep’t of Health & Env’tl. Control*, 2012 WL 10841840, at *1 (Ct. App. 2012); *see also Great Games, Inc. v. S.C. Dep’t of Revenue*, 339 S.C. 79, 82 n. 5, 529 S.E.2d 6, 7 n. 5 (2000); *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188–89, 714 S.E.2d 547, 549–50 (2011) (noting it is a general rule “that an appellate body may not extend the time to appeal”). Petitioner is therefore time-barred from bringing its claims, thus removing the ALC’s appellate and subject matter jurisdiction

B. Petitioner does not deny its failure to serve MRR Pickens within 30 Days as Required.

Even if the Court were to find Petitioner timely filed its appeal (which MRR Pickens respectfully denies), Petitioner has admitted its failure to serve the Request for a Contested Case Hearing on MRR Pickens. Petitioner’s Response, Exh. 21, Affidavit of Gary Poliakoff, para. 3(C)-(D), p. 3 (August 18, 2016).

S.C. Code Ann. §1-23-600(B) requires that a party that files a Request for a Contested Case Hearing simultaneously serve a copy of the request on the parties in accordance with the ALC Rules. Rule 11(B), ALC Rules, provides “[a] copy of the request must also be served on each party and on the affected agency . . . in accordance with Rule 5.” Further, Rule 11(B), ALC Rules, requires, without exception, that a Petitioner serve its Request for a Contested Case Hearing on each party within 30 days of actual notice of the final agency decision. Proof of service must be included with the request. Rule 11(B), ALC Rules. Rule 5, ALC Rules, requires service upon all parties by delivery by mail to the last known address.

While MRR Pickens does not dispute that personal circumstances existed for one of Petitioner’s three counsel of record during the relevant time period, this Court has previously recognized it does not have the power to “fix” jurisdictional issues where jurisdiction does not exist – no matter the reason. *Delk v. S.C. Dep’t of Motor Vehicles, et al.*, 13-ALJ-21-0234-AP, 2013 WL 3790642 (July 16, 2013); See also *Trademark Properties, Inc., Petitioners*, 06-ALJ-07-0148-CC, 2007 WL 1219374, at *2 (Mar. 22, 2007)(holding the Rules of the Administrative Law Court prescribe certain steps that must be taken to initiate a contested case proceeding and failing to serve a copy of a request for a hearing on a party as prescribed by Rule of 11(B), Petitioner has not properly invoked the jurisdiction of this tribunal and this matter dismissed).

In fact, the Court is not permitted to delve into the reasons why a party fails to effect service or consider things like the prejudice to opposing parties as a result of the failure to serve. As stated by this Court in the *Delk* decision, “[t]he requirement that the Appellant file and serve the Notice of Appeal on all parties in accordance with the timeframes set forth in the ALC Rules of Procedure is an indispensable component of the appellate process.” *Id.* (emphasis added). “Moreover, the Supreme Court of South Carolina has determined that filing and service of the

Notice of Appeal upon the [parties] is a jurisdictional requirement. *Id.*; See *Thomas E. Skinner v. Westinghouse Electric Corp.*, 380 S.C. 91, 668 S.E.2d 795 (2008); See also *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004) (“[i]f a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.”)

Importantly, *Delk* is not a rare or unique holding. This Court has consistently taken this same position holding that the *Elam* case requires dismissal for lack of jurisdiction in the following cases: *Tapp v. Horry County*, 2009 WL 1319817, *1 (S.C.A.L.J. April, 21, 2009); *Wingard Towing Servs. v. S.C. Dep't of Public Safety*, 2015 WL 1966828, * 1 (S.C.A.L.J. April 28, 2015); *Felicia Blocker v. Richland County School Dist.*, 2010 WL 2604805 (S.C.A.L.J. May 25, 2010) (where the Respondent only became aware of the filing of the Request for a Contested Case Hearing through the ALJ's Notice of Assignment and was never served with the request, the Court had no choice but to dismiss the case for lack of jurisdiction).

In this case, Petitioner concedes it failed to serve Respondent MRR Pickens at its last known address within 30 days of notice of DHEC's final agency decision (or to date), but asks for forgiveness. Case law clearly and incontestably states service is an indispensable component of the appellate process and is necessary to establish jurisdiction. Because Petitioner did not file or serve the Notice of Appeal as legally required, this Court lacks jurisdiction over this appeal.

II. PETITIONER'S DUE PROCESS RIGHTS ARE NOT AFFECTED BECAUSE IT LACKS STANDING.

Petitioner has no legal ground to resurrect its pleading so it attempts to invoke equity. Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong. *Sabb v. S. Carolina State Univ.*, 350 S.C.

416, 422, 567 S.E.2d 231, 234 (2002); *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 442 S.E.2d 598 (1994). “A motion to dismiss filed under Rule 12(b)(1), SCRCP, alleging lack of jurisdiction is purely a question of law for a court.” *Sheppard Constr. Co., Inc., Petitioner*, Docket No. 11-ALJ-07-0001-CC, 2011 WL 2413300, at *1 (S.C. ALJ Mar. 28, 2011); *See Woodard v. Westvaco Corp.*, 215 S.C. 329, 433 S.E.2d 8890 (Ct.App.1993).

Assuming Petitioner is not an affected person who had the right to actual notice, the Minor Modification became the final agency decision 15 days after DHEC mailed it to MRR Pickens on August 10, 2016 - thus making the final date August 25, 2015. DHEC’s Initial Staff Resp. to Request for Review, p. 1. Petitioner’s appeal here is approximately 7 months after it became final. In fact, this Court has recognized on a number of occasions in permitting cases, there needs to be some point in which an applicant for a permit can presume that the permitting process has concluded. *Amisub of S. Carolina, Inc., d/b/a Piedmont Med. Ctr. Petitioners*, 08-ALJ-07-0063-CC, 2008 WL 4879672, at *9 (Oct. 3, 2008); citing *Botany Bay Marina, Inc. v. Townsend*, 296 S.C. 330, 335 n.3, 372 S.E.2d 584, 586 n.3 (1988), overruled in part on other grounds by *Woodard v. Westvaco Corp.*, 460 S.E.2d 392, 319 S.C. 240 (1995) (noting the importance of “finality in administrative decision-making”). This is especially true here, where Petitioner has actual notice and still missed any statutory deadlines for filing and service.

III. THE UNDISPUTED FACTS DO NOT SUPPORT LACK OF DUE PROCESS CLAIMS OR EQUITABLE TOLLING.

Finally, in an attempt to convince the Court this case requires it to ignore the letter of the law, Petitioner Pickens County uses words like “toxic coal ash” and due process to justify the drastic remedy of equitable tolling. These words are unsupported by any facts and irrelevant here.

Petitioner cites to portions of an open deposition of Kent Coleman, former Director of DHEC's Division of Mining and Solid Waste Management in a separate case to support its plea for equitable relief. Pet.'s Response in Opp. to MRR Pickens' Motion to Dismiss, pp. 6-10. Kent Coleman's testimony is not part of the record on appeal in this case and is improperly used to cloud the relevant issues. Furthermore, Petitioner uses bits of testimony to support conclusory statements regarding whether DHEC should or should not have issued a "formal" Legal Notice in the paper and to the adjoining landowners. First, Petitioner misrepresents Mr. Coleman's testimony. Second, Petitioner cannot complain of lack of Public Notice, where it received actual notice and failed to timely file and serve its appeal.

MRR Pickens does not waive its right to object to the use of Mr. Coleman's partial deposition in these proceedings. However, MRR Pickens feels compelled to directly address Petitioner's misrepresentation of Mr. Coleman's testimony in order to provide the Court with the facts. Mr. Coleman stated the following facts which illustrate that Petitioner (and the public in general) has had and continues to have due process relating to the the Highway 93 Class 2 Landfill Permit and that there is no compelling reason to invoke the extreme remedy provided by equitable tolling:

1. The 2008 Highway 93 Permit allowed any waste that met the Class 2 testing thresholds to be disposed of at the Highway 93 Landfill.

Q. Would MRR's 2008 permit allow them to accept coal combustion residuals if they met the threshold and notwithstanding the new law?

A. Yes.

[Exhibit F, Deposition of Kent Coleman, p. 70, ll. 8-12]

- 2. The 2015 Modification for the option to install a liner was determined to DHEC to be "Minor" because it was not a change to the waste stream and because it was more protective of the environment.**

Q. Okay. So let's talk about the modification itself. It appears -- it states this is an issuance of a modified Class Two landfill permit. Was this a minor or a major modification?

A. We issued this modification as a minor modification.

Q. Okay. Can you tell me why?

A. Yes. I can. I've had to recall those conversations a few times lately. But the -- basically, we looked at it, and since there were no new waste streams involved, and it was an optional upgrade so to speak -- it was only basically, you know, making the facility more environmentally protective than we had already issued. We felt like it was -- you know, we felt like we could do it as a minor because any, you know, any impact would just be positive, if they decided to install the liner. And since we didn't improve any new waste streams or increase in volume or anything like that, we felt like an upgrade was with a minor modification.

Id., p. 77, ll. 17-26, p. 78, ll. 1-11.

- 3. A liner like the one at issue here is more protective of the environment and the public.**

Q. And in your opinion, if a permittee, came to DHEC and asked to install a liner that is not required in the regulations --

A. Uh-huh.

Q. -- would there be any reason for DHEC to deny that request?

MR. POLIAKOFF: Objection, form. Leading.

A. I -- I can't think of a reason why we would deny a liner request, if it were not required.

Q. And I guess what I'm asking, is there any negative impacts to the presence of a liner in a solid waste landfill, to your knowledge?

A. Not for the department or the environment. No.

Id., p. 74, ll. 14-25, p. 75: 1.

4. The Minor Modification did not change the waste streams allowed at the MRR Pickens' Highway 93 Landfill.

Q. Does the modification alter the waste stream that MRR Pickens would be allowed to take under its '08 permit.

A. No. I mean, the regs were the same under both permits.

Q. Okay. So since no new waste streams were added

A. Uh-huh.

Q. -- the liner itself does not automatically modify the permit to allow a new waste stream. Is that correct?

A. Correct.

Id., p. 76, ll. 8-118.

5. MRR Pickens Minor Modification is not the final agency decision that will allow or disallow it to take coal ash (aka coal combustion residuals) at the Highway 93 Class 2 Landfill.

Q. So for MRR Pickens to take coal combustion in residuals --

A. Uh-huh.

Q. -- at its Pickens County Class Two landfill, there is still a regulatory process that is not complete at this time. Is that true?

A. Yes.

Id., p. 81, l. 25 & p. 82, ll. 1-6.

As stated above, the Minor Modification does not include the addition of any waste stream -- including coal ash -- to the 2008 permit. It is simply the option to install a liner -- and therefore, according to DHEC it does not impose any public health or the environmental concerns. Id., pp. 72-75. In fact, the option to install a liner does not substantially change the Highway 93 Permit issued in 2008 -- a permit which Pickens County did not appeal or request to DHEC in writing to be notified of decisions relating thereto (and thus be treated as an "affected person"). Exhibit 15, para. 20 of Petitioner's Response. Therefore, there is no public interest or

due process that will be denied if the Minor Modification as written is allowed to stand – rather a landfill that is more protective of public health and the environment will be allowed to be permitted.

Furthermore, this Court has stated that: “[e]quitable tolling is a doctrine rarely applied in South Carolina to stop the running of the statute of limitations. The doctrine is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or in other words, if the relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine.” *Fabri et al. vs. DHEC and Nancy Union*, 2009 WL 332981, * 3 (ALJD 2009).

The *Fabri* case is directly on point. In that case, the Court held that parties given actual notice when a permit was first issued, do not necessarily have the right to future notices related to that permit. *Id.* Here, Petitioner received notice of the Highway 93 Permit in 2009 but did not request in writing to be treated as an “affected person” or have any other right to notice of future decisions relating to the permit – including the Minor Modification.

If the Court disagrees and believes Petitioner was required to get notice, it in fact, received actual notice over six months ago and still did not timely file its appeal. Therefore, lack of due process does not apply in this case. “One cannot complain of a due process violation if [he] has recourse to a constitutionally administrative procedure but merely declines or fails to take advantage of it. *Citizens for Sandy Flat vs. DHEC et al*, 2001 WL 1502396, *4 (SCALJD 2001).

IV. PETITIONER IMPROPERLY ATTEMPTS TO RESURRECT ITS PLEADING BY "APPEARING ON BEHALF" OF ADJOINING LANDOWNERS AND MEMBERS OF THE PUBLIC

Petitioner attempts to appear on behalf of individuals ("Movants") who allegedly own property in the County, some allegedly adjacent to the landfill, in order to create subject matter jurisdiction. Petitioner cannot lawfully repair lack of jurisdiction at this stage of the case.

Even if it could appear on behalf of individuals (which MRR Pickens' denies), those individuals have not established standing. First, Movants have sat on their rights and have had, at the very least, constructive notice of the Minor Permit Modification since December of 2104. They conveniently do not state in their affidavits when they received actual or constructive notice of the Minor Modification. Rather, they simply state they are not aware of a Public Notice from DHEC or MRR Pickens that was made and they did not receive a formal notification of the Minor Modification. [Exs. 16-20 to Pet.'s Response. It is undisputed that the Minor Modification at issue here has been the subject of articles in the paper in Greenville, Pickens County, Easley and the State Petitioner has been publicly discussing the Minor Modification at is Planning Commission and County Council Meetings since December of 2014. [Exhibit G; Newspaper Articles referencing Minor Modification and Meetings relating to Same (Dec. 2014 - Jan. 2015)].

Furthermore, Movants received notice of the 2008 permit. This Court has held where a party has notice of a previous permit or ongoing operations, it must take active steps to receive future notices if it has an "interest" in the permitting operations. In the case of *Bba Nonwovens Simpsonville, Inc, Petitioner*, 00-ALJ-07-0337-CC, 2001 WL 1147378, at *6 (Sept. 7, 2001); citing *Smothers v. U.S. Fidelity and Guaranty Co.*, 322 S.C. 207, 470 S.E.2d 858 (Ct. App. 1996) (every citizen is presumed to have knowledge of the law and must exercise reasonable

care to protect his interests). Movants left it up to other parties to inquire into the permit modification and to Pickens County to appeal its issuance. Unfortunately, Pickens County failed to timely and properly do so and the Movants can't now come forward to fix the County's jurisdictional issues.

Finally, Petitioner has not sufficiently pled facts in the Affidavits of the Movants or in its pleadings to establish the Movants have requisite injury in fact. An organization has standing only if it alleges that it or its members will suffer an individualized injury; a mere interest in a problem is not enough. *Energy Research Found. v. Waddell*, 295 S.C. 100, 102, 367 S.E.2d 419, 420 (1988); citing *In Sierra Club v. Morton*, 405 U.S. 727, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972), See also *United States v. SCRAP*, 412 U.S. 669, 93 S.Ct. 2405, 37 L.Ed.2d 254 (1973) (environmental group standing where complaint alleged increase in freight rates would discourage use of recycled goods); *Conservation Council of North Carolina v. Costanzo*, 505 F.2d 498 (4th Cir.1974) (following *Sierra*, supra, finding no standing of licensee alleging environmental injury to another's land).

Petitioner cites issues such as "dust and ash, and contamination of the air, soil, surface water and groundwater in the area in which the transport trucks travel, and in the area of the landfill. . . ." Petitioner's Response at p. 27. First, the aforementioned issues are speculative in nature and, more importantly, are not triggered by the Minor Modification at issue here. This is because the Minor Modification does not change the waste stream allowed under Respondent MRR Pickens' 2008 Highway 93 Class 2 Permit. Second, the issues of alleged dust, contamination and diminution in property values that exist in 2015 are the same as those that allegedly existed in 2008 – a liner added via the 2015 Minor Modification do not increase those concerns. Neither Pickens County nor the Movants raised these concerns in 2008 when MRR

Pickens was issued a Class Two Landfill Permit. In fact, Petitioner makes clear "Pickens County and MRR were in complete accord with the terms of the 2008 Permit." Ex. 7 to Petitioner's Response.

V. DISCOVER IS NOT APPROPRIATE ON THE SOLE ISSUE BEFORE THE COURT: WHETHER PETITIONER WAS LATE AND FAILED TO SERVE ITS APPEAL.

Petitioner requests discovery on certain issues prior to the Court ruling on the Motions to Dismiss filed by both DHEC and MRR Pickens. It says those issues are limited to a few issues, but a review of the list of those issues illustrates that they cover the entire case. The issues are:

1. Issues of determination regarding major modification and whether the changes are major pursuant to the regulation;
2. Proof of lack of Notice;
3. Proof of prejudice to the public, to all adjoining landowners and to the County;
4. Communication between MRR and DHEC regarding the agreement to characterize modifications as "minor", and
5. Any issues regarding standing (if standing is challenged).

Regarding Item 1, for the reasons stated above, major verses minor only matters if the issue of "public notice" comes to play. Where Petitioner had actual notice, and the public has had constructive notice since December of 2015, public notice is not relevant to the Motions to Dismiss.

Regarding Item 2, Petitioner has conceded to actual notice. DHEC has conceded that no public notice was given on the 2015 modification because it was treated as "minor". The facts show the public has had access to information in the newspapers (both state and local) and from their County Council and Planning Commission Members since December of 2014. Therefore,

the facts surrounding "notice" are not in dispute. No discovery will provide further enlightenment on this issue.

Regarding Item 3, Petitioner has access to alleged facts relating to allegations of prejudice to the public. Testimony from Respondents achieved through discovery will not provide any information related to this topic.

Regarding Item 4, discussions between DHEC and a permittee relating to how DHEC plans to handle an application for a modification will not enlighten the Court on whether Petitioner had notice and timely filed and served its appeal in this case. It is further irrelevant to the issues at stake.

Regarding Item 5, like Item 3, Petitioner has access to alleged the facts relating to standing. As stated above and in Respondent MRR's Response to Movant's Request to Intervene, Respondent MRR does not believe any of the Movants have standing. However, this Court need not address standing of the Movants, where it does not have a justiciable case into which the Movants can intervene.

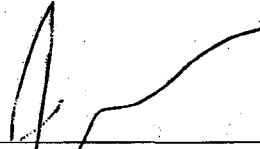
Finally, Petitioner raises the need for discovery to further delay a decision on the Motions. Respondent MRR respectfully requests the Court not further burden the parties with discovery that will have no effect on the facts necessary to rule on the Motions to Dismiss before the Court at this time.

CONCLUSION

This Court does not have jurisdiction to hear this matter for the following reasons: (1) Petitioner Pickens County failed to timely file its Request for Final Review of the DHEC staff Minor Permit Modification Decision with the DHEC Board pursuant to Section 44-1-60(E) of

the South Carolina Code and thus, Petitioner did not exhaust its administrative remedies; (2) Petitioner failed to timely serve the Request for a Contested Case Hearing on Respondent MRR Pickens by mailing to MRR Pickens' last known address within 30 days of actual or constructive notice of the DHEC Board Final Agency Decision. For the reasons set forth above, MRR Pickens request the Court dismiss with prejudice Petitioner Pickens County's Request for a Contested Case Hearing. Finally, Respondent MRR Pickens respectfully requests this Court deny Petitioner's request for discovery, as discovery is not necessary to rule on the Motions to Dismiss and will cause undue delay and burden on the parties.

Respectfully submitted,



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Attorneys for Respondent MRR Pickens, LLC

Columbia, South Carolina
September 6, 2016

MRA Exhibits - ~~ALL~~

Respondent MRR Pickens, LLC

Exhibit A



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

September 19, 2008

CERTIFIED MAIL

91 7108 2133 3932 9290 2453

Mr. Ronald C. Gilkerson, P.G.
MRR Pickens, LLC
11743 Trails End Lane
Charlotte, NC 28078

RE: Draft Permit for Class 2 Solid Waste Landfill
Proposed Highway 93 C & D Landfill
Location: 34° 47' 50" N, 82° 40' 30" W
Pickens County

Dear Mr. Gilkerson:

The Department has completed the review of your submittal dated November 2007, with the August 2008 revisions on the proposed Class 2 Landfill. Enclosed is a draft permit for the proposed Highway 93 Construction, Demolition and Land-Clearing Debris Landfill in Pickens County. This permit is drafted under Regulation 61-107.19, *Solid Waste Management: Solid Waste Landfills and Structural Fill*. If you have any comments regarding the permit conditions, please respond by **October 20, 2008**.

The Public Notice of the draft permit will be published in the *Easley Progress* and *The Pickens Sentinel* on September 19, 2008. (Copy Attached) If no comments are received the permit may be issued as written.

If you should have any questions, please contact Timothy M. Eleazer at (803) 896-4217.

Sincerely,

Joan F. Litton, Manager
Solid Waste Permitting Section
Division of Mining and Solid Waste Management
Bureau of Land and Waste Management

JFL/TME/tme

Enclosures

cc: Bill Rampey, Region 2, Greenville EQC Office
Keith Collinsworth, P.G. Manager, Solid Waste Groundwater Section
Marty Lindler, Manager, Solid and Hazardous Waste Compliance
Donna Rowe, Upstate Regional Community Liaison (Region 1 & 2)
Jeff Herbig, P.E., B.P. Barber and Associates, Columbia, SC
BLWM File # 021212



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-###

Permit Issued Date: _____ Permit Effective Date: _____

Permission is hereby granted to:

Name of Facility: Highway 93 C & D Landfill
Permittee: MRR Pickens, LLC
Address: 11743 Trails End Lane
Charlotte, NC 28078
Contact: Mr. Ronald C. Gilkerson
Phone: (704) 947-6652

for the operation of a Class 2 landfill at 2180 Greenville Highway, Liberty, South Carolina, 29657 in Pickens County located off Highway 93 at Glardy Road approximately 2,000 feet NE of the City of Liberty, SC.

This permit is issued pursuant to Section 44-96-10 *et seq.* (Supp. 2007) and 25A S.C. Code of Regulations Section 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.

Kent M. Coleman, P.G., Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-###
September 19, 2008
Page 1 of 4

MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-###

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the design specifications and construction plans received November 30, 2007; and last revised August 26, 2008, unless permit conditions state otherwise.
2. This permit is limited solely to the disposal of items listed in Appendix I of R.61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to June 30). Information concerning the facility's previous Fiscal Year's waste receipts is due in the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV. Subpart C is to the attention of:

Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

4. All Appendix-I acceptable wastes must be covered at least every thirty (30) days with a minimum of six (6) inches of clean soil, except for test spots containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to twelve (12) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than twelve (12) acres (at the time of the certification). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before **July 1** of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (38,720 yd³ of soil for 12 acres with 2' thickness). The certification shall have been completed within the last 60 days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.
2. Within ninety (90) days of the effective date of this permit, the Permittee shall submit a detailed Compliance Plan that describes steps to be taken in order to fully comply with all regulatory requirements of R.61-107.19 that relate to Class I Landfills. This Compliance Plan shall include, but not limited to, the following: a groundwater monitoring design workplan, a landfill post-closure care plan, and a landfill post-closure care cost estimate. Upon the Department's approval of said Compliance Plan, the Permittee will have six (6) months to implement the plan and will have a deadline for full compliance with R.61-107.19 of **November 19, 2009**.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. SPECIAL ENVIRONMENTAL PERMIT CONDITIONS

Within ninety (90) days of the effective date of this permit, the Permittee shall submit to the Department for review, a Groundwater Monitoring Design Workplan in accordance with R.61-107.19, Part IV, Section E (Groundwater Monitoring and Corrective Action). In addition, an approved groundwater monitoring system must be installed and operating prior to November 19, 2009, pursuant to R.61-107.19, Part I, Section A.6.c. Upon the Department's approval of the Groundwater Monitoring Design Workplan, permit conditions C.2, C.3 and C.4 will become effective.

2. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit.

The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.

- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- e) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

3. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine monitoring at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Part IV Subpart B.

4. REPORTING

- a) The Permittee shall submit to the Department the results of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following sampling schedule:

<u>Sampling Schedule</u>	<u>Results Due</u>
November/December	January 15 (Semi-Annual)
May/June	July 15 (Annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.2.A.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Groundwater Section, and to the Solid Waste Consultant in Region 2 EQC (Greenville).

5. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required comply with R.61-107.19, Part IV, Section C.21.



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

13

MEMORANDUM

TO: Bill Rampey
Region 2 EQC Office
Greenville EQC Office

FROM: Timothy M. Eleazer *TME*
Solid Waste Permitting Section

DATE: September 19, 2008

RE: Public Notice of the Draft Highway 93 C&D, LCD Landfill
(Pickens County)

Enclosed is a copy of the revised application for the proposed construction, demolition and land-clearing debris landfill. Please make it available for public inspection, until the end of the public review period on October 20, 2008. A public notice is to be printed in *Easley Progress* and *The Pickens Sentinel* on September 19, 2008.

Your cooperation in this matter is appreciated and if you have any questions, please contact me at (803) 896-4217.

TME/tme

Respondent MRR Pickens, LLC

Exhibit B

RECEIVED

22a

Easley, November 12, 20 08

DEC 4 2008

In Account With

The Easley Progress

205 Russell Street, Easley, SC 29640

The Pickens Sentinel

109 West Main Street, Pickens, SC 29671

• PO Box 709 • Easley, SC 29641 • (864) 855-0355

DIVISION OF MINING &
SOLID WASTE MANAGEMENT,
BLWM

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS.

PERSONALLY appeared Ben Robinson, who, being duly sworn, says that he is Managing Editor of *The Easley Progress*, a newspaper being published twice each week at Easley and *The Pickens Sentinel*, a newspaper being published once each week at Pickens, both in Pickens County, South Carolina; and that the clipping hereto attached is a true copy of printed matter appearing in the issues of *The Easley Progress* and *The Pickens Sentinel* of:

11/12

and that the matter shown on said copy was duly published in the issues of *The Easley Progress* and *The Pickens Sentinel* above mentioned in their general circulation

SWORN to before me this 12th day of November, A.D. 20 08

(SEAL)

Bonnie Serey (L.S.)
Notary Public for South Carolina

PUBLIC NOTICE
STATE OF SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Bureau of Land and Waste Management
NOTICE OF DEPARTMENT DECISION

Topic: Highway 93 C&D Landfill
Location: 2180 Greenville Highway, Liberty, SC 29657

Off Highway 93 at Clardy Road in Pickens County;

Approximately 2,000 feet NE of the City of Liberty, SC.

The South Carolina Department of Health and Environmental Control (Department) is noticing its decision to approve the application submitted by MRR Pickens, LLC for a Class 2 Landfill for the above referenced site. This permit is issued under SC Code Ann. Sections 44-96-10 et. Seq. and 25A SC Code Reg. 61-107.19, Solid Waste Management: Solid Waste Landfills and Structural Fill.

This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person.

An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393: ATTN: Clerk of the Board, SC DHEC, 2600 Bull Street, Columbia, SC 29201. The request for final review should include the following:

1. The grounds on which the Department's decision is challenged and the specific changes sought in the decision

2. A statement of any significant issues or factors the Board should consider in deciding how to handle the matter

3. A copy of the Department's decision or action under review

In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the Department decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due.

If you have any questions, you may contact Joan Litton at (803) 896-4264.

38c

Pickens, Jan. 16 20 08

The Pickens Sentinel

109 West Main Street • PO Box 95 • Pickens, SC 29671 • 864-878-2453

STATE OF SOUTH CAROLINA COUNTY OF PICKENS

PERSONALLY appeared Scott Williamson, who,
being duly sworn, says that he is Publisher
of *The Pickens Sentinel*, a newspaper being
published weekly at Pickens, in Pickens County,
South Carolina; that the clipping hereto attached
is a true copy of printed matter appearing in
the issues of *The Pickens Sentinel* of

1/16/2008

and that the matter shown on said copy was
duly published in the issues of *The Pickens
Sentinel* above mentioned in its general
Circulation.

SWORN to before me this 16th day of

January, A.D. 2008

(Seal)

Donna Sealey (L.S.)
Notary Public for South Carolina

RECEIVED

JAN 28 2008

DIVISION OF MINING &
SOLID WASTE MANAGEMENT
BLWM

SC DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL PUBLIC NOTICE

Topic: Proposed Highway 93 Construction,
Demolition and Land-Clearing Debris
(C&D) Landfill Permit

Location: 2180 Greenville Highway,
Liberty, SC 29657; Off Highway 93 at Clardy
Road in Pickens County; Approximately
2,000 feet NE of the City of Liberty, SC.

The South Carolina Department of Health and
Environmental Control's (SCDHEC) Solid
Waste Permitting Section has received a per-
mit application from MRR Pickens, LLC, for
the establishment of a new long-term, com-
mercial C&D landfill. The proposed landfill
will be located within a 149-acre parcel of
property located off Highway 93 at Clardy
Road approximately 2,000 feet northeast of the
city limits of Liberty, SC. The proposed land-
fill is estimated to have a disposal lifetime of
more than fifty (50) years.

SCDHEC requires that a permit be issued for
C&D landfills pursuant to SC Code Ann. Sec-
tions 44-96-10 et. Seq. (Supp. 2006) and 25A
SC Code Reg. 61-107.11, *Construction, Demolition
and Land-Clearing Debris Landfills*
(Supp. 2006). The types of wastes that can be
accepted at the Highway 93 C&D Landfill are
described in Appendix I of the above-men-
tioned regulation. Acceptable wastes include,
but are not limited to, land-clearing debris,
bricks, blocks, shingles, untreated lumber, and
other wastes listed in Appendix I that have not
been in contact with lead-based paint, hazard-
ous constituents, or petroleum products.

Wastes that are not acceptable at C&D land-
fills include household garbage, hazardous
waste, and infectious waste. For a more de-
tailed description of Appendix I-acceptable
wastes, please contact one of the persons be-
low to view the application or to request a
C&D landfill fact sheet. A copy of the regula-
tion may also be viewed at the following web-
site:

<http://www.scdhec.gov/lwm/html/reg.html>

At this time, the Solid Waste Permitting Sec-
tion has completed an administrative review of
the permit application and found that all re-
quired documents are in place to begin a tech-
nical review.

Who to contact? Copies of the permit appli-
cation are available by appointment for public
viewing during normal working hours, at the
following locations:

Bureau of Land and Waste Management
SC Department of Health and Environmental
Control, 8911 Farrow Road, Columbia, SC
29223

Contact: Timothy M. Eleazer,
(803) 896-4217

E-mail: eleazertm@dhcc.sc.gov

Environmental Quality Control Regional Of-
fice, SC Department of Health and Environ-
mental Control, Region 2 - Greenville
301 University Ridge, Suite 5800
Greenville, SC 29601-3677

Contact: Bill Rampey, (864) 241-1098

E-mail: rampeybi@dhcc.sc.gov

Any interested person(s) may submit written
comments concerning the proposed landfill
permit application to this mailing address: Mr.
Timothy M. Eleazer, SCDHEC BLWM, 2600
Bull Street, Columbia, SC 29201.

Any individuals with disabilities or special
needs who want to review the permit appli-
cation should contact the Department to dis-
cuss any special services needed. A minimum of
one (1) week's prior notice is requested to al-
low the Department to make any necessary ar-
rangements.

Jan 16

Respondent MRR Pickens, LLC
Exhibit C



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

021215

14a

MEMORANDUM

TO: Adjacent Landowners

FROM: Timothy M. Eleazer *TME*
Solid Waste Permitting Section
Division of Mining and Solid Waste Management
Bureau of Land and Waste Management

DATE: September 19, 2008

Re: Proposed Class 2 Landfill
Highway 93 C&D, LCD Landfill
Pickens County

The South Carolina Department of Health and Environmental Control's (SCDHEC) Solid Waste Permitting Section has received a permit application from MRR Pickens LLC for a Class 2 Landfill. The Department has completed a technical review of the application. At this time, the Department's Solid Waste Permitting Section has issued a draft permit for this Class 2 Landfill and will be taking comments from the public before a final permit decision is made.

Please see the attached Public Notice for additional information on the proposed project. A Copy of the regulation may also be viewed at the following website:
http://www.scdhec.gov/environment/lwm/html/solidwaste_new_regulation.htm

If you have any questions regarding the proposed landfill or wish to view the permit application, please contact me at (803) 896-4217.

TME/tme

Enclosure

**SC DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
PUBLIC NOTICE**

Topic: Proposed Highway 93 Construction, Demolition and Land-Clearing Debris (C&D) Landfill Permit

Location: 2180 Greenville Highway, Liberty, SC 29657
Off Highway 93 at Clardy Road in Pickens County;
Approximately 2,000 feet NE of the City of Liberty, SC.

The South Carolina Department of Health and Environmental Control's (SCDHEC) Solid Waste Permitting Section has received a permit application from MRR Pickens, LLC for a new Class 2 Landfill. The proposed landfill will be located within a 149-acre parcel of property located off Highway 93 at Clardy Road approximately 2,000 feet northeast of the city limits of Liberty, SC. The proposed landfill is estimated to have a disposal lifetime of more than fifty (50) years.

SCDHEC requires that a permit be issued for Class 2 Landfills pursuant to SC Code Ann. Sections 44-96-10 et. Seq. (Supp. 2007) and 25A SC Code Reg. 61-107.19, *Solid Waste Management: Solid Waste Landfills and Structural Fill*. The types of wastes that can be accepted at the MRR Pickens, LLC C&D Landfill are described in Appendix I of the above-mentioned regulation. Acceptable wastes include, but are not limited to, land-clearing debris, bricks, blocks, shingles, lumber, and other wastes listed in Appendix I. Wastes that are not acceptable at Class 2 landfills include household garbage, hazardous waste, and infectious waste. For a more detailed description of Appendix-I-acceptable wastes, please contact one of the persons below to view the application or to request a Class 2 Landfill fact sheet. A copy of the regulation may also be viewed at the following website: <http://www.scdhec.gov/environment/lwm/regulatory.htm>.

At this time, the Solid Waste Permitting Section has completed its review of the permit application and found that the application meets all technical requirements. Solid Waste Permitting has completed a draft permit and hereby gives notice to the public. During the public comment period the Department will be taking comments from the public concerning the draft permit, which is inclusive of the Department's determinations as outlined in R.61-107.19 Part I.D.2.b.and/or the permit application. The comment period will remain open until October 20, 2008.

Who to contact? Copies of the permit application are available by appointment for public viewing during normal working hours at the following locations:

Bureau of Land and Waste Management
SC Department of Health and Environmental Control
8911 Farrow Road
Columbia, SC 29223

Contact: Timothy M. Eleazer, (803) 896-4217
E-mail: eleazetm@dhc.sc.gov

Environmental Quality Control Regional Office
SC Department of Health and Environmental Control
Region 2 - Greenville
301 University Ridge, Suite 5800
Greenville, SC 29601-3677

Contact: Bill Rampey, (864) 241-1090
E-mail: rampeybj@dhc.sc.gov

Any interested person(s) may submit written comments concerning the proposed landfill permit application to this mailing address: Mr. Timothy M. Eleazer, SCDHEC BLWM, 2600 Bull Street, Columbia, SC 29201. To be considered, all comments or requests must be received by October 20, 2008, at which time the public comment will end.

Any individuals with disabilities or special needs who want to review the permit application should contact the Department to discuss any special services needed. A minimum of one (1) week's prior notice is requested to allow the Department to make any necessary arrangements.

665/865

**Mailing list for the proposed MRR Pickens LLC
Highway 93 C&D Landfill,
Pickens County.**

This mailing list for draft permit dated September 19, 2008.

PETER H SMITH
PO BOX 467279
ATLANTA GA 31146

VUCAN LANDS, LLC
PO BOX 80730
ATLANTA GA 30366

METROMONT MATERIALS
C/O CEMEX
PO BOX 1500
HOUSTON TX 77251-1500

JAMES D MOORE
PO BOX 4
LIBERTY SC 29657-0004

MARGRET WELBORN
LIFE ESTATE
107 DANA DR
OAKRIDGE TN 37830

~~KING~~ ASPHALT INC
PO BOX 179
LIBERTY SC 29657-0179

LAURA W FOWLER TRUSTEE
210 ORANGE ST
SATELLITE BCH FL 32937-3013

TONY CHARPING
PO BOX 677
LIBERTY SC 29657

RANDOLPH E REVIS SR
2026 GREENVILLE HWY
LIBERTY SC 29657

GB ENTERPRISES LTD
PO BOX 486
EASLEY SC 29640-0486

MARGARET WELBORN
LIFE ESTATE
610 CAROLINA DR
LIBERTY SC 29657-1551

PHILIP J KALCHTHALER
108 CORAL BBEDS WAY
SUNSET SC 29685

MAYOR CITY OF LIBERTY
CITY HALL
LIBERTY SC 29657

ROBERT L TRABER
2041 GREENVILLE HWY
LIBERTY SC 29657-8920

WILLIAM R MCBRIDE TRUSTEE
933 JESSICA ST
RIDGECREST CA 93555-3002

COUNTY ADMINISTRATOR
PICKENS COUNTY
222 MCDANIEL AVE STE B1
PICKENS SC 29671-2556

NEW HORIZON-ELECTRIC
COOPRATIVE INC
PO BOX 1169
LAURENS SC 29360-1169

DUKE ENERGY CORP
PO BOX 1007
CHARLOTTE NC 28201

SAMMY SMITH
206 LAKESIDE LN
LIBERTY SC 29657-3810

UNA W HUGHES
540 AMSTERDAM RD
LIBERTY SC 29657-9373

ERIC M LILIESTEDT
143 BUD SMITH RD
LIBERTY SC 29657-9335

CALVIN L SCHOULTIES
1630 DAVIS CREEK RD
SENECA SC 29678

JAMES S COX
1639 EARLS BRIDGE RD
EASLEY SC 29640-6307

MICHAEL DAVID THOMPSON
348 COBB RD
PELZER SC 29669

GREGORY A CRUMP
208 WELBY WAY
LIBERTY SC 29657

ROBERT EDWARD KELLEY
211 GILSTRAP RD
LIBERTY SC 29657

JAMES RAY CHANDLER
118 CLOVER ST
LIBERTY SC 29657

BRIAN PAUL WASTON
115 CLOVER ST
LIBERTY SC 29657

SHELBA C PORTER
634 AMBERWOOS RD
PICKENS SC 29671

CRYSTAL D HOLLIDAY
114 CLOVER ST
LIBERTY SC 29657

JR BUILDERS OF PICKENS INC
1712 GENTRY MEMORIAL HWY
EASLEY SC 29640

PETER H SMITH
1810 N POTTER PL
TUCSON AZ 85719-3833

EASLEY BUILDERS SUPPLY
INC
PO BOX 1016
EASLEY SC 29641-1016

SAMUEL J VIDAL
175 ORCHARD DR
LIBERTY SC 29657-9317

EDITH M HEAD
172 ORCHARD DR
LIBERTY SC 29657-9317

DIANE H HUTTON
110 POPLAR POINTE
SUNSET SC 29685

BETTY C DUNCAN
18 N PALMETTO ST
LIBERTY SC 29657-1026

ROSA LEE JAMES
2011 GREENVILLE HWY
LIBERTY SC 29657-8920

BARBARA HEAD ROGERS
2001 GREENVILLE HWY
LIBERTY SC 29657-8920

CYNTHIA D YOUNG
PO BOX 36
LIBERTY SC 29657

CITY OF LIBERTY
FIRE DEPARMENT
206 W FRONT ST
LIBERTY SC 29357

PICKENS COUNTY SCHOOL
SUPERINTENDENT
1348 GRIFFIN MILL RD
EASLEY SC 29640-8885

EASLEY CENTRAL WATER
DISTRICT
PO BOX C
NORRIS SC 29667-0050

VIRGINIA JUMPER
1307 ANDERSON HWY
EASLEY SC 29642

WATKINS BUILDERS INC
TROY WATKINS
405 WEXFORD WAY
EASLEY SC 29642

FURMAN RICHARD STATON
360 SPRINGDALE AVE
LIBERTY SC 29657

THOMAS K NIX
356 SPRINGDALE AVE
LIBERTY SC 29657-3807

WILLIAM W GARRISON
352 SPRINGDALE AVE
LIBERTY SC 29657-3807

JASON LEE WADE
348 SPRINGDALE AVE
LIBERTY SC 29657-3807

TIMOTHY RAY RIDDLE
344 SPRINGDALE AVE
LIBERTY SC 29657-3807

KALOUTIE RANDASS
340 SPRINGDALE AVE
LIBERTY SC 29657-3807

ANGELA MARIE CHADWICK
336 SPRINGDALE AVE
LIBERTY SC 29657-3807

JAMES N YOUNG JR
332 SPRINGDALE AVE
LIBERTY SC 29657-3807

KEVIN R JONES
326 SPRINGDALE AVE
LIBERTY SC 29657-3807

Respondent MRR Pickens, LLC

Exhibit D



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

Bureau of Land and Waste Management

MEMORANDUM

DATE: November 3, 2008

TO: Concerned Citizens

FROM: Kent M. Coleman, P.G. Director
Division of Mining and Solid Waste Management
Bureau of Land and Waste Management

SUBJECT: **Class 2 Solid Waste Landfill Permit**
Permit Issuance for Highway 93 C&D Landfill
Permit No. LF2-00003
Pickens County

After careful review of information submitted by MRR Pickens, LLC (the Applicant), the South Carolina Department of Health and Environmental Control (the Department) has approved the application for a new Class 2 landfill (previously Construction, Demolition and Land-Clearing Debris (C&D) landfill). The landfill is located off Highway 93 near Liberty, South Carolina, Pickens County, SC. The approved Permit and a Staff Decision Summary Report have been enclosed for your information. The Summary Report addresses comments received during the public comment period for the proposed landfill.

This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person. This decision may be appealed by complying with the requirements described in the attached *Notice of Appeal Procedure*, provided as a courtesy by the Department.

If you have any questions regarding the solid waste permit, you may call Joan F. Litton at (803) 896-4264.

KMC/TME/tmc

Enclosures



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

Notice of Appeal Procedure

The following procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person.
2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393:

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201
3. The request for final review should include the following:
 - a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
 - b. a statement of any significant issues or factors the Board should consider in deciding how to handle the matter
 - c. a copy of the Department's decision or action under review
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the Department decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

October 31, 2006

STAFF DECISION SUMMARY REPORT

October 30, 2008

Approval of Class 2 Solid Waste Landfill (previously C&D) Application Issuance of Permit for the Highway 93 C&D Landfill

This summary report addresses the South Carolina Department of Health and Environmental Control's (the Department's) decision to issue a Class 2 Landfill permit for the proposed Highway 93 C&D Landfill owned and operated by MRR Pickens, LLC (Applicant). The site is located at 2180 Greenville Highway, Highway 93, near Liberty, South Carolina in Pickens County. This summary report provides responses to comments received throughout the public comment period.

SOLID WASTE MANAGEMENT

The principal law governing solid waste management in this state is the South Carolina Solid Waste Policy and Management Act of 1991 (Act) [44-96-10]. One of the main purposes of the Act is to ensure those activities associated with solid waste management are executed in a manner adequate to protect human health, safety and welfare of the environment.

The passage of the Act acknowledged a growing statewide concern about the generation, management, and disposal of solid waste. DHEC was given the responsibility to develop regulations establishing minimum standards for solid waste management facilities. Regulation 61-107.11, *Solid Waste Management: Construction, Demolition and Land-Clearing Debris Landfills* became effective on April 24, 1998, and was the applicable regulation when the Department on June 27, 2006 received the permit application. Regulation 61-107.11 was replaced by Regulation 61-107.19, *Solid Waste Management: Solid Waste Landfills & Structural Fill*, on May 23, 2008. This regulation outlines the requirements for permitting the design, construction, operation, maintenance, and closure of landfills. Please see the following web page http://www.scdhec.gov/environment/lwm/html/solidwaste_new_regulation.htm for a more complete description and for a copy of the new regulation.

In reaching its decision on the permit application, the Solid Waste Permitting Section reviewed all information submitted in the application, supplemental information submitted, and public comments. The Department has reviewed the application with respect to the requirements of the Act and Regulation 61-107.19. The applicant has met the applicable requirements and a permit is being issued.

PUBLIC PARTICIPATION AND NOTICE

The following is a summary of public involvement that occurred during the Department's consideration of this application:

- On January 16, 2008, the original application package was advertised to the public in *The Pickens Sentinel* newspaper of Pickens County.

- On September 19, 2008, notice was advertised to the public in *The Easley Progress* and *The Pickens Sentinel*.
- On September 19, 2008, the public notice of the draft permit was mailed to adjacent landowners.

TRAFFIC CONCERNS

The current solid waste law and regulations do not grant the Department the authority to regulate traffic on public roads. Jurisdictional authority over the setting and enforcement of weight limits, speed limits, traffic patterns, encroachments, etc. is the responsibility of other state and local entities.

BUFFERS

Regulation 61-107.19, Part IV B.1 a. & g. requires that the boundary of the fill area not be located within 1,000 feet of any residence, school, day-care center, church, hospital, or publicly owned recreational park area and not be located within 100 feet of any drinking water well. The Applicant's submittal for the landfill meets all regulatory requirements for buffers.

GROUNDWATER QUALITY

Class 2 Landfills are required to meet all the design and operational requirements set forth in Regulation 61-107.19 – Part IV. The landfill regulations were promulgated as a means of providing environmentally sound disposal options for those inert construction wastes and demolition wastes listed in Appendix I of R.61-107.19. As such, these landfills are required to monitor groundwater, and are required to design the landfill to achieve a required two (2) feet separation from the seasonal high groundwater table (Regulation 61-107.19 – Part IV.D.1). The permit will have groundwater monitoring and reporting requirements. The monitoring wells will be monitored semiannually for the constituents in Appendix III of the Regulation R.61-107.19 with the results reported to the Department.



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

November 3, 2008

CERTIFIED MAIL

Mr. Ronald C. Gilkerson, P.G.
MRR Pickens, LLC
11743 Trails End Lane
Charlotte, NC 28078

**RE: Class 2 Solid Waste Landfill Permit for
Highway 93 C&D Landfill
Permit No. LF2-00003
Location: 34° 47' 50" N, 82° 40' 30" W
Pickens County**

Dear Mr. Gilkerson:

Enclosed is a Class 2 Solid Waste Landfill Permit for the Highway 93 Construction and Demolition Landfill in Pickens County. This permit is issued under Regulation 61-107.19 *Solid Waste Management: Solid Waste Landfills and Structural Fill*. Also, enclosed is the approved landfill Engineering Report and Engineering Drawings, to be kept at the facility at all times.

The financial assurance for closure of this facility is established at three hundred thousand dollars (\$300,000) at this time. A mechanism that is acceptable to the Department must be established in the amount previously specified prior to the facility accepting waste. Please contact Pete Stevens of my staff at (803) 896-4149 for help in establishing a financial assurance mechanism that is acceptable to the Department.

This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person. This decision may be appealed by complying with the requirements described in the attached *Notice of Appeal Procedure*, provided as a courtesy by the Department.

MRR Pickens, LLC is responsible for complying with all of the conditions in the attached permit and should review each condition carefully.

November 3, 2008 letter
MRR Pickens Class 2 Landfill
Page 2 of 2

If you should have any questions, please contact Joan F. Litton of my staff at (803) 896-4264. All other questions should be directed to Bill Rampey in the Region 2 – Greenville EQC Office at (864) 241-1090.

Sincerely,



Kent M. Coleman, P.G. Director
Division of Mining and Solid Waste Management
Bureau of Land and Waste Management

KMC/TME/tme

Enclosures

cc: Bill Rampey, Region 2, Greenville EQC Office
Keith Collinsworth, P.G. Manager, Solid Waste Groundwater Section
Marty Lindler, Manager, Solid and Hazardous Waste Compliance
Jeff Herbig, P.E., B.P. Barber and Associates, Columbia, SC
BLWM File # 021212

Notice of Appeal Procedure

The following procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person.
2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393:

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201
3. The request for final review should include the following:
 - a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
 - b. a statement of any significant issues or factors the Board should consider in deciding how to handle the matter
 - c. a copy of the Department's decision or action under review.
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the Department decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

October 31, 2006

675/865



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003

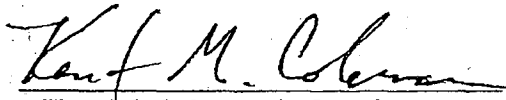
Permit Issued Date: November 3, 2008 Permit Effective Date: November 18, 2008

Permission is hereby granted to:

Name of Facility: Highway 93 C & D Landfill
Permittee: MRR Pickens, LLC
Address: 11743 Trails End Lane
Charlotte, NC 28078
Contact: Mr. Ronald C. Gilkerson
Phone: (704) 947-6652

for the operation of a Class 2 landfill at 2180 Greenville Highway, Liberty, South Carolina, 29657 in Pickens County located off Highway 93 at Clardy Road approximately 2,000 feet NE of the City of Liberty, SC.

This permit is issued pursuant to Sections 44-96-10 *et seq.* (Supp. 2007) and 25A S.C. Code of Regulations Section 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, P.G., Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
November 3, 2008
Page 1 of 4

MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No., LF2-00003

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the design specifications and construction plans received November 30, 2007; and last revised August 26, 2008, unless permit conditions state otherwise.
2. This permit is limited solely to the disposal of items listed in Appendix I of R.61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to June 30). Information concerning the facility's previous Fiscal Year's waste receipts is due in the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV. Subpart C.16, to the attention of:

**Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201**

4. All Appendix-I acceptable wastes must be covered at least every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to twelve (12) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than twelve (12) acres (at the time of the certification). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (38,720 yd³ of soil for 12 acres with 2' thickness). The certification shall have been completed within the last 60 days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.
2. Within ninety (90) days of the effective date of this permit, the Permittee shall submit a detailed Compliance Plan that describes steps to be taken in order to fully comply with all regulatory requirements of R.61-107.19 that relate to Class 2 Landfills. This Compliance Plan shall include, but not limited to, the following: a groundwater monitoring design workplan, a landfill post-closure care plan, and a landfill post-closure care cost estimate. Upon the Department's approval of said Compliance Plan, the Permittee will have six (6) months to implement the plan and will have a deadline for full compliance with R.61-107.19 of **November 19, 2009**.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. SPECIAL ENVIRONMENTAL PERMIT CONDITIONS

Within ninety (90) days of the effective date of this permit, the Permittee shall submit to the Department for review, a Groundwater Monitoring Design Workplan in accordance with R.61-107.19, Part IV, Section E (Groundwater Monitoring and Corrective Action). In addition, an approved groundwater monitoring system must be installed and operating prior to November 19, 2009, pursuant to R.61-107.19, Part I, Section A.6.c. Upon the Department's approval of the Groundwater Monitoring Design Workplan, permit conditions C.2, C.3 and C.4 will become effective.

2. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit.

The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.

- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- e) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

3. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine monitoring at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Part IV Subpart E.3.

4. REPORTING

- a) The Permittee shall submit to the Department the results of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following sampling schedule:

<u>Sampling Schedule</u>	<u>Results Due</u>
November/December	January 15 (Semi-Annual)
May/June	July 15 (Annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.2.A.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Groundwater Section, and to the Solid Waste Consultant in Region 2 EQC (Greenville).

5. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required comply with R.61-107.19, Part IV, Section C.21.

Respondent MRR Pickens, LLC

Exhibit E

BEFORE THE BOARD OF HEALTH AND
ENVIRONMENTAL CONTROL
COLUMBIA, SOUTH CAROLINA

RECEIVED
S.C. DEPT. OF HEALTH
& ENVIRONMENTAL CONTROL
2009 MAR 25 PM 4:37
OFFICE OF THE COMMISSIONER
CHIEF OF STAFF
CLERK OF SCHEC BOARD

GB Enterprises,

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control and MRR Pickens,
LLC,

Respondents.

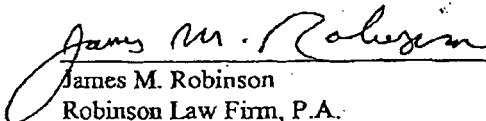
Docket No.: 08-RFR

NOTICE OF DISMISSAL

Petitioner GB Enterprises, also known as G&B Enterprises, Ltd. and GB Enterprises, Ltd. ("Petitioner"), by and through its attorney, voluntarily dismisses with prejudice its request for Board review of Class 2 Solid Waste Landfill Permit LF2-0003 ("Permit") issued to Respondent MRR Pickens, LLC ("MRR") on November 3, 2008 by Respondent South Carolina Department of Health and Environmental Control ("Department").

On November 11, 2008, Petitioner filed a Notice of Appeal of the Permit with the Board. By letter dated December 15, 2008, the Clerk of the Board notified Petitioner that the Board had decided on December 11, 2008, not to conduct a final review conference in this matter.

Petitioner and MRR have reached a resolution of the issues raised by Petitioner in its request for a final review conference. Petitioner now acknowledges that these proceedings are dismissed with prejudice, and Petitioner hereby waives its right to further appeal of the issuance of the Permit, including any right to a contested case hearing.


James M. Robinson
Robinson Law Firm, P.A.
Post Office Box 738
Easley, SC 29641-0738
(864) 859-7501

March
~~February~~ 10, 2009
Columbia, South Carolina

Attorney for Petitioner GB Enterprises

Respondent MRR Pickens, LLC
Exhibit F

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

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

MRR PICKENS, LLC,

PLAINTIFF,

vs.

DEPOSITION TRANSCRIPT

KENT M. COLEMAN

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

MARCH 8, 2016

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



A P P E A R A N C E S

REPRESENTING THE PLAINTIFF: *MRR Pickens, LLC*

JESSICA J.O. KING, ESQUIRE

A. KEITH MCALISTER, JR., ESQUIRE

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REPRESENTING THE WITNESS: *Kent Coleman and The South Carolina
Department of Health and Environmental Control*

ETTA R. LINEN, ESQUIRE

S.C. DEPARTMENT OF HEALTH

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COLUMBIA, SOUTH CAROLINA 29201

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A P P E A R A N C E S

REPRESENTING THE DEFENDANTS: --

AMY M. SNYDER, ESQUIRE

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GARY W. POLIAKOFF, ESQUIRE

POLIAKOFF & ASSOCIATES, PA

PO BOX 1571

SPARTANBURG, SOUTH CAROLINA 29304

EMAIL: atty@gpoliakoff.comREPRESENTING THE DEFENDANT: *Pickens County Planning Commission*

MATTHEW K. JOHNSON, ESQUIRE

CAMDEN D. NAVARRO, ESQUIRE

OGLETREE DEAKINS NASH SMOAK & STEWART, PC

106 DOMINICK COURT

GREENVILLE, SOUTH CAROLINA 29602

EMAIL: matthew.johnson@ogletreedeakins.comEMAIL: camden.navarro@ogletreedeakins.com

ALSO PRESENT: SHELLEY ROBBINS, CHRIS ROOF, AND DONALD
GRAVES (VIDEOGRAPHER)

C O N T E N T S

(Deposition of Kent M. Coleman)

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L E G E N D

- INDICATES INTERRUPTION; INCOMPLETE PHRASES;
UNFINISHED SENTENCES AND/OR TRAILING OFF.
- [sic] WRITTEN AS SAID.
- [ph] WRITTEN PHONETICALLY.

1 permit were modified to include it.

2 Q. Okay. I asked you before whether the Class Two
3 landfill in South Carolina could take coal combustion
4 residuals if they meet the threshold less than ten times
5 the MCL. And your answer was, "Yes, if they meet the
6 criteria." Notwithstanding the new regulator -- I mean,
7 the new law.

8 A. Right.

9 Q. Would MRR's 2008 permit allow them to accept
10 coal combustion residuals if they met the threshold and
11 notwithstanding the new law?

12 A. Yes.

13 Q. This 2008 permit, would it have gone out for
14 public notice?

15 A. When it was originally issued in '08? Yes.

16 Q. Okay. And what's the process for that?

17 A. Well it's laid out in the regulation in Part I,
18 but basically just -- if I can generalize it a little
19 bit. The requirement is that it be public noticed to
20 adjacent landowners and in the newspaper. And then we
21 would -- as a common practice, we would add others who
22 have expressed an interest, and also probably local
23 governments in the area, the County, maybe a nearby city
24 or town if it's close. That type of thing.

25 Q. Okay. So anyone receiving that, such as a

1 county --

2 A. Uh-huh.

3 Q. -- would have the opportunity to ask questions
4 if it was not clear to them what the permit allows.

5 A. We, we issued a public notice so that people
6 will be aware and they ask questions or make comments.

7 Q. Do you hold public hearings on permits?

8 A. Yes. If requested, we do -- or meetings or
9 hearings, whatever --

10 Q. Okay.

11 A. -- you know, folks would like to do, we
12 accommodate that.

13 Q. Do you recall on this particular permit
14 whether a public hearing was requested by any party?

15 A. No. I don't recall.

16 (PLAINTIFF'S EXHIBIT NO. 6; MARKED FOR IDENTIFICATION)

17 Q. Okay. I'm going to hand you another document
18 which will be Plaintiff's Exhibit 6. And this is dated
19 August 10, 2015. This is again, dated August 10, 2015,
20 and it's regarding issuance of a modified Class Two
21 Landfill Permit, Highway 93 Landfill, Permit No. LF2-
22 00003, Pickens County. Have you seen this document
23 before?

24 A. Yes.

25 Q. Is that your signature on the cover page and

1 the first page of the permit?

2 A. Yes.

3 Q. What is this document?

4 A. This was a -- when we issued a modified -- we
5 modified this Class Two permit.

6 Q. So you modified, just for clarification -- you
7 modified MRR Pickens Highway 93 landfill in 2015?

8 A. That's correct.

9 Q. And when you say you -- DHEC modified it.

10 A. Yes.

11 Q. And do you recall what modifications were made
12 to the permit?

13 A. I do remember, I think, the primary reason for
14 the modification was the addition of a synthetic liner,
15 designed with leachate collection. Basically a new
16 design for the landfill.

17 Q. Okay. And were you a part of -- were you
18 involved in this modification?

19 A. Yes.

20 Q. Okay. And I think the liner that you're
21 referring to is in section A-8 of the special conditions.
22 And you can clarify me if that's not what you were
23 referring to. But it's on Page 3 of the permit.

24 And it states, "60 days prior to starting
25 construction of the Class Two landfill, the permittee

1 shall notify the department of their selection between
2 option one, traditional Class Two, landfill design; and
3 option two, alternate liner design. And then it
4 discusses the financial assurance mechanism.

5 A. Uh-huh.

6 Q. So did this modification require MRR to
7 install a liner?

8 A. No.

9 Q. So it gives them the option. Is that correct?

10 A. That's correct.

11 Q. And the alternate liner design was, I expect,
12 described in the application for the permit
13 modification. Is that correct?

14 A. Yes.

15 Q. And what type of liner is this?

16 A. Well, I -- I do know that the liner design
17 included a synthetic component which generally is what we
18 refer to at least, as a subtitle D-type liner design.

19 Q. Okay. And are those the types of liners that
20 you often see in a Class Three landfill?

21 A. Yes.

22 Q. Or always see in a Class Three landfill?

23 A. Yes. That's the type of liner that would be
24 required in a Class Three, yes.

25 Q. But not required in a Class Two?

1 A. Correct.

2 Q. And is it safe to say that a subtitle D liner
3 provides added protection to the environment in a
4 landfill of any kind?

5 A. As compared to what -- no liners?

6 Q. An unlined landfill.

7 A. Yes, certainly.

8 Q. Okay. Are Class Two landfills required to have
9 any type of liner?

10 A. Class Two?

11 Q. Yeah.

12 A. No.

13 Q. And in your opinion, if a permittee, came to
14 DHEC and asked to install a liner that is not required in
15 the regulations --

16 A. Uh-huh.

17 Q. -- would there be any reason for DHEC to deny
18 that request?

19 MR. POLIAKOFF: Objection, form.

20 Leading.

21 A. I -- I can't think of a reason why we would
22 deny a liner request, if it were not required.

23 Q. And I guess what I'm asking, is there any
24 negative impacts to the presence of a liner in a solid
25 waste landfill, to your knowledge?

1 A. Not for the department or the environment. No.

2 Q. Does the addition -- let's look at one other
3 portion of the permit. And you may need to have the '08
4 permit in front of you as well --

5 A. Okay.

6 Q. -- with the '15, so that we can compare. I'm
7 not sure which Exhibit the '08 permit is.

8 MR. POLIAKOFF: Five.

9 Q. Five. Thank you. So if you look at the '08
10 permit, well Plaintiff's Exhibit 5, and this 2015
11 modification, condition -- special condition A-2 states,
12 in '15 states, this permit is limited to the disposal of
13 the items listed in Appendix I of Regulation 61-107.19,
14 and any other waste approved by the department for
15 disposal in a Class Two landfill pursuant to Regulation
16 61-107.19, Part IV, Section C-2.

17 And if you look at the '08 permit under that
18 same section, A-2, it says the permit is limited solely
19 to the disposal of items listed in Appendix I of
20 Regulation 61-107.19. All other wastes, including
21 animal carcasses, are prohibited from disposal in this
22 landfill.

23 So the language is a little different.
24 Correct?

25 A. Yes.

1 Q. And can you, in your -- in reading that
2 language, does the new language under A-2 alter the waste
3 stream that MRR Pickens would be allowed to take,
4 subsequent to this modification?

5 A. Does the -- which permit?

6 Q. Does the new --

7 A. 2015?

8 Q. Does the modification alter the waste stream
9 that MRR Pickens would be allowed to take under its '08
10 permit.

11 A. No. I mean, the regs were the same under both
12 permits.

13 Q. So what would be the purpose of the change in
14 the language?

15 A. Just, I think clarity. As we've evolved, we've
16 had to be a little more clear with that language than we
17 did in the previous permit.

18 Q. So since 2008, DHEC made the determination
19 that it would be smart to clarify that language?

20 MR. POLIAKOFF: Objection, form. Leading.

21 A. I think any time we -- it comes to our
22 attention that something is not completely clear, we try
23 to improve it. So that's what we did.

24 Q. Okay. So based on what you just said, that
25 this would not change -- does not change the waste stream

1 that MRR would be allowed to take under the '08 or the
2 modified permit. Under the modified permit --

3 A. Uh-huh.

4 Q. -- would MRR be able to go through the process
5 you discussed to add a new waste, so long as it meets the
6 waste characterization requirements?

7 A. Yes.

8 Q. Okay. And notwithstanding the new state law --

9 A. Uh-huh.

10 Q. -- governing coal combustion residuals and
11 disposal in South Carolina, under 107.19, if MRR
12 submitted a waste characterization for coal ash, showing
13 it less than ten times the MCL, would DHEC potentially
14 allow it to dispose of coal ash in the Pickens 2
15 landfill?

16 A. Yes.

17 Q. Okay. So let's talk about the modification
18 itself. It appears -- it states this is an issuance of a
19 modified Class Two landfill permit. Was this a minor or
20 a major modification?

21 A. We issued this modification as a minor
22 modification.

23 Q. Okay. Can you tell me why?

24 A. Yes. I can. I've had to recall those
25 conversations a few times lately. But the -- basically,

1 we looked at it, and since there were no new waste
2 streams involved, and it was an optional upgrade so to
3 speak -- it was only basically, you know, making the
4 facility more environmentally protective than we had
5 already issued.

6 We felt like it was -- you know, we felt like
7 we could do it as a minor because any, you know, any
8 impact would just be positive, if they decided to install
9 the liner. And since we didn't improve any new waste
10 streams or increase in volume or anything like that, we
11 felt like an upgrade was with a minor modification.

12 Q. Okay. So since no new waste streams were added

13 --

14 A. Uh-huh.

15 Q. -- the liner itself does not automatically
16 modify the permit to allow a new waste stream. Is that
17 correct?

18 A. Correct.

19 MR. POLIAKOFF: Object to form, leading.

20 Q. And you said this is an upgrade because it's
21 more protective.

22 A. It's my term, but yes I considered it an
23 upgrade because it's more protective. Yes, that's fair.

24 Q. Okay. If MRR decides to install the liner in
25 its Pickens Class Two landfill --

1 Q. Okay. I'm going to hand you Plaintiff's
2 Exhibit 8, which is a December 11, 2015 letter from
3 Justin Kuhn (ph) --

4 A. Uh-huh.

5 Q. -- to MRR. Is that the request letter you were
6 just referring to from DHEC?

7 A. Yes.

8 Q. I'm sorry -- and again, you have not received a
9 response to this to date --

10 A. Not, not that I know of.

11 Q. -- to your knowledge?

12 A. Uh-uh.

13 Q. Okay. So would it be safe to say that DHEC has
14 made no determination, at this time, as to whether MRR
15 will be allowed a variance in its annual tonnage rate?

16 A. That's correct. We have made no
17 determination.

18 Q. Have you to date received a waste
19 characterization for coal combustion residuals from MRR
20 Pickens?

21 A. Not to my knowledge.

22 Q. Would it -- would you expect to know if that
23 had been received in your position?

24 A. I, I would most likely be aware of it, yes.

25 Q. So for MRR Pickens to take coal combustion in

1 residuals --

2 A. Uh-huh.

3 Q. -- at its Pickens County Class Two landfill,
4 there is still a regulatory process that is not complete
5 at this time. Is that true?

6 A. Yes.

7 Q. You mentioned earlier, legislation that has
8 been passed in South Carolina recently in March --

9 A. Yes.

10 Q. -- that deals with disposal of coal combustion
11 residuals. Is that correct?

12 A. Yes. I can't remember whether it uses the
13 term, coal combustion residuals or coal ash, but
14 something along that line.

15 Q. And it's your understanding that that is --
16 that legislation is final?

17 A. Yes.

18 Q. Okay. And have you been asked questions about
19 that legislation from any -- by anyone from Pickens
20 County?

21 A. Pickens County, define like -- do you mean, do
22 they live there? Do they work for the county? Or what
23 are you asking exactly?

24 Q. Well, I guess --

25 A. Any?

Respondent MRR Pickens, LLC

Exhibit G

Pickens County officials distressed about plan for coal ash landfill

 Ron Barnett, rbarnett@greenvillenews.com 12:57 p.m. EST December 28, 2015



(Photo: Paul Brown)

A private company has entered into a preliminary agreement to undertake "a large disposal project" that could dump hundreds of thousands of tons of coal ash in Pickens County, according to the state Department of Health and Environmental Control, which has approved landfill construction plans.

The magnitude of the project would require "a significant increase" in the 70,500 tons per year the company was permitted to handle when it received approval for an unlined landfill eight years ago, a DHEC spokesman said.

DHEC has asked for more information from the company and doesn't know where the coal ash would be coming from or how much would be coming.

An attorney for the landfill property owner, MRR Pickens, LLC, declined to comment.

But county officials who have fielded calls from concerned people who live and work nearby, are distressed about the possibility of contamination from toxic heavy metals found in coal ash, a byproduct of coal-fired power plants:

Coal ash contains contaminants such as arsenic, lead, mercury, selenium, cadmium, and chromium, and has been linked to increased risk of cancer, according to the Environmental Protection Agency.

"The acceptance of coal ash in our county is just not acceptable," said County Councilman Neil Smith, who represents the area where the landfill is to be located. "And potential health problems can't be offset by the influence and the money of that industry.

"I'm upset about the state even allowing it."

The 4.61-million cubic yard landfill is under construction at the intersection of State 93 and Cartee Road between Liberty and Easley and borders the Pickens County Commerce Park.

County officials said they had no idea that the company, which had entered into a development agreement with the county in 2007 to build a landfill for construction and demolition waste, was planning to accept coal ash until they started hearing complaints from residents.

"The question I have is why wasn't there a public comment period on that that we had to go through," Smith said.

DHEC spokesman Jim Beasley said public notice will be given prior to the agency making a final decision on MRR's request to increase the volume of waste it can take.

But DHEC already approved the company's request to install a synthetic liner, which would allow it to take in coal ash, as long as its level of toxicity doesn't exceed certain parameters, he said.

At the time of the 2007 agreement, the county's landfill was nearing capacity, and the idea was for the private landfill to take over handling nontoxic waste such as wood and concrete scrap. The company was to begin construction within 30 days of receiving approval from DHEC.

But in a meeting with the Pickens County Planning Commission in January of this year, representatives of the company said they had held off developing the landfill because of the recession and now felt the time was right to move ahead with it.

They said "nothing had changed" about their plans since the 2007 agreement and that the company had donated 160 acres of the 443-acre tract to the county for use as a recreational area, under the terms of the agreement, according to minutes of the meeting.

There was no mention of coal ash in the minutes, although one commission member asked if asbestos would be allowed in the landfill and was told it could be placed in a part of the facility dedicated for that purpose.

Weldon Clark, vice chairman of the Planning Commission, said the commission gave the OK for the landfill project to proceed because it was within the county's guidelines for development.

701/865

"Basically the only thing we're charged with is enforcing the development standard ordinance," he said. "So we didn't find anything they were doing that was opposed to the development standard ordinance."

"As far as coal ash goes, depending on what goes in it, it can be a very benign substance," he added. "If you have some heavy metals in it, it can be a problem."

Last December, the EPA issued a ruling on coal ash that stopped short of labeling it as a hazardous material and left it up to states to enforce the new regulations.

Coal ash could be disposed of in an unlined, or Class 2, landfill under DHEC regulations that went into effect in 1996, according to agency documents, but the state now requires linings, Beasley said.

Some coal ash can meet the less toxic Class 2 requirements "but must be demonstrated to do so prior to disposal in this or any Class 2 landfill," he said.

The state environmental agency received a request from MRR on March 31 to modify its 2007 permit which had never been used, by adding a synthetic liner system "so the facility could potentially receive (less toxic) Class 2 coal ash from power generating utilities," Beasley said.

"Any waste received by the facility must meet Class 2 specifications even with the liner installed," he said. "Installation of the liner does not allow the facility to take (more toxic) Class 3 solid waste."

He didn't know how it would be determined whether the coal ash that would go into this landfill meets the Class 2 standard.

Frank Holleman, a senior attorney for the Southern Environmental Law Center who has been active in battling the power industry over coal ash in the Carolinas, said the toxicity of coal ash can be determined in a lab, but it's questionable how the public could be assured that what goes into the landfill meets that lower toxicity standard.

"Even though it's scientifically possible to do it, the question is are they doing it adequately," he said. "It's almost always done by paid consultant rather than independent scientists."

Holleman said he didn't know anything about the Pickens landfill, but experience with others around the Southeast gives evidence that the public has reason to be concerned.

"These facilities can be done well and they can be done badly," he said.

SCE&G, for example, has a coal ash landfill outside Columbia and there have been no complaints or problems.

But a TVA landfill in Alabama "has been a source of constant problems."

And in some cases the state and local governments "get left holding the bag," he said.

"Water contaminated with coal ash pollutants has been known to move more than a mile from coal ash dump sites," according to the Southern Alliance for Clean Energy's Southeast Coal Ash website. "Dry landfills also pose dangers to drinking water and aquatic life, and damage air quality when the fine dust from these containment facilities is blown into surrounding neighborhoods."

Amy Armstrong, an attorney for the South Carolina Environmental Law Project, said MRR, which stands for Materials Recovery and Recycling, tried to open landfills in Laurens and Marlboro counties but couldn't get permits approved. MRR Pickens is a division of MRR Southern, LLC, based in Raleigh.

The one in Marlboro County would have had capacity to take in a quarter million tons of waste annually.

In that county, residents waged a public campaign against the plan and MRR sued them for defamation. A federal judge threw out the lawsuit, saying the company hadn't given evidence that the citizens group knowingly made false statements and did so out of malice.

Armstrong cited a DHEC report that showed that South Carolina has more than enough capacity to handle all its own waste.

No coal ash from Duke Energy is destined for any landfill in Pickens County, according to company spokeswoman Danielle Peoples.

Duke, which has two retired coal-fired plants in the state, sends some ash to a site in Homer, Ga., and announced plans last week to store 2.2 million tons of coal ash in a lined landfill that would be on site at the W.S. Lee Station in Anderson County.



THE GREENVILLE NEWS

Opposition grows to proposed coal ash dump in Pickens County

(<http://www.greenvilleonline.com/story/news/local/pickens-county/2015/12/28/pickens-county-council-consider-resolution-proposed-coal-ash-dump/77970592/>)

Read or Share this story: <http://grnol.co/1YIML2i>

B*CON
LABOR DAY

SEPT 4-5

MORE INFO & TICKETS

SIMPSONVILLE CITY PARK
FOOD VENDORS ★ CRAFT BEER ★ CAR SHOW
ARTISANS & CRAFTERS ★ ENTERTAINMENT ★ KIDS AREA

Pickens County Council approves resolution opposing coal ash landfill



Ron Barnett, rbarnett@greenvillenews.com 8:44 p.m. EST January 4, 2016



(Photo: Ron Barnett)

66CONNECTTWEETLINKEDINCOMMENTEMAILMORE

PICKENS – Pickens County Council told an overflow crowd Monday that it will fight a company's plans to bring thousands of tons of coal ash to a landfill near Liberty and will go to court if necessary to stop it.

"We are prepared to defend you," Council Chairman Jennifer Wills declared, drawing applause from the audience of more than 100, many of whom came to urge the council to take action.

The council gave unanimous approval to a resolution urging the state Department of Health and Environmental Control to reject a variance requested by Raleigh-based MRR Pickens, LLC that would allow it to undertake a major coal ash disposal project.

The company has not responded to questions from *The Greenville News*.

Council members asked the county attorney to brief them in closed session on legal options to stop the project.

In a public session portion of the meeting, 10 people spoke against allowing coal ash disposal here.

"My opinion on it is if the folks in North Carolina want a Class 3 landfill to dump coal ash in, they can dig a hole up there and dump it in. We don't want it here," Eric Boughman, mayor of Liberty, said as the crowd cheered.

"I'm gonna holler as loud as I need to to stop this," he said. "We don't need to be a dumping ground for anybody."

Pree Hamilton, who lives across the road from the landfill site on land that has been in her family for five generations, said she feels like "the wolves are at the back door."

"I will protect it with my life, she said. "I don't want to see it changed."

A manufacturers group in Pickens County also went on record opposing the landfill, citing environmental and economic concerns.

Manufactures Caring for Pickens County, a nonprofit organization that works to improve education, social responsibility and economic development in the county, issued a statement in advance of the meeting.

"MCPC (Manufactures Caring for Pickens County) is opposed to this landfill proposal due to the lack of any published study on the environmental impact, the economic impact, or the suitability of the current site to contain the toxins," the statement says. "The transport method of coal ash to the site, the remoteness of this site to the power generation plants responsible are also concerns and unknown at this time."

The state Department of Health and Environmental Control has approved the company's plan to install a synthetic liner in the landfill it has been approved to build along State 93 and Cartee Road.

Such a lining would allow it to deposit a type of coal ash that is considered less toxic than the type most dangerous because of heavy metals.

But DHEC is awaiting more information from the company on how much coal ash it would put in the landfill, where it would be coming from, and how it would ensure that it meets the less toxic standards.

The manufacturers group said it is "deeply concerned" in part because the proposed site is near many of their facilities at the Pickens County Commerce Park and along State 93.

"It is inconceivable that such a project would be approved without considering the impact on the health and well-being of those most directly affected, not to mention the potential business and financial damage to companies located in the Commerce Park and other nearby areas."

MRR received approval to build a landfill there in 2007, which was to be designed for construction and demolition debris. But the landfill was never built because of the recession that followed, company officials told the county Planning Commission last year.

The company submitted a request to DHEC a few months ago, saying it had made tentative arrangements to undertake "a large disposal project" involving coal ash.

It told DHEC it needed "a significant increase" in the amount of material it would be allowed to dispose of, which was limited to 70,500 tons per year.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Pickens County,

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control and MRR Pickens,
LLC,

Respondents.

CERTIFICATE OF SERVICE

DOCKET NO. 16-ALJ-07-0164-CC

I hereby certify that on the 6th day of September, 2016, in Columbia, South Carolina, a copy of the foregoing Respondent MRR Pickens, LLC's Reply to Petitioner's Response in Opposition to Motion to Dismiss and Motion for Stay were served on all parties to this matter by hand delivery or depositing the same in the United States Mail, postage paid, and addressed as follows:

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S.C. Department of Health and Environmental Control
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Columbia, South Carolina 29201

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Pickens County,

Petitioner,

vs:

South Carolina Department of Health and
Environmental Control and MRR Pickens,
LLC,

Respondents.

Docket No.: 16-A1J-07-0164-CC

**MOTION FOR
LEAVE TO INTERVENE**

TO: SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL AND MRR PICKENS, LLC:

Motion is hereby made, on behalf of Robert L. Traber, Matthew S. Stone, Randolph E. Revis, Sr. by P.R. Randy Martin, Tony Charping and Randall King, for Leave to Intervene in this case (or in the alternative, to have Pickens County appear in their behalf and represent and advance their interests in this matter).

All of the above Interveners are adjoining landowners and members of the public owning real property in extremely close proximity to the Landfill in question. All of said Interveners were denied any Notice of the Application for Permit Modification, the Draft Permit, or the final Department Decision, regarding the Landfill Permit Modification which is the subject of this case. All were denied any opportunity for review or comment to the aforesaid documents and proceedings, and were denied any opportunity to object, to be heard, or to request any Public Hearing. No newspaper publication in the area of the landfill, and no mailings to them by either MRR or DHEC were made, and then they were deprived of any Notice and deprived of due process. All of said Interveners will suffer irreparable harms and injuries if the Modification in question is allowed to stand. Further, all

of said Interveners wish to fully participate in these proceedings and to be heard in this matter. (See Affidavits of Traber, Stone, Revis, Charping and King, Exhibit Nos. 16-20 attached to Pickens County's Memoranda in Opposition to Motion to Dismiss, as well as Affidavit of Christopher Brink, Exhibit 15 to said Memoranda).

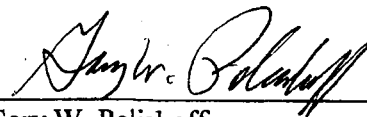
The intervention by these parties will cause no delay or difficulties in these proceedings.

The Interveners hereby show:

- (1) That they will be irreparably aggrieved and adversely affected by the final Order (should it uphold the proposed Modification).
- (2) That these Interveners are entitled to Intervene (as they have been deprived of any and all Notice and opportunity to participate in any relevant proceedings or to be heard in any manner heretofore, and wish to be heard now).
- (3) That this intervention will not unduly prolong the proceedings or otherwise prejudice the rights of existing parties. (To the contrary, the rights of the Interveners have been entirely denied and prejudiced heretofore).

The above persons respectfully move to Intervene in this matter.

Respectfully submitted,



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Raymond P. Mullman
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August 18, 2016

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ATTORNEYS FOR PICKENS COUNTY

COPY

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Pickens County,

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control and MRR Pickens,
LLC,

Respondents.

DOCKET NO. 16-ALJ-07-0164-CC

**RESPONDENT DHEC'S
MEMORANDUM IN OPPOSITION
TO MOTION FOR
LEAVE TO INTERVENE**

TO: GARY J. POLIAKOFF, ESQUIRE, ATTORNEY FOR PETITIONER, PICKENS
COUNTY, AND JESSICA J.O. KING, ESQUIRE, ATTORNEY FOR RESPONDENT
MRR PICKENS, LLC

Respondent South Carolina Department of Health and Environmental Control ("DHEC"
or "the Department") respectfully submits its *Memorandum in Opposition to Motion for Leave to
Intervene*, as follows:

This Motion is filed on behalf of the following individuals: Robert L. Traber; Matthew S.
Stone; Randolph E. Revis, Sr. by P.R. Randy Martin; Tony Charping; and Randall King
(hereafter referred to as the "Proposed Intervenors"). The Motion is based on the affidavits of
these individuals, which are attached as Exhibits to the Petitioner Pickens County's
Memorandum in Opposition to DHEC's Motion to Dismiss. The Motion also requests, as an
alternative, that Petitioner Pickens County (the "County") appear on behalf of the Proposed
Intervenors and represent and advance their interests in the contested case matter. For the
following reasons, the Department opposes the Motion to Intervene.

FILED

SEP 06 2016

A. The ALC lacks jurisdiction to hear County's Request for a Contested Case hearing, therefore, County's Motion to Intervene should be denied.

For the reasons articulated in the Department's Motion to Dismiss and Memorandum in Support of said Motion filed with this Court on July 25, 2016 and the Department's Motion in Support of Respondent MRR Pickens' Motion to Dismiss and Memorandum in Support of said Motion filed on August 9, 2016, the Department reiterates its position that the ALC lacks jurisdiction to hear this contested case matter. The grounds for dismissal of the contested case hearing contained in the Department's and MRR Pickens' Memoranda are incorporated herein and made a part of this response in opposition to the Motion to Intervene.

B. If the contested case is not dismissed, Proposed Intervenors are not entitled to seek judicial review because they have failed to exhaust their administrative remedies.

As a threshold matter, the Department's solid waste regulations do not require public notice prior to the issuance of a minor permit modification. (R.61-107.19 Part D.2.c.(1); Part IV I.2). Second, none of the Proposed Intervenors, either individually or collectively, requested notification of Department decisions related to the permit as an "affected person" under Section 44-1-60(E)(1). Section 44-1-60(E)(1) requires the Department to provide notice of a Department decisions to "affected persons" who have requested in writing to be notified. The Department first issued a Class 2 Highway 93 Landfill Permit, No. LF2-00003, to Respondent MRR Pickens in 2008. Since 2008, Proposed Intervenors have never requested to be notified of any decisions relating to the Class 2 Landfill permit. As noted in Respondent MRR Pickens' Memorandum in Support of its Motion to Dismiss, where notice was not requested of future staff decisions after an initial permit was issued, the Department was not required to give subsequent notices of renewals or otherwise treat them as an "affected person." (See MRR Pickens, LLC's Memorandum in Support of Motion to Dismiss, at 8, citing Hubbard et al. v. SCDHEC and

Shavon's Purple Lotus Body Art Boutique, 2008 WL 2300531 (S.C. ALC) (May 2, 2008). Here, the Proposed Intervenor did not request notification as affected persons when the permit was issued in 2008, and have not requested notification of any Department decisions related to the permit since that time.

Third, even if the Proposed Intervenor were affected persons, none of the named individuals submitted a Request for Final Review ("RFR") of the minor permit modification within the requisite fifteen days as required by Section 44-1-60(E)(2). Moreover, even after the minor permit modification became a very well publicized issue, none of the named individuals filed a RFR.

Having failed to seek timely review, the Proposed Intervenor have failed to exhaust their administrative remedies. As noted in the Department's Memorandum in Support of its Motion to Dismiss, it is fundamental that an appellant is required to exhaust administrative remedies prior to filing an appeal in the ALC. (See DHEC's Memorandum in Support of Motion to Dismiss at 6). Having failed to exhaust their administrative remedies, Proposed Intervenor are not now entitled to participate in judicial review. Because the County also failed to exhaust its administrative remedies, it is not entitled to appear on the Proposed Intervenor's behalf or to represent and advance their interests in this matter.

C. The Motion to Intervene should be denied for failure to meet the requirements of ALC Rule 20.

Rule 20(B) of the Rules of the ALC state three grounds for intervention in a pending contested case hearing. The movant must show that: (1) it will be aggrieved or adversely affected by the final order; (2) the interests of the movant are not being adequately represented by existing parties, or that it is otherwise entitled to intervene; and (3) that intervention will not

unduly prolong the proceedings or otherwise prejudice the rights of existing parties. For the following reasons, the Motion to Intervene fails to satisfy the requirements of Rule 20(B) (1) and (2).

1. **Proposed Intervenor**s have not shown that they will be aggrieved or adversely affected by the Court's decision to uphold the minor permit modification.

The affidavits of the Proposed Intervenor

s are identical in their characterization of the purported harm that will befall them if the minor permit modification is allowed to stand, and that harm is based on the fear that, with the minor permit modification, the existing Class 2 landfill will be allowed to accept coal ash or coal combustion residuals ("CCR"). Item No. 5 of each affidavit states that the named individual:

"[i]s informed and believes that if the Permit Modification is allowed to stand, and if the landfill is allowed to accept wastes other than C&D/LCD [construction and demolition debris and land-clearing debris], such as coal ash or CCR, or Special Wastes, other wastes more problematic and offensive than C&D/LCD, that his use and enjoyment of his property will be adversely affected, quality of life will likely be adversely affected, and his property value will likely be adversely affected" Concerns include the blowing of coal ash/CCR from trucks entering the landfill, the blowing of coal ash/CCR by the wind, the inherent and typical toxic components and toxic nature of coal ash/CCR, the propensity of coal ash/CCR to contaminate nearby properties such as his, including the soil, surface water and groundwater and air; as well as problems and potential and likely odors from other wastes (other than C&D/LCD wastes), which *may* be deposited into this landfill if the Permit Modification is allowed to stand." (Emphasis added.)

For intervention purposes, a person will be aggrieved or adversely affected by the final order "if *final disposition* of a matter may impair his ability to protect his interests." (South Carolina Coastal Conservation League v. SCDHEC et al., 97-ALJ-07-0763 (S.C. ALC) (April 14, 1998), citing ALJD Rule 20(B)(1); cf. Rule 24(a)(2) SCRCF; Berkeley County Electric Cooperative, Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 394 S.E.2d 712, 714-715 (1990). Here, upholding the minor permit modification will not impair the Proposed Intervenor

s' ability to protect their interests because the interests they seek to protect are unaffected by the permit

modification. Coal ash disposal, and all the deleterious effects described by the Proposed Intervenor as a result of such disposal, will not result from upholding the permit modification because such waste is not allowed under the modified permit. In addition, coal ash/CCR is not allowed to be disposed of in a Class 2 landfill by law.

The minor permit modification does not allow the acceptance of coal ash/CCR or special wastes. The permit modification allows for the installation of a liner and associated leachate collection system to a portion of the existing, permitted Class 2 landfill. The modification does not allow MRR Pickens to accept additional waste types (e.g., coal ash) or quantities of waste. It will not have the effect of allowing coal ash, CCR, or other special wastes to be disposed of at the Class 2 landfill. The modified permit is limited to the disposal of items listed in Appendix I of R. 61-107.19, "Acceptable Waste for Class Two Landfills," which does not include coal ash, CCR, or special wastes. Any other waste proposed to be disposed of in the Landfill must be approved by the Department. (See MRR Pickens, LLC Class 2 Landfill Permit No. LF2-00003, Special Conditions A.2.)

The issue of the disposal of coal ash/CCR in a permitted, Class 2 Landfill has been directly addressed by the South Carolina General Assembly so that the very issue upon which Proposed Intervenor's grievances are based has been resolved as a matter of law. Act 138 of 2016 (R.142, H.4857), passed by the General Assembly on February 25, 2016 and signed by the Governor on March 2, 2016, provides that "[c]oal combustion residuals that result from an electric utility . . . must be placed in a commercial Class 3 solid waste management landfill" By law, the Highway 93 Class 2 Landfill is prohibited from accepting CCR or coal ash because it is not permitted as a Class 3 landfill. The minor permit modification issued to MRR Pickens does not change the Landfill or any portion thereof from a Class 2 to a Class 3 landfill. The adverse

impacts to the Proposed Intervenor's property values and quality of life as a result of accepting CCR or coal ash simply cannot and will not occur because, by law, as a Class 2 landfill it is not allowed to accept this type of waste.

In addition, none of the affidavits of the Proposed Intervenor's identify any particular or specific injury, nor do they cite any individual harm that may result from the permit modification. In the absence of any showing other than a generic recitation of alleged and unfounded harm from the permit decision, there is no basis for intervention. The adverse effects alleged by the Proposed Intervenor's all concern the disposal of coal ash/CCR and/or special wastes, none of which are allowed under the minor permit modification. To speculate about what *might* occur in the future is insufficient to show that the Proposed Intervenor's will be adversely affected or aggrieved by the Court's decision to uphold the minor permit modification. Without more, the Proposed Intervenor's have not shown they are otherwise entitled to intervene in this matter.¹

2. The interests of the Proposed Intervenor's are being adequately represented by the County and Proposed Intervenor's are not otherwise entitled to intervene.

The County has been and continues to be substantially involved in all aspects of the Highway 93 Landfill and all decisions related thereto. The County has claimed in its Memorandum in Opposition to DHEC's Motion to Dismiss, that it represents the citizens of Pickens County, including adjacent landowners. If the County is allowed to go forward with the contested case, there is no benefit to adding individual petitioners to the ongoing action.² Any party seeking intervention is required to show in sufficient detail how and why he alleges his

¹ If the intervention is not disallowed on the grounds stated herein, the Department reserves and does not waive its right to seek discovery as to any actual harm to Proposed Intervenor's.

² It is unclear whether the County is filing the Motion on behalf of the individuals named, whether the individuals are represented with the County, or whether they are acting independently. Regardless, the Department opposes the addition of the individuals as named parties to the case.

interests will be aggrieved or adversely affected if the final decision of the Department is upheld. Without more, the Proposed Intervenors have not shown that they are otherwise entitled to intervene in this matter.

Conclusion

For the foregoing reasons, the Department respectfully requests that the County's Motion for Leave to Intervene made on behalf of Robert L. Traber, Matthew S. Stone, Randolph E. Revis, Sr. by P.R. Randy Martin, Tony Charming, and Randall King be denied, and that the County's alternative request to appear on their behalf and represent and advance their interests in this matter also be denied.

Respectfully Submitted,



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Claire H. Prince, Esquire
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September 6, 2016
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Pickens County,

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control and MRR Pickens,
LLC,

Respondents.

DOCKET NO. 16-ALJ-07-0164-CC

**RESPONDENT MRR PICKENS, LLC'S
RESPONSE IN OPPOSITION TO
PETITIONER'S MOTION FOR LEAVE
TO INTERVENE**

TO: GARY J. POLIAKOFF, ESQUIRE, ATTORNEY FOR PETITIONER PICKENS
COUNTY, AND ETTA R. WILLIAMS LINEN, ESQUIRE, ATTORNEY FOR
RESPONDENT SOUTH CAROLINA DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL

NOW COMES Respondent MRR Pickens, LLC ("MRR Pickens"), by and through
counsel, and submits this response in opposition to Robert L. Traber, Matthew W. Stone,
Randolph E. Revis, Sr. by P.R. Randy Martin, Tony Charping and Randall King's ("herein
collectively referred to as the "Movants") Motion for Leave to Intervene or in the alternative
have Petitioner Pickens County ("Petitioner" or "Pickens County") appear on their behalf
("Motion to Intervene"). Pursuant to Rule 20 of the South Carolina Administrative Law Court
(ALC) Rules ("ALC Rules"), the Motion to Intervene should be dismissed with prejudice or, in
the alternative, denied on the following grounds:

- (1) the Motion to Intervene is barred from consideration by this Court for
lack of subject matter jurisdiction¹;

¹ MRR Pickens craves reference to its Motion to Dismiss filed July 29, 2016.

(2) the Motion to Intervene does not meet the requirements of Rule 20(C) of the ALC Rules²; and

(3) Movants do not submit sufficient evidence to establish “standing”.

BACKGROUND

In November of 2007, MRR Pickens applied for a permit to operate a Class 2 Landfill from the South Carolina Department of Health and Environmental Control (DHEC) on property located at 2180 Greenville Highway, Liberty, South Carolina, Pickens County (the “Highway 93 Class 2 Landfill”). On September 19, 2008, DHEC issued a draft permit for the Highway 93 Class 2 Landfill. [Exhibit A; Draft Permit (Sept. 19, 2008)]. On or about September 24, 2008, DHEC publicly noticed the draft permit in the Easley Progress and The Pickens Sentinel. [Exhibit B; Public Notice (Sept. 24, 2008)]. In addition to publishing the draft permit in the local newspapers, DHEC sent notice to Adjacent Landowners, Pickens County and others on its mailing list by memorandum dated September 19, 2008. [Exhibit C; Public Notice to Adjacent Landowners (Sept. 19, 2008)]. At the end of the public comment period, on November 3, 2008, DHEC staff issued Solid Waste Permit LF2-00003 to MRR Pickens for the Highway 93 Class 2 Landfill (the “Highway 93 Permit”). [Exhibit D; Permit LF2-00003 (Nov. 3, 2008)]. A property owner in the area, GB Enterprises, timely requested final review before the Board of Health and Environmental Control (“DHEC Board”) on November 11, 2008. GB Enterprises Request for Final Review (Nov. 11, 2008). Neither the Movants nor Petitioner filed a Request for Final Review (RFR) or asked to be notified of any future decisions relating to Highway 93 Permit. [Affidavits of Movants filed with Petitioners’ Memorandum in Opposition to MRR Pickens, LLC’s Motion to Dismiss (Aug. 17, 2016); DHEC’s Motion to Dismiss, Ex. 2, Aff. of

² Movants’ Motion also fails to identify or meet requirements prescribed in Rule 24 of the South Carolina Rules of Civil Procedure (SCRCP).

Joan Litton (April 15, 2016)]. Four months later, on March 10, 2009, GB Enterprises voluntarily dismissed its RFR with prejudice. [Exhibit E; Notice of Dismissal (March 10, 2009)].

On March 30, 2015, MRR Pickens applied for a minor modification to the Highway 93 Permit, requesting the option to install a liner and associated leachate collection system ("Minor Permit Modification"). On August 10, 2015, the DHEC staff issued the Minor Permit Modification by mailing the decision to MRR Pickens, allowing the liner option. Since the first public notice of the Highway 93 Permit in September of 2008 and prior to DHEC's issuance of the Minor Permit Modification in August of 2015, neither Petitioner, nor the Movants ever requested in writing (via certified mail, electronic mail or by any other method) to be treated as an "affected person" and/or notified by DHEC of any decisions relating to the permit. See Petitioner's Memorandum in Opposition to MRR Pickens, LLC's Motion to Dismiss, Ex. 15, Aff. of Chris Brink, ¶ 23 (Aug. 17, 2016); See also Affs. of Movants filed with Petitioner's Memorandum in Opposition to MRR Pickens, LLC's Motion to Dismiss, Exs. 16-20 (Aug. 17, 2016) (Fail to attest they requested to be an "affected person").³ Therefore, DHEC did not mail notice of the Minor Permit Modification to Petitioner or Movants. The Minor Permit Modification became the Final Agency Decision 15 days after mailing to the permittee, MRR Pickens, on August 25, 2015.

According to representations made by Petitioner and DHEC records, Petitioner received actual notice of the Minor Permit Modification in December of 2015 and received a copy of the Minor Permit Modification no later than January 11, 2016. See MRR Pickens, LLC's Notice of Motion and Motion to Dismiss and Memorandum in Support Motion to Dismiss (July 29, 2016)

³ MRR Pickens contends affidavits of Movants should not be considered for purposes of this Motion to Intervene because they were not properly attached as exhibits. Instead, affidavits of Movants were filed by Petitioner's counsel as an exhibit in Petitioner's Memorandum in Opposition to MRR Pickens, LLC's Motion to Dismiss. Thus, referenced affidavits were filed separate and apart in an unrelated response.

("Motion to Dismiss") and DHEC's Motion to Dismiss (July 18, 2016). Petitioner filed a RFR of the Minor Permit Modification on or about March 23, 2016. Movants were not named as parties, were not referenced or identified in Petitioners' pleadings, or otherwise involved in Petitioner's RFR to the DHEC Board. On April 21, 2016, the DHEC Board declined in writing to hold a final review conference, thus constituting a final agency decision and giving rise procedurally to a right to request a contested case⁴ hearing with the Administrative Law Court (ALC). S.C. Code Ann. § 44-1-60(F). On May 19, 2016, Petitioner mailed its Request for a Contested Case Hearing to the ALC. On July 25, 2016, DHEC filed a Motion to Dismiss, and on July 29, 2016, MRR Pickens filed a Motion to Dismiss for lack of subject matter jurisdiction as well as a Motion to Stay Discovery pending a ruling on the pending dispositive motions. On August 11, 2016, Petitioner served its Memorandum in Opposition to DHEC's Motion to Dismiss. On August 18, 2016, Petitioner filed its Amended Memorandum in Opposition to DHEC's Motion to Dismiss. On that same day, Petitioner served its Memorandum in Opposition to MRR Pickens' Motion to Dismiss, Memorandum in Opposition to MRR Pickens' Motion to Stay Discovery, and filed this Motion to Intervene on behalf of Movants.

ARGUMENT

Movants' Motion to Intervene is barred from consideration by this Court for lack of subject matter jurisdiction. In the alternative, if the ALC determines it must consider the Motion to Intervene, Movants' Motion to Intervene should be denied with prejudice for the following reasons:

- the Motion to Intervene fails to meet requirements of Rule 20 of the ALC Rules; and

⁴ Although Petitioner may procedurally request a contested case, MRR Pickens does not concede jurisdiction of this Court for Petitioner or Movants. No underlying contested case exists for which Movants may intervene because this Court lacks requisite subject matter jurisdiction due in part to Petitioner's untimeliness.

- Movants do not submit sufficient evidence to establish “standing”.

1. Intervention cannot be considered because this Court does not have jurisdiction in the underlying case.

No underlying contested case exists for which Movants may intervene because this Court lacks requisite subject matter jurisdiction. As stated in MRR Pickens’ Motion to Dismiss and Memorandum in Support thereof, Petitioner failed to timely file a RFR and failed to timely serve MRR Pickens.

A. Petitioner’s Request was Untimely after Receiving Actual Notice.

Petitioner had actual and constructive notice of the Minor Permit Modification on December 15, 2016. Petitioner delayed filing its RFR ninety-nine (99) days after it met with DHEC and discussed the modification, seventy-two (72) days after it received a copy of the modification and notified MRR Pickens of its knowledge of it, thirty-two (32) days after it entered an affidavit in the record of the Court of Common Pleas attesting under oath to its knowledge of, including the contents of the Minor Permit Modification, and thirty-three (33) days after it used a copy of the Minor Permit Modification as an Exhibit in a civil proceeding in South Carolina. See MRR Pickens’ Motion to Dismiss, p. 10 n. 2 (July 29, 2016). Therefore, this contested case must be dismissed for lack of subject matter jurisdiction, and the ALC has no jurisdiction to consider this Motion to Intervene.

To establish jurisdiction for a contested case hearing with the ALC, Petitioner must first exhaust its administrative remedies and timely file an RFR with the DHEC Board. The seminal case on notice and timeliness of RFRs is *S.C. Coastal Conservation League vs S.C. Dep’t of Health & Envtl. Control and S.C. State Ports Auth.*, 390 S.C. 418, 702 S.E.2d 246 (2010). In that case, the South Carolina Supreme Court held the fifteen day deadline to file an RFR begins to run on the day the notice is mailed to an “affected party” that has requested to be notified of

the staff decision. *Coastal Conservation*, 390 S.C. at 426. Here, Petitioner does not qualify as an “affected party”; however, even if the Court finds that it does, it exceeded the statutory filing deadline by waiting more than 15 days after receiving actual and constructive notice of the Minor Permit Modification before filing its RFR. Petitioner is time-barred from bringing its claims, thus removing the ALC’s appellate and subject matter jurisdiction. *Grand Bees Dev., LLC v. S. C. Dep’t of Health & Envtl. Control*, 2012 WL 10841840, at *1 (Ct. App. 2012); see also *Great Games, Inc. v. S.C. Dep’t of Revenue*, 339 S.C. 79, 82 n. 5, 529 S.E.2d 6, 7 n. 5 (2000); *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188–89, 714 S.E.2d 547, 549–50 (2011) (noting it is a general rule “that an appellate body may not extend the time to appeal”). Therefore, this Court has no jurisdictional authority to consider Movants’ Motion to Intervene, and it must be denied with prejudice.

B. Petitioner Failed to Serve MRR Pickens within 30 Days as Required.

Even if the Court were to find Petitioner timely filed its appeal (which MRR Pickens respectfully denies), Petitioner has admitted its failure to serve the Request for a Contested Case Hearing on MRR Pickens. Petitioner’s Response in Opposition to MRR Pickens’ Motion to Dismiss, Ex. 21, Affidavit of Gary Poliakoff ¶ 3(C)-(D), p. 3 (August 18, 2016).

S.C. Code Ann. §1-23-600(B) requires that a party that files a Request for a Contested Case Hearing simultaneously serve a copy of the request on the parties in accordance with the ALC Rules. Rule 11(B), ALC Rules, provides “[a] copy of the request must also be served on each party and on the affected agency . . . in accordance with Rule 5.” Further, Rule 11(C), ALC Rules, requires, without exception, that a Petitioner serve its Request for a Contested Case Hearing on each party within 30 days of actual notice of the final agency decision. Proof of

service must be included with the request. Rule 11(B), ALC Rules. Rule 5, ALC Rules, also requires service upon all parties by delivery by mail to the last known address.

While MRR Pickens does not dispute that personal circumstances may have existed for Petitioner's counsel during the relevant time period, this Court has previously recognized it does not have the power to "fix" jurisdictional issues where jurisdiction does not exist – no matter the reason. *Delk v. S.C. Dep't of Motor Vehicles, et al.*, 13-ALJ-21-0234-AP, 2013 WL 3790642 (July 16, 2013). Where Petitioner fails to timely serve a party, the Court is without jurisdiction. *Id.* at 2. In fact, the Court is not permitted to delve into the reasons why a party fails to effect service or consider things like the prejudice to opposing parties as a result of the failure to serve. As stated by this Court in the *Delk* decision, "[t]he requirement that the Appellant file and serve the Notice of Appeal on all parties in accordance with the timeframes set forth in the ALC Rules of Procedure is an indispensable component of the appellate process." *Id.* (emphasis added). "Moreover, the Supreme Court of South Carolina has determined that filing and service of the Notice of Appeal upon the [parties] is a jurisdictional requirement. *Id.*; See *Thomas E. Skinner v. Westinghouse Electric Corp.*, 380 S.C. 91, 668 S.E.2d 795 (2008); See also *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004) ("[i]f a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice.")

Importantly, *Delk* is not a rare or unique holding. This Court has consistently taken this same position holding that the *Elam* case requires dismissal for lack of jurisdiction in the following cases: *Tapp v. Horry County*, 2009 WL 1319817, *1 (S.C.A.L.J. April, 21, 2009); *Wingard Towing Servs. v. S.C. Dep't of Public Safety*, 2015 WL 1966828, * 1 (S.C.A.L.J. April 28, 2015); *Felicia Blocker v. Richland County School Dist.*, 2010 WL 2604805 (S.C.A.L.J. May

25, 2010) (where the Respondent only became aware of the filing of the Request for a Contested Case Hearing through the ALJ's Notice of Assignment and was never served with the request, the Court had no choice but to dismiss the case for lack of jurisdiction).

In this case, Petitioner concedes it failed to serve MRR Pickens at its last known address within 30 days (or to date) but asks for forgiveness due to exigent personal circumstances experienced by one of three attorneys of record. See Petitioner's Memorandum in Opposition to MRR Pickens, LLC's Motion to Dismiss, Ex. 21, Aff. of Gary Poliakoff ¶ 3-4, pp. 2-3 (Aug. 18, 2016) (Also submitted by Raymond P. Mullman of Poliakoff & Associates, P.A. and Kenneth S. Roper of Roper Law Firm, LLC). Case law clearly and incontestably states service is an indispensable component of the appellate process and is necessary to establish jurisdiction. Because Petitioner did not file or serve the Notice of Appeal as legally required, this Court lacks jurisdiction over this appeal, and Movants' Motion to Intervene cannot be considered.

C. Where the Court does not have jurisdiction of the underlying case, intervention will not be considered.

If this Court determines that it does not have jurisdiction over Petitioner's Request for a Contested Case Hearing, it may not rule on Movants' Motion to Intervene.

The Court addressed this exact issue in *Thomas & Victoria Rogers v. S.C. Dep't of Health & Envtl. Control, et al.*, 01-ALJ-07-0402-CC, 2001 WL 1397451, at *1 (Oct. 23, 2001). In the *Rogers* case, the petitioners appealed a decision by DHEC's Office of Ocean and Coastal Resource Management (OCRM). The respondents filed a motion to dismiss arguing that the Court lacked subject matter jurisdiction because the staff decision at issue did not qualify as a "contested case" under the South Carolina Administrative Procedures Act (the "APA"). Third-parties moved to intervene prior to dismissal of the case but during the pendency of respondents' motion to dismiss for lack of subject matter jurisdiction. The Court properly held:

Given the decision reached here that the ALJD has no jurisdiction in this matter, the issues of whether the Rogers should be allowed to withdraw their challenge and whether Stelling should be allowed to intervene are not addressed. *See State v. Funderburk*, 259 S.C. 256, 261, 191 S.E.2d 520, 522 (1972) (“[t]he acts of a court with respect to a matter as to which it has no jurisdiction are void.”); *also see, e.g., First Palmetto Savings Bank, F.S.B. v. Patel*, 344 S.C. 179, 186, 543 S.E.2d 241, 244 (Ct. App. 2001) (“Because we reverse on this issue, we need not reach First Palmetto's remaining arguments.”).

Rogers at 1.

Here, the Court cannot lawfully allow Petitioner to effectively resurrect its time-barred appeal by assuming the rights of non-party Movants in order to rehabilitate its late filing. Therefore, Petitioner's appeal must be dismissed with prejudice, and the Court lack of jurisdiction precludes consideration of Movants' Motion to Intervene.

D. Equitable tolling and want for due process are not appropriate in this case.

Although not raised with any particularity in the Movants' Motion to Intervene, it is clear Petitioner attempts to incorporate equity and due process arguments also made in its Memorandum in Opposition to MRR Pickens, LLC's Motion to Dismiss. In an attempt to circumvent statutory law and confuse substantive issues, Petitioner uses words like “toxic coal ash” and due process to justify the drastic remedy of equitable tolling. Such issues and terms are not supported by any facts and are irrelevant to this Motion to Intervene; however, MRR Pickens is compelled to briefly address any muddying of facts and issues for clarification of the record.⁵

First, the Minor Permit Modification became the final agency decision 15 days after DHEC mailed it to MRR Pickens on August 10, 2016 - thus making the final date August 25, 2016. Petitioner's appeal was brought approximately 7 months after finalization. To allow an appeal of a permitting decision 7 months after it is rendered by an agency is prejudicial to MRR

⁵ MRR Pickens reserves the right to supplement its response, if necessary.

Pickens (and other members of the regulated community) and does not correspond to the intent of the APA:

The foregoing notwithstanding, in permitting cases, there needs to be some point in which an applicant for a permit can presume that the permitting process has concluded.

Amisub of S.C., Inc., d/b/a Piedmont Med. Ctr. Petitioners, 08-ALJ-07-0063-CC, 2008 WL 4879672, at *9 (Oct. 3, 2008); citing *Botany Bay Marina, Inc. v. Townsend*, 296 S.C. 330, 335 n.3, 372 S.E.2d 584, 586 n.3 (1988), *overruled in part on other grounds by Woodard v. Westvaco Corp.*, 460 S.E.2d 392, 319 S.C. 240 (1995) (noting the importance of “finality in administrative decision-making”). This is especially true where Petitioner has actual notice for so extensive period of time before filing its appeal.

Second, the Minor Permit Modification does not include the addition of any waste stream – including coal ash – to the 2008 permit. It is simply the option to install a liner, and according to DHEC, it does not impose any public health or the environmental concerns. [Exhibit F; K. Coleman Dep. 74:14-75:1]. In fact, the option to install a liner does not substantially change the Highway 93 Permit issued in 2008 – a permit that neither Petitioner nor Movants appealed or requested to be treated as an “affected person” concerning. Petitioner’s Memorandum in Opposition to MRR Pickens, LLC’s Motion to Dismiss, Ex. 15, Aff. of Chris Brink, ¶ 20 (Aug. 17, 2016); *See also* Affs. of Movants filed with Petitioners’ Memorandum in Opposition to MRR Pickens, LLC’s Motion to Dismiss, Exs. 16-20 (Aug. 17, 2016) (Fail to attest they requested to be an “affected person”). Therefore, there is no public interest that will be denied if the Minor Permit Modification as written is allowed to stand. Rather, a landfill that is more protective of public health and the environment will be allowed to be completed.

Furthermore, this Court has stated that: “[e]quitable tolling is a doctrine rarely applied in South Carolina to stop the running of the statute of limitations. The doctrine is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or in other words, if the relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine.” *Fabri et al. vs. S.C. Dep’t of Health & Env’tl. Control and Nancy Union*, 08-ALJ-07-0336-CC, 2009 WL 332981, * 3 (January 13, 2009). The *Fabri* case is directly on point. In that case, the Court held that parties given actual notice when a permit was first issued, do not necessarily have the right to future notices related to that permit. *Id.* Here, Petitioner received notice of the Highway 93 Permit in 2009 but did not request in writing to be treated as an “affected person” or have any other right to notice of future decisions relating to the permit – including the Minor Permit Modification. Thus, equitable tolling is inapplicable.

If the Court disagrees and believes Petitioner was required to get notice, it in fact received actual notice over six months ago and still did not timely file its appeal. “One cannot complain of a due process violation if [he] has recourse to a constitutionally administrative procedure but merely declines or fails to take advantage of it. *Citizens for Sandy Flat vs. S.C. Dep’t of Health & Env’tl. Control, et al.*, 01-ALJ-07-0009-CC, 2001 WL 1502396, *4 (Oct. 12, 2001). Therefore, like equitable tolling, lack of due process does not apply in this case.

2. Movants do not meet the requirements of Rule 20 of the ALC Rules.

Even if subject matter jurisdiction exists for the ALC (which MRR Pickens denies), Movants are barred from intervening because they failed to meet requirements for intervention set forth in Rule 20, ALC Rules.

"Intervention is a procedural device whereby a third party who is not a named party in an existing lawsuit, but who has an interest in its outcome, may become a party to the action." *In re Horry County State Bank*, 361 S.C. 503, 507, 604 S.E.2d 723, 725 (Ct. App. 2004); *See Black's Law Dictionary* 826 (7th ed. 1999). Rule 20, ALC Rules, sets forth the procedural requirements necessary to intervene at the ALC, which is directly aligned with Rule 24(a), SCRCP.⁶ *Sonoc v. S.C. Dep't of Health & Envtl. Control*, 14-ALJ-07-0002-CC, *2 (July 17, 2014) (Order denying motion to intervene). In the ALC, a movant may be allowed to intervene only if it meets all of the following requirements:

- (1) The movant will be aggrieved or adversely affected by the final order;
- (2) The interests of the movant are not being adequately represented by existing parties or that it is otherwise entitled to intervene; and
- (3) The intervention will not unduly prolong the proceedings or otherwise prejudice the rights of existing parties.

Rule 20(B), ALC Rules.

A. Movants have not established that they will be aggrieved or adversely affected by a final order.

Movants must establish they are adversely affected. *Sonoc* at 3. In this case, Movants are barred from intervening because they have not pled how each will be aggrieved by a final order.

The affidavits of Movants are virtually identical. Each affidavit is vague and generally states the Movant: (1) owns land close to or adjacent to the Property; (2) did not receive formal and direct written notice from DHEC of the Minor Permit Modification; (3) is not aware of any

⁶ Pursuant to Rule 24(c), SCRCP, Movants must state the ground for intervention and the Motion to Intervene shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. Movants fail to attach a pleading to their Motion or identify the claim for which intervention is sought. Movants also fail to state with particularity the grounds therefor and relief sought in the Motion to Intervene. Rule 7(b), SCRCP.

Legal Notices of the Minor Permit Modification provided in the newspaper by DHEC; and (4) will allegedly be harmed by **transportation of disposal of coal ash** in the Highway 93 Landfill because of dust, contamination, and property value impacts. See Affs. of Movants, Exs. 16-20 of Petitioner's Memorandum in Opposition to MRR Pickens, LLC's Motion to Dismiss.⁷

While Movants allege harm from coal ash, they do not provide sworn testimony of alleged harm from the Minor Permit Modification. The Minor Permit Modification is the option to install a liner. A liner does not permit disposal of a particular waste stream – including but not limited to coal ash. Coleman Dep. 76:8-18. A liner simply serves as a barrier between the Class 2 Waste placed in the landfill and the underlying soils and groundwater. As DHEC confirms, a liner option is a protective barrier and it is more protective than what is generally required in a Class 2 landfill. Coleman Dep. 77:17-78:11.

Nevertheless, this Court may only hear those cases that present a legitimate justiciable controversy. The concerns raised in Movants' Motion to Intervene and affidavits are vague, general and speculative in nature. More importantly, Movants fail to allege any injury that will result from the installation of a liner.⁸

B. Movants Concede Petitioner Adequately Protects Movants' Interests

Even if the Court determines that Movants meet the initial requirement and have an interest in this case, intervention may be allowed only where movant's interest is not adequately represented by existing parties. *Ex Parte Reichlyn*, 310 S.C. 495, 427 S.E.2d 661 (1993); Rule 24(a)(2), SCRPC. South Carolina has adopted a three-part test for determining adequacy of representation:

⁷ MRR Pickens renews its objection to consideration of affidavits not properly attached.

⁸ In the event the Court does not dismiss this case for lack of subject matter jurisdiction and find Movants Motion to Intervene moot as a result, MRR Pickens reserves the right to request discovery on standing issues and to challenge each Movants standing prior to the Court ruling on their Motion to Intervene.

- (1) Whether Petitioner will make Movants' arguments;
- (2) Whether Petitioner is capable and willing to make such arguments; and
- (3) Whether Movants offer different knowledge or experience for the proceeding.

Berkeley Electric Co-op, Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 191, 394 S.E.2d 712, 715 (1990); *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525 (9th Cir. 1983). "The burden of demonstrating inadequacy of representation is on the applicant." *Horry County State Bank*, 361 S.C. at 508; *Berkeley Electric* at 191.

Movants' concede their interests are adequately represented by Petitioner by consenting to Petitioner appearing on "their behalf and represent[ing] and advance[ing] their interests in this matter". *Motion to Intervene* at 1. In fact, "Attorneys for Pickens County" filed this Motion to Intervene on behalf of Movants. *Id.* at 3. Movants also crave reference to an affidavit of Petitioner's staff member, Chris Brink, who further confirms: "[Petitioner] brings this action in the Administrative Law Court on behalf of the citizens and residents of Pickens County[,] property owners of Pickens County, on behalf of adjoining landowners[,] and "[i]n particular, [Petitioner] brings this action on behalf of members of the public residing in close proximity to the landfill. . . ." *Id.* at 2; *Citing* Petitioner's Memorandum in Opposition to MRR Pickens, LLC's Motion to Dismiss, Ex. 15, Aff. of Chris Brink, ¶ 23 (Aug. 17, 2016). Therefore, Movants confirm Petitioner will make their arguments. Petitioner confirms it is capable and willing to make Movants' arguments, and Movants offer no evidence that they have differing knowledge or experience from Petitioner.

Additionally, in Movants' affidavits attached to Petitioner's filing, Movants convey the same misplaced "interest" in the Minor Permit Modification as Petitioner – that the modification changes the 2008 permit to allow coal ash and that coal ash will affect their properties:

The rights and defenses of the [Movants] rise and fall with the acts and omissions of [Petitioner]. They share the same interest and objective.

In re Horry County State Bank, 361 S.C. at 510. Moreover, there is no way for this Court to discern from Movants' argument that its ultimate objective is different from Petitioner:

Regardless of how the parties' interests are characterized, the [Movants] and the [Petitioner] seek the same outcome in the case.

S.C. Tax Comm'n v. Union County Treasurer, 295 S.C. 257, 260-261, 368 S.E.2d 72, 74 (Ct. App. 1988).

Consequently, Movants have unequivocally demonstrated their interests are adequately represented by Petitioner. Movants also fail to distinguish their interests from Petitioner. Therefore, this Motion to Intervene must be denied.⁹

C. Intervention at this stage will unduly prolong the case and prejudice the rights of Respondents.

Rule 20(B)(3), ALC Rules, requires that intervention will not unduly prolong the proceedings or otherwise prejudice the rights of existing parties. Rule 20(C), ALC Rules, provides a motion for leave to intervene must be filed as early in the proceedings as possible to avoid adverse impacts on the disposition of the proceedings.

Here, Petitioner filed its RFR with the DHEC Board on March 23, 2016, over five (5) months ago. Upon denial of the RFR by the Board in late April, Petitioner filed its Request for a Contested Case Hearing with this Court on May 19, 2016 – almost four (4) months ago. Prehearing statements and dispositive motions have been filed and Petitioner has served discovery on Respondents DHEC and MRR Pickens. MRR Pickens filed its Motion to Dismiss on July 29, 2016. It appears Petitioner's counsel, recognizing its fatal flaws for timeliness,

⁹ Again, it is clear Petitioner only moves to add parties to this action in an effort to repair its failure to establish subject matter jurisdiction in this case. Thus, MRR Pickens requests this Court grant MRR Pickens its attorneys' fees, costs and expenses, and other just and proper relief in responding to this Motion to Intervene.

service, and other necessary requirements, now files this Motion to Intervene on behalf of Movants in a final effort to save or resurrect its pleading. By this filing, Petitioner effectively concedes its appeal is time-barred and acknowledges it failed to adhere to statutorily prescribed procedure as identified in detail herein and in MRR Pickens' Motion to Dismiss.

Moreover, if Petitioner is untimely, then Movants are also untimely. None of the Movants state or identify reasons why they have not been involved in these administrative proceedings prior to this Motion to Intervene or why they have not come forward on their own at any time since the Minor Permit Modification was issued - over a year ago. Upon review of Movants' affidavits, it is impossible to establish from the sworn testimony when Movants became aware of the Minor Permit Modification.

First, the public record shows that the Movants were given actual and constructive notice of the original Highway 93 Permit in 2008. In fact, it was Legally Noticed on three (3) separate occasions and a written notice was mailed to each of the Movants at that time. [Exhibits C and D] Finally, a resident of Pickens County, GB Enterprises, appealed the 2008 Permit and the case was dismissed in March of 2009. None of the Movants intervened or joined in that case or asked to be notified of the resolution of it or of any future decisions relating to the Highway 93 Permit.

Secondly, no Movant identifies when he or she received notice of the Minor Permit Modification. Constructive Notice is defined as "information or knowledge of a fact imputed by law to a person, because he could have discovered the fact by property diligence, and his situation was such as to cast upon him the duty of inquiring into it. *Concerned Citizens for Sandy Flat v. S.C. Dep't of Health & Envtl. Control, et al.*, 2001 WL 1502396, *3 (2001). Here, information relating to the permit at issue, including the modification to add the option of a liner, has been in the state and local newspapers since at least December of 2015. [Exhibit G;

Newspaper articles addressing the Highway 93 Landfill and the Minor Modification to add a Liner]. Therefore, Movants and the public in general have at the very least had constructive notice of the Minor Permit Modification since January of 2016.

Therefore, intervention will prolong these proceedings and prejudice MRR Pickens by requiring extensive discovery on whether the Movants have standing, and the alleged harm each Movant claims. To allow this over a year after the Minor Modification will serve no public purpose given the limited nature of the Minor Permit Modification.

3. Movants' have failed to establish standing to intervene.

Movants cannot stand on their own as a "parties" because they failed to exhaust administrative remedies as required by statute. No Movant has requested the DHEC Board for Final Review at any time after receiving actual or constructive notice of the Minor Permit Modification. Therefore, the Court should not allow Movants to "stand in the shoes" of the Petitioner in an attempt to repair Petitioner's untimely appeal and to repair Movants' failure to exhaust their own administrative remedies.

Under the APA, a party is defined as "each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party." S.C. Code Ann. § 1-23-505(5). Only a "party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review." S.C. Code Ann. § 1-23-380. Movants have the burden to show they have a right to intervene. *See In re Horry County State Bank*, 361 S.C. 503, 508, 604 S.E.2d 723, 725 (Ct. App. 2004). No Movant has made a RFR or requested be notified as an affected person.

In addition to the requirements set forth above, this Court has held that Rule 20(C), ALC Rules, implicitly requires the Movants to establish "standing" to appeal. Standing requires

"injury in fact" beyond injury to the general public. Movants have not established any such injury as a result of an optional liner. Furthermore, review of public GIS and tax records for Pickens County, indicates that only two of the Movants have property adjacent to the Highway 93 Class 2 Landfill and all the Movant's properties are "vacant land". Even if Movants had exhausted administrative remedies (which MRR Pickens respectfully denies), MRR Pickens suspects that some, if not all, the Movants would be unable to establish standing in this matter, if a justiciable case existed. Based on the pleadings, Movants failed to meet this burden. If the Court does not dismiss this case for lack of jurisdiction or deny the Motion to Intervene on the pleadings, MRR Pickens will respectfully request discovery on the issue of standing and reserves the right to file supplemental briefs on the issue before a final ruling is given.

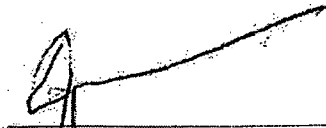
CONCLUSION

Respondent MRR Pickens respectfully requests this Court rule Movants' Motion to Intervene is moot given the lack of subject matter jurisdiction in Petitioner Pickens County's underlying case. In the alternative, MRR Pickens respectfully requests the Court deny Movants' Motion to Intervene on the grounds that: Movants have failed to satisfy the requirements for intervention pursuant to Rule 20(C) of the ALC Rules; and Movants have failed to establish standing in this case. Furthermore, MRR Pickens requests Movants and/or Petitioner reimburse its attorneys' fees, costs, and expenses in responding to this Motion to Intervene.

Respectfully submitted, this the 6th day of September, 2016.

(SIGNATURE PAGE TO FOLLOW)

WILLIAMS MULLEN



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**ATTORNEYS FOR RESPONDENT
MRR PICKENS, LLC**

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Pickens County,

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control and MRR Pickens,
LLC,

Respondents.

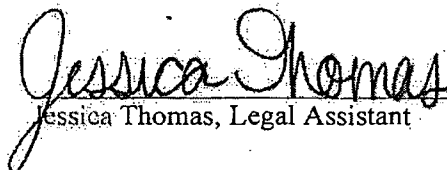
DOCKET NO. 16-ALJ-07-0164-CC

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of September, 2016, in Columbia, South Carolina, a copy of the foregoing **RESPONDENT MRR PICKENS, LLC'S RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FOR LEAVE TO INTERVENE** was served on all parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows:

Etta R. Williams Linen, Esquire
Office of the General Counsel
S.C. Department of Health and
Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Gary W. Poliakoff, Esquire
Poliakoff & Associates
P.O. Box 1571
Spartanburg, South Carolina 29304


Jessica Thomas, Legal Assistant

WILLIAMS MULLEN
1441 Main Street, Suite 1250
Columbia, SC 29201
Telephone: 803.567.4604
Facsimile: 803.567.4601

Respondent MRR Pickens, LLC

Exhibit A



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

September 19, 2008

CERTIFIED MAIL

91 7108 2133 3932 9290 2453

Mr. Ronald C. Gilkerson, P.G.
MRR Pickens, LLC
11743 Trails End Lane
Charlotte, NC 28078

**RE: Draft Permit for Class 2 Solid Waste Landfill
Proposed Highway 93 C & D Landfill
Location: 34° 47' 50" N, 82° 40' 30" W
Pickens County**

Dear Mr. Gilkerson:

The Department has completed the review of your submittal dated November 2007, with the August 2008 revisions on the proposed Class 2 Landfill. Enclosed is a draft permit for the proposed Highway 93 Construction, Demolition and Land-Clearing Debris Landfill in Pickens County. This permit is drafted under Regulation 61-107.19, *Solid Waste Management: Solid Waste Landfills and Structural Fill*. If you have any comments regarding the permit conditions, please respond by **October 20, 2008**.

The Public Notice of the draft permit will be published in the *Easley Progress* and *The Pickens Sentinel* on September 19, 2008. (Copy Attached) If no comments are received the permit may be issued as written.

If you should have any questions, please contact Timothy M. Eleazer at (803) 896-4217.

Sincerely,

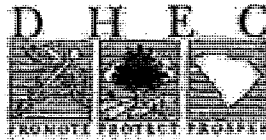
Joan F. Litton, Manager
Solid Waste Permitting Section
Division of Mining and Solid Waste Management
Bureau of Land and Waste Management

JFL/TME/tmc

Enclosures

cc: Bill Rampey, Region 2, Greenville EQC Office
Keith Collinsworth, P.G. Manager, Solid Waste Groundwater Section
Marty Lindler, Manager, Solid and Hazardous Waste Compliance
Dorina Rowe, Upstate Regional Community Liaison (Region 1 & 2)
Jeff Herbig, P.E., B.P. Barber and Associates, Columbia, SC
BLWM File # 021212

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
9600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3432 • www.scdhec.gov



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-###

Permit Issued Date: _____ Permit Effective Date: _____

Permission is hereby granted to:

Name of Facility: Highway 93 C & D Landfill
Permittee: MRR Pickens, LLC
Address: 11743 Trails End Lane
Charlotte, NC 28078
Contact: Mr. Ronald C. Gilkerson
Phone: (704) 947-6652

for the operation of a Class 2 landfill at 2180 Greenville Highway, Liberty, South Carolina, 29657 in Pickens County located off Highway 93 at Glady Road approximately 2,000 feet NE of the City of Liberty, SC.

This permit is issued pursuant to Sections 44-96-10 *et seq.* (Supp. 2007) and 25A S.C. Code of Regulations Section 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.

Kenn M. Coleman, P.G., Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-###
September 19, 2008
Page 1 of 4

MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-###

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the design specifications and construction plans received November 30, 2007; and last revised August 26, 2008, unless permit conditions state otherwise.
2. This permit is limited solely to the disposal of items listed in Appendix I of R.61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to June 30). Information concerning the facility's previous Fiscal Year's waste receipts is due in the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV. Subpart C.1. to the attention of:

**Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201**

4. All Appendix-I acceptable wastes must be covered at least every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to twelve (12) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than twelve (12) acres (at the time of the certification). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (38,720 yd³ of soil for 12 acres with 2' thickness). The certification shall have been completed within the last 60 days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.
2. Within ninety (90) days of the effective date of this permit, the Permittee shall submit a detailed Compliance Plan that describes steps to be taken in order to fully comply with all regulatory requirements of R.61-107.19 that relate to Class 2 landfills. This Compliance Plan shall include, but not limited to, the following: a groundwater monitoring design workplan, a landfill post-closure care plan, and a landfill post-closure care cost estimate. Upon the Department's approval of said Compliance Plan, the Permittee will have six (6) months to implement the plan and will have a deadline for full compliance with R.61-107.19 of November 19, 2009.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. SPECIAL ENVIRONMENTAL PERMIT CONDITIONS

Within ninety (90) days of the effective date of this permit, the Permittee shall submit to the Department for review, a Groundwater Monitoring Design Workplan in accordance with R.61-107.19, Part IV, Section E (Groundwater Monitoring and Corrective Action). In addition, an approved groundwater monitoring system must be installed and operating prior to November 19, 2009 pursuant to R.61-107.19, Part I, Section A.6.c. Upon the Department's approval of the Groundwater Monitoring Design Workplan, permit conditions C.2, C.3 and C.4 will become effective.

2. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit.

The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.

- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- e) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

3. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine monitoring at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19, Part IV Subpart E.

4. REPORTING

- a) The Permittee shall submit to the Department the results of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following sampling schedule:

<u>Sampling Schedule</u>	<u>Results Due</u>
November/December	January 15 (Semi-Annual)
May/June	July 15 (Annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.2.A.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Groundwater Section and to the Solid Waste Consultant in Region 2 EQC (Greenville).

5. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required comply with R.61-107.19, Part IV, Section C.21.



13

C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

MEMORANDUM

TO: Bill Rampey
Region 2 EQC Office
Greenville EQC Office

FROM: Timothy M. Eleazer *TME*
Solid Waste Permitting Section

DATE: September 19, 2008

RE: Public Notice of the Draft Highway 93 C&D, LCD Landfill
(Pickens County)

Enclosed is a copy of the revised application for the proposed construction, demolition and land-clearing debris landfill. Please make it available for public inspection, until the end of the public review period on October 20, 2008. A public notice is to be printed in *Easley Progress* and *The Pickens Sentinel* on September 19, 2008.

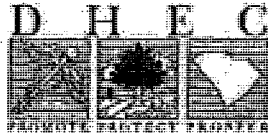
Your cooperation in this matter is appreciated and if you have any questions, please contact me at (803) 896-4217.

TME/tme

Respondent MRR Pickens, LLC
Exhibit B

Respondent MRR Pickens, LLC

Exhibit C



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

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MEMORANDUM

TO: Adjacent Landowners

FROM: Timothy M. Eleazer *TME*
Solid Waste Permitting Section
Division of Mining and Solid Waste Management
Bureau of Land and Waste Management

DATE: September 19, 2008

Re: Proposed Class 2 Landfill
Highway 93 C&D, LCD Landfill
Pickens County

The South Carolina Department of Health and Environmental Control's (SCDHEC) Solid Waste Permitting Section has received a permit application from MRR Pickens LLC for a Class 2 Landfill. The Department has completed a technical review of the application. At this time, the Department's Solid Waste Permitting Section has issued a draft permit for this Class 2 Landfill and will be taking comments from the public before a final permit decision is made.

Please see the attached Public Notice for additional information on the proposed project. A Copy of the regulation may also be viewed at the following website:
http://www.scdhec.gov/environment/lwm/html/solidwaste_new_regulation.htm

If you have any questions regarding the proposed landfill or wish to view the permit application, please contact me at (803) 896-4217.

TME/tme

Enclosure

SC DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL PUBLIC NOTICE

Topic: Proposed Highway 93 Construction, Demolition and Land-Clearing Debris (C&D) Landfill Permit

Location: 2180 Greenville Highway, Liberty, SC 29657
Off Highway 93 at Clardy Road in Pickens County;
Approximately 2,000 feet NE of the City of Liberty, SC.

The South Carolina Department of Health and Environmental Control's (SCDHEC) Solid Waste Permitting Section has received a permit application from MRR Pickens, LLC for a new Class 2 Landfill. The proposed landfill will be located within a 149-acre parcel of property located off Highway 93 at Clardy Road approximately 2,000 feet northeast of the city limits of Liberty, SC. The proposed landfill is estimated to have a disposal lifetime of more than fifty (50) years.

SCDHEC requires that a permit be issued for Class 2 Landfills pursuant to SC Code Ann. Sections 44-96-10 et. Seq. (Supp. 2007) and 25A SC Code Reg. 61-107.19, *Solid Waste Management: Solid Waste Landfills and Structural Fill*. The types of wastes that can be accepted at the MRR Pickens, LLC C&D Landfill are described in Appendix I of the above-mentioned regulation. Acceptable wastes include, but are not limited to, land-clearing debris, bricks, blocks, shingles, lumber, and other wastes listed in Appendix I. Wastes that are not acceptable at Class 2 landfills include household garbage, hazardous waste, and infectious waste. For a more detailed description of Appendix-I-acceptable wastes, please contact one of the persons below to view the application or to request a Class 2 Landfill fact sheet. A copy of the regulation may also be viewed at the following website: <http://www.scdhec.gov/environment/lwm/regulatory.htm>.

At this time, the Solid Waste Permitting Section has completed its review of the permit application and found that the application meets all technical requirements. Solid Waste Permitting has completed a draft permit and hereby gives notice to the public. During the public comment period the Department will be taking comments from the public concerning the draft permit, which is inclusive of the Department's determinations as outlined in R.61-107.19 Part I.D.2.b and/or the permit application. The comment period will remain open until October 20, 2008.

Who to contact? Copies of the permit application are available by appointment for public viewing during normal working hours at the following locations:

Bureau of Land and Waste Management
SC Department of Health and Environmental Control
8911 Farrow Road
Columbia, SC 29223

Contact: Timothy M. Eleazer, (803) 896-4217
E-mail: eleazetm@dhiec.sc.gov

Environmental Quality Control Regional Office
SC Department of Health and Environmental Control
Region 2 - Greenville
301 University Ridge, Suite 5800
Greenville, SC 29601-3677

Contact: Bill Rampey, (864) 241-1090
E-mail: rampeybj@dhiec.sc.gov

Any interested person(s) may submit written comments concerning the proposed landfill permit application to this mailing address: Mr. Timothy M. Eleazer, SCDHEC BLWM, 2600 Bull Street, Columbia, SC 29201. To be considered, all comments or requests must be received by October 20, 2008, at which time the public comment will end.

Any individuals with disabilities or special needs who want to review the permit application should contact the Department to discuss any special services needed. A minimum of one (1) week's prior notice is requested to allow the Department to make any necessary arrangements.

**Mailing list for the proposed MRR Pickens LLC
Highway 93 C&D Landfill,
Pickens County.**

This mailing list for draft permit dated September 19, 2008.

PETER H SMITH
PO BOX 467279
ATLANTA GA 31146

VUCAN LANDS, LLC
PO BOX 80730
ATLANTA GA 30366

METROMONT MATERIALS
C/O CEMEX
PO BOX 1500
HOUSTON TX 77251-1500

JAMES D MOORE
PO BOX 4
LIBERTY SC 29657-0004

MARGRET WELBORN
LIFE ESTATE
107 DANA DR
OAKRIDGE TN 37830

KING ASPHALT INC
PO BOX 179
LIBERTY SC 29657-0179

LAURA W FOWLER TRUSTEE
210 ORANGE ST
SATELLITE BCH FL 32937-3013

TONY CHARPING
PO BOX 677
LIBERTY SC 29657

RANDOLPH E REVIS SR
2026 GREENVILLE HWY
LIBERTY SC 29657

GB ENTERPRISES LTD
PO BOX 486
EASLEY SC 29640-0486

MARGARET WELBORN
LIFE ESTATE
610 CAROLINA DR
LIBERTY SC 29657-1551

PHILIP J KALCHTHALER
108 CORAL BBEDS WAY
SUNSET SC 29685

MAYOR CITY OF LIBERTY
CITY HALL
LIBERTY SC 29657

ROBERT L TRABER
2041 GREENVILLE HWY
LIBERTY SC 29657-8920

WILLIAM R MCBRIDE TRUSTEE
933 JESSICA ST
RIDGECREST CA 93555-3002

COUNTY ADMINISTRATOR
PICKENS COUNTY
222 MCDANIEL AVE STE B1
PICKENS SC 29671-2556

NEW HORIZON-ELECTRIC
COOPRATIVE INC
PO BOX 1169
LAURENS SC 29360-1169

DUKE ENERGY CORP
PO BOX 1007
CHARLOTTE NC 28201

SAMMY SMITH
206 LAKESIDE LN
LIBERTY SC 29657-3810

UNA W HUGHES
540 AMSTERDAM RD
LIBERTY SC 29657-9373

ERIC M LILJESTEDT
143 BUD SMITH RD
LIBERTY SC 29657-9335

CALVIN L SCHOULTIES
1630 DAVIS CREEK RD
SENECA SC 29678

JAMES S COX
1639 EARLS BRIDGE RD
EASLEY SC 29640-6307

MICHAEL DAVID THOMPSON
348 COBB RD
PELZER SC 29669

GREGORY A CRUMP
208 WELBY WAY
LIBERTY SC 29657

ROBERT EDWARD KELLEY
211 GILSTRAP RD
LIBERTY SC 29657

JAMES RAY CHANDLER
118 CLOVER ST
LIBERTY SC 29657

BRIAN PAUL WASTON
115 CLOVER ST
LIBERTY SC 29657

SHELBA C PORTER
634 AMBERWOOS RD
PICKENS SC 29671

CRYSTAL D HOLLIDAY
114 CLOVER ST
LIBERTY SC 29657

JR BUILDERS OF PICKENS INC
1712 GENTRY MEMORIAL HWY
EASLEY SC 29640

PETER H SMITH
1810 N POTTER PL
TUCSON AZ 85719-3833

EASLEY BUILDERS SUPPLY
INC
PO BOX 1016
EASLEY SC 29641-1016

SAMUEL J VIDAL
175 ORCHARD DR
LIBERTY SC 29657-9317

EDITH M HEAD
172 ORCHARD DR
LIBERTY SC 29657-9317

DIANE H HUTTON
110 POPLAR POINTE
SUNSET SC 29685

BETTY C DUNCAN
18 N PALMETTO ST
LIBERTY SC 29657-1026

ROSA LEE JAMES
2011 GREENVILLE HWY
LIBERTY SC 29657-8920

BARBARA HEAD ROGERS
2001 GREENVILLE HWY
LIBERTY SC 29657-8920

CYNTHIA D YOUNG
PO BOX 36
LIBERTY SC 29657

CITY OF LIBERTY
FIRE DEPARMENT
206 W FRONT ST
LIBERTY SC 29357

PICKENS COUNTY SCHOOL
SUPERINTENDENT
1348 GRIFFIN MILL RD
EASLEY SC 29640-8885

EASLEY CENTRAL WATER
DISTRICT
PO BOX C
NORRIS SC 29667-0050

VIRGINIA JUMPER
1307 ANDERSON HWY
EASLEY SC 29642

WATKINS BUILDERS INC
TROY WATKINS
405 WEXFORD WAY
EASLEY SC 29642

FURMAN RICHARD STATON
360 SPRINGDALE AVE
LIBERTY SC 29657

THOMAS K NIX
356 SPRINGDALE AVE
LIBERTY SC 29657-3807

WILLIAM W GARRISON
352 SPRINGDALE AVE
LIBERTY SC 29657-3807

JASON LEE WADE
348 SPRINGDALE AVE
LIBERTY SC 29657-3807

TIMOTHY RAY RIDDLE
344 SPRINGDALE AVE
LIBERTY SC 29657-3807

KALOUTIE RANDASS
340 SPRINGDALE AVE
LIBERTY SC 29657-3807

ANGELA MARIE CHADWICK
336 SPRINGDALE AVE
LIBERTY SC 29657-3807

JAMES N YOUNG JR
332 SPRINGDALE AVE
LIBERTY SC 29657-3807

KEVIN R JONES
326 SPRINGDALE AVE
LIBERTY SC 29657-3807

Respondent MRR Pickens, LLC

Exhibit D



C. Earl Hunter, Commissioner

Protecting and preserving the health of the people and the environment

Bureau of Land and Waste Management
MEMORANDUM

DATE: November 3, 2008

TO: Concerned Citizens

FROM: Kent M. Coleman, P.G. Director
 Division of Mining and Solid Waste Management
 Bureau of Land and Waste Management

SUBJECT: Class 2 Solid Waste Landfill Permit
 Permit Issuance for Highway 93 C&D Landfill
 Permit No. LF2-00003
 Pickens County

After careful review of information submitted by MRR Pickens, LLC (the Applicant), the South Carolina Department of Health and Environmental Control (the Department) has approved the application for a new Class 2 landfill (previously Construction, Demolition and Land-Clearing Debris (C&D) landfill). The landfill is located off Highway 93 near Liberty, South Carolina, Pickens County, SC. The approved Permit and a Staff Decision Summary Report have been enclosed for your information. The Summary Report addresses comments received during the public comment period for the proposed landfill.

This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person. This decision may be appealed by complying with the requirements described in the attached *Notice of Appeal Procedure*, provided as a courtesy by the Department.

If you have any questions regarding the solid waste permit, you may call Joan F. Litton at (803) 896-4264.

KMC/TME/tmc

Enclosures



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

Notice of Appeal Procedure

The following procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person.
2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393:

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201
3. The request for final review should include the following:
 - a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
 - b. a statement of any significant issues or factors the Board should consider in deciding how to handle the matter
 - c. a copy of the Department's decision or action under review
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the Department decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

October 31, 2006

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3432 • www.scdhec.gov

STAFF DECISION SUMMARY REPORT

October 30, 2008

Approval of Class 2 Solid Waste Landfill (previously C&D) Application Issuance of Permit for the Highway 93 C&D Landfill

This summary report addresses the South Carolina Department of Health and Environmental Control's (the Department's) decision to issue a Class 2 Landfill permit for the proposed Highway 93 C&D Landfill owned and operated by MRR Pickens, LLC (Applicant). The site is located at 2180 Greenville Highway, Highway 93, near Liberty, South Carolina in Pickens County. This summary report provides responses to comments received throughout the public comment period.

SOLID WASTE MANAGEMENT

The principal law governing solid waste management in this state is the South Carolina Solid Waste Policy and Management Act of 1991 (Act) [44-96-10]. One of the main purposes of the Act is to ensure those activities associated with solid waste management are executed in a manner adequate to protect human health, safety and welfare of the environment.

The passage of the Act acknowledged a growing statewide concern about the generation, management, and disposal of solid waste. DHEC was given the responsibility to develop regulations establishing minimum standards for solid waste management facilities. Regulation 61-107.11, Solid Waste Management: *Construction, Demolition and Land-Clearing Debris Landfills* became effective on April 24, 1998, and was the applicable regulation when the Department on June 27, 2006 received the permit application. Regulation 61-107.11 was replaced by Regulation 61-107.19, *Solid Waste Management: Solid Waste Landfills & Structural Fill*, on May 23, 2008. This regulation outlines the requirements for permitting the design, construction, operation, maintenance, and closure of landfills. Please see the following web page http://www.scdhec.gov/environment/lwm/html/solidwaste_new_regulation.htm for a more complete description and for a copy of the new regulation.

In reaching its decision on the permit application, the Solid Waste Permitting Section reviewed all information submitted in the application, supplemental information submitted, and public comments. The Department has reviewed the application with respect to the requirements of the Act and Regulation 61-107.19. The applicant has met the applicable requirements and a permit is being issued.

PUBLIC PARTICIPATION AND NOTICE

The following is a summary of public involvement that occurred during the Department's consideration of this application:

- On January 16, 2008, the original application package was advertised to the public in *The Pickens Sentinel* newspaper of Pickens County.

- On September 19, 2008, notice was advertised to the public in *The Easley Progress* and *The Pickens Sentinel*.
- On September 19, 2008, the public notice of the draft permit was mailed to adjacent landowners.

TRAFFIC CONCERNS

The current solid waste law and regulations do not grant the Department the authority to regulate traffic on public roads. Jurisdictional authority over the setting and enforcement of weight limits, speed limits, traffic patterns, encroachments, etc. is the responsibility of other state and local entities.

BUFFERS

Regulation 61-107.19, Part IV B.1 a. & g. requires that the boundary of the fill area not be located within 1,000 feet of any residence, school, day-care center, church, hospital, or publicly owned recreational park area and not be located within 100 feet of any drinking water well. The Applicant's submittal for the landfill meets all regulatory requirements for buffers.

GROUNDWATER QUALITY

Class 2 Landfills are required to meet all the design and operational requirements set forth in Regulation 61-107.19 - Part IV. The landfill regulations were promulgated as a means of providing environmentally sound disposal options for those inert construction wastes and demolition wastes listed in Appendix I of R.61-107.19. As such, these landfills are required to monitor groundwater, and are required to design the landfill to achieve a required two (2) feet separation from the seasonal high groundwater table (Regulation 61-107.19 - Part IV.D.1). The permit will have groundwater monitoring and reporting requirements. The monitoring wells will be monitored semiannually for the constituents in Appendix III of the Regulation R.61-107.19 with the results reported to the Department.



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

November 3, 2008

CERTIFIED MAIL

Mr. Ronald C. Gilkerson, P.G.
MRR Pickens, LLC
11743 Trails End Lane
Charlotte, NC 28078

**RE: Class 2 Solid Waste Landfill Permit for
Highway 93 C&D Landfill
Permit No. LF2-00003
Location: 34° 47' 50" N, 82° 40' 30" W
Pickens County**

Dear Mr. Gilkerson:

Enclosed is a Class 2 Solid Waste Landfill Permit for the Highway 93 Construction and Demolition Landfill in Pickens County. This permit is issued under Regulation 61-107.19 *Solid Waste Management: Solid Waste Landfills and Structural Fill*. Also, enclosed is the approved landfill Engineering Report and Engineering Drawings, to be kept at the facility at all times.

The financial assurance for closure of this facility is established at three hundred thousand dollars (\$300,000) at this time. A mechanism that is acceptable to the Department must be established in the amount previously specified prior to the facility accepting waste. Please contact Pete Stevens of my staff at (803) 896-4149 for help in establishing a financial assurance mechanism that is acceptable to the Department.

This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person. This decision may be appealed by complying with the requirements described in the attached *Notice of Appeal Procedure*, provided as a courtesy by the Department.

MRR Pickens, LLC is responsible for complying with all of the conditions in the attached permit and should review each condition carefully.

November 3, 2008 letter
MRR Pickens Class 2 Landfill
Page 2 of 2

If you should have any questions, please contact Joan F. Litton of my staff at (803) 896-4264. All other questions should be directed to Bill Rampey in the Region 2 – Greenville EQC Office at (864) 241-1090.

Sincerely,



Kent M. Coleman, P.G. Director
Division of Mining and Solid Waste Management
Bureau of Land and Waste Management

KMC/TME/tme

Enclosures

cc: Bill Rampey, Region 2, Greenville EQC Office
Keith Collinsworth, P.G. Manager, Solid Waste Groundwater Section
Marty Lindler, Manager, Solid and Hazardous Waste Compliance
Jeff Herbig, P.E., B.P. Barber and Associates, Columbia, SC
BLWM File # 021212

Notice of Appeal Procedure

The following procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person.
2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393:

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. The request for final review should include the following:
 - a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
 - b. a statement of any significant issues or factors the Board should consider in deciding how to handle the matter
 - c. a copy of the Department's decision or action under review
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the Department decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

October 31, 2006



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003

Permit Issued Date: November 3, 2008 Permit Effective Date: November 18, 2008

Permission is hereby granted to:

Name of Facility: Highway 93 C & D Landfill
Permittee: MRR Pickens, LLC
Address: 11743 Trails End Lane
Charlotte, NC 28078
Contact: Mr. Ronald C. Gilkerson
Phone: (704) 947-6652

for the operation of a Class 2 landfill at 2180 Greenville Highway, Liberty, South Carolina, 29657 in Pickens County located off Highway 93 at Clardy Road approximately 2,000 feet NE of the City of Liberty, SC.

This permit is issued pursuant to Sections 44-96-10 *et seq.* (Supp. 2007) and 25A S.C. Code of Regulations Section 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.

Kent M. Coleman, P.G., Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
November 3, 2008
Page 1 of 4

MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the design specifications and construction plans received November 30, 2007; and last revised August 26, 2008, unless permit conditions state otherwise.
2. This permit is limited solely to the disposal of items listed in Appendix I of R.61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to June 30). Information concerning the facility's previous Fiscal Year's waste receipts is due in the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV. Subpart C.16, to the attention of:

**Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201**

4. All Appendix-I acceptable wastes must be covered at least every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to twelve (12) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before **July 1** of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than twelve (12) acres (at the time of the certification). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (38,720 yd³ of soil for 12 acres with 2' thickness). The certification shall have been completed within the last 60 days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.
2. Within ninety (90) days of the effective date of this permit, the Permittee shall submit a detailed Compliance Plan that describes steps to be taken in order to fully comply with all regulatory requirements of R.61-107.19 that relate to Class 2 Landfills. This Compliance Plan shall include, but not limited to, the following: a groundwater monitoring design workplan, a landfill post-closure care plan, and a landfill post-closure care cost estimate. Upon the Department's approval of said Compliance Plan, the Permittee will have six (6) months to implement the plan and will have a deadline for full compliance with R.61-107.19 of November 19, 2009.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. SPECIAL ENVIRONMENTAL PERMIT CONDITIONS

Within ninety (90) days of the effective date of this permit, the Permittee shall submit to the Department for review, a Groundwater Monitoring Design Workplan in accordance with R.61-107.19, Part IV, Section E (Groundwater Monitoring and Corrective Action). In addition, an approved groundwater monitoring system must be installed and operating prior to November 19, 2009, pursuant to R.61-107.19, Part I, Section A.6.c. Upon the Department's approval of the Groundwater Monitoring Design Workplan, permit conditions C.2, C.3 and C.4 will become effective.

2. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit.

The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.

- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- e) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

3. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine monitoring at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Part IV Subpart E.3.

4. REPORTING

- a) The Permittee shall submit to the Department the results of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following sampling schedule:

<u>Sampling Schedule</u>	<u>Results Due</u>
November/December	January 15 (Semi-Annual)
May/June	July 15 (Annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.2.A.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Groundwater Section, and to the Solid Waste Consultant in Region 2 EQC (Greenville).

5. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required comply with R.61-107.19, Part IV, Section C.21.

Respondent MRR Pickens, LLC

Exhibit E

BEFORE THE BOARD OF HEALTH AND
ENVIRONMENTAL CONTROL
COLUMBIA, SOUTH CAROLINA

RECEIVED
S.C. DEPT. OF HEALTH
& ENVIRONMENTAL CONTROL
2009 MAR 25 PM 4:37
OFFICE OF THE COMMISSIONER
CHIEF OF STAFF
CLERK OF SCHEC BOARD

GB Enterprises,

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control and MRR Pickens,
LLC,

Respondents.

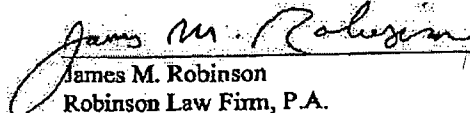
Docket No.: 08-RFR

NOTICE OF DISMISSAL

Petitioner GB Enterprises, also known as G&B Enterprises, Ltd. and GB Enterprises, Ltd. ("Petitioner"), by and through its attorney, voluntarily dismisses with prejudice its request for Board review of Class 2 Solid Waste Landfill Permit LF2-0003 ("Permit") issued to Respondent MRR Pickens, LLC ("MRR") on November 3, 2008 by Respondent South Carolina Department of Health and Environmental Control ("Department").

On November 11, 2008, Petitioner filed a Notice of Appeal of the Permit with the Board. By letter dated December 15, 2008, the Clerk of the Board notified Petitioner that the Board had decided on December 11, 2008, not to conduct a final review conference in this matter.

Petitioner and MRR have reached a resolution of the issues raised by Petitioner in its request for a final review conference. Petitioner now acknowledges that these proceedings are dismissed with prejudice, and Petitioner hereby waives its right to further appeal of the issuance of the Permit, including any right to a contested case hearing.


James M. Robinson
Robinson Law Firm, P.A.
Post Office Box 738
Easley, SC 29641-0738
(864) 859-7501

~~March~~
February 10, 2009
Columbia, South Carolina

Attorney for Petitioner GB Enterprises

Respondent MRR Pickens, LLC
Exhibit F

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

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

MRR PICKENS, LLC,

PLAINTIFF,

vs.

DEPOSITION TRANSCRIPT

KENT M. COLEMAN

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

MARCH 8, 2016

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



A P P E A R A N C E S

REPRESENTING THE PLAINTIFF: *MRR Pickens, LLC*

JESSICA J.O. KING, ESQUIRE

A. KEITH MCALISTER, JR., ESQUIRE

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REPRESENTING THE WITNESS: *Kent Coleman and The South Carolina
Department of Health and Environmental Control*

ETTA R. LINEN, ESQUIRE

S.C. DEPARTMENT OF HEALTH

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MATTHEW K. JOHNSON, ESQUIRE
CAMDEN D. NAVARRO, ESQUIRE
OGLETREE DEAKINS NASH SMOAK & STEWART, PC
106 DOMINICK COURT
GREENVILLE, SOUTH CAROLINA 29602
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ALSO PRESENT: SHELLEY ROBBINS, CHRIS ROOF, AND DONALD
GRAVES (VIDEOGRAPHER)

C O N T E N T S

(Deposition of Kent M. Coleman)

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L E G E N D

- INDICATES INTERRUPTION; INCOMPLETE PHRASES;
UNFINISHED SENTENCES AND/OR TRAILING OFF.
- [sic] WRITTEN AS SAID.
- [ph] WRITTEN PHONETICALLY.

1 permit were modified to include it.

2 Q. Okay. I asked you before whether the Class Two
3 landfill in South Carolina could take coal combustion
4 residuals if they meet the threshold less than ten times
5 the MCL. And your answer was, "Yes, if they meet the
6 criteria." Notwithstanding the new regulator -- I mean,
7 the new law.

8 A. Right.

9 Q. Would MRR's 2008 permit allow them to accept
10 coal combustion residuals if they met the threshold and
11 notwithstanding the new law?

12 A. Yes.

13 Q. This 2008 permit, would it have gone out for
14 public notice?

15 A. When it was originally issued in '08? Yes.

16 Q. Okay. And what's the process for that?

17 A. Well it's laid out in the regulation in Part I,
18 but basically just -- if I can generalize it a little
19 bit. The requirement is that it be public noticed to
20 adjacent landowners and in the newspaper. And then we
21 would -- as a common practice, we would add others who
22 have expressed an interest, and also probably local
23 governments in the area, the County, maybe a nearby city
24 or town if it's close. That type of thing.

25 Q. Okay. So anyone receiving that, such as a

1 county --

2 A. Uh-huh.

3 Q. -- would have the opportunity to ask questions
4 if it was not clear to them what the permit allows.

5 A. We, we issued a public notice so that people
6 will be aware and they ask questions or make comments.

7 Q. Do you hold public hearings on permits?

8 A. Yes. If requested, we do -- or meetings or
9 hearings, whatever --

10 Q. Okay.

11 A. -- you know, folks would like to do, we
12 accommodate that.

13 Q. Do you recall on this particular permit
14 whether a public hearing was requested by any party?

15 A. No. I don't recall.

16 (PLAINTIFF'S EXHIBIT NO. 6; MARKED FOR IDENTIFICATION)

17 Q. Okay. I'm going to hand you another document
18 which will be Plaintiff's Exhibit 6. And this is dated
19 August 10, 2015. This is again, dated August 10, 2015,
20 and it's regarding issuance of a modified Class Two
21 Landfill Permit, Highway 93 Landfill, Permit No. LF2-
22 00003, Pickens County. Have you seen this document
23 before?

24 A. Yes.

25 Q. Is that your signature on the cover page and

1 the first page of the permit?

2 A. Yes.

3 Q. What is this document?

4 A. This was a -- when we issued a modified -- we
5 modified this Class Two permit.

6 Q. So you modified, just for clarification -- you
7 modified MRR Pickens Highway 93 landfill in 2015?

8 A. That's correct.

9 Q. And when you say you -- DHEC modified it.

10 A. Yes.

11 Q. And do you recall what modifications were made
12 to the permit?

13 A. I do remember, I think, the primary reason for
14 the modification was the addition of a synthetic liner,
15 designed with leachate collection. Basically a new
16 design for the landfill.

17 Q. Okay. And were you a part of -- were you
18 involved in this modification?

19 A. Yes.

20 Q. Okay. And I think the liner that you're
21 referring to is in section A-8 of the special conditions.
22 And you can clarify me if that's not what you were
23 referring to. But it's on Page 3 of the permit.

24 And it states, "60 days prior to starting
25 construction of the Class Two landfill, the permittee

1 shall notify the department of their selection between
2 option one, traditional Class Two, landfill design; and
3 option two, alternate liner design. And then it
4 discusses the financial assurance mechanism.

5 A. Uh-huh.

6 Q. So did this modification require MRR to
7 install a liner?

8 A. No.

9 Q. So it gives them the option. Is that correct?

10 A. That's correct.

11 Q. And the alternate liner design was, I expect,
12 described in the application for the permit
13 modification. Is that correct?

14 A. Yes.

15 Q. And what type of liner is this?

16 A. Well, I -- I do know that the liner design
17 included a synthetic component which generally is what we
18 refer to at least, as a subtitle D-type liner design.

19 Q. Okay. And are those the types of liners that
20 you often see in a Class Three landfill?

21 A. Yes.

22 Q. Or always see in a Class Three landfill?

23 A. Yes. That's the type of liner that would be
24 required in a Class Three, yes.

25 Q. But not required in a Class Two?

1 A. Correct.

2 Q. And is it safe to say that a subtitle D liner
3 provides added protection to the environment in a
4 landfill of any kind?

5 A. As compared to what -- no liners?

6 Q. An unlined landfill.

7 A. Yes, certainly.

8 Q. Okay. Are Class Two landfills required to have
9 any type of liner?

10 A. Class Two?

11 Q. Yeah.

12 A. No.

13 Q. And in your opinion, if a permittee, came to
14 DHEC and asked to install a liner that is not required in
15 the regulations --

16 A. Uh-huh.

17 Q. -- would there be any reason for DHEC to deny
18 that request?

19 MR. POLIAKOFF: Objection, form.

20 Leading.

21 A. I -- I can't think of a reason why we would
22 deny a liner request, if it were not required.

23 Q. And I guess what I'm asking, is there any
24 negative impacts to the presence of a liner in a solid
25 waste landfill, to your knowledge?

1 A. Not for the department or the environment. No.

2 Q. Does the addition -- let's look at one other
3 portion of the permit. And you may need to have the '08
4 permit in front of you as well --

5 A. Okay.

6 Q. -- with the '15, so that we can compare. I'm
7 not sure which Exhibit the '08 permit is.

8 MR. POLIAKOFF: Five.

9 Q. Five. Thank you. So if you look at the '08
10 permit, well Plaintiff's Exhibit 5, and this 2015
11 modification, condition -- special condition A-2 states,
12 in '15 states, this permit is limited to the disposal of
13 the items listed in Appendix I of Regulation 61-107.19,
14 and any other waste approved by the department for
15 disposal in a Class Two landfill pursuant to Regulation
16 61-107.19, Part IV, Section C-2.

17 And if you look at the '08 permit under that
18 same section, A-2, it says the permit is limited solely
19 to the disposal of items listed in Appendix I of
20 Regulation 61-107.19. All other wastes, including
21 animal carcasses, are prohibited from disposal in this
22 landfill.

23 So the language is a little different.
24 Correct?

25 A. Yes.

1 Q. And can you, in your -- in reading that
2 language, does the new language under A-2 alter the waste
3 stream that MRR Pickens would be allowed to take,
4 subsequent to this modification?

5 A. Does the -- which permit?

6 Q. Does the new --

7 A. 2015?

8 Q. Does the modification alter the waste stream
9 that MRR Pickens would be allowed to take under its '08
10 permit.

11 A. No. I mean, the regs were the same under both
12 permits.

13 Q. So what would be the purpose of the change in
14 the language?

15 A. Just, I think clarity. As we've evolved, we've
16 had to be a little more clear with that language than we
17 did in the previous permit.

18 Q. So since 2008, DHEC made the determination
19 that it would be smart to clarify that language?

20 MR. POLIAKOFF: Objection, form. Leading.

21 A. I think any time we -- it comes to our
22 attention that something is not completely clear, we try
23 to improve it. So that's what we did.

24 Q. Okay. So based on what you just said, that
25 this would not change -- does not change the waste stream

1 that MRR would be allowed to take under the '08 or the
2 modified permit. Under the modified permit --

3 A. Uh-huh.

4 Q. -- would MRR be able to go through the process
5 you discussed to add a new waste, so long as it meets the
6 waste characterization requirements?

7 A. Yes.

8 Q. Okay. And notwithstanding the new state law --

9 A. Uh-huh.

10 Q. -- governing coal combustion residuals and
11 disposal in South Carolina, under 107.19, if MRR
12 submitted a waste characterization for coal ash, showing
13 it less than ten times the MCL, would DHEC potentially
14 allow it to dispose of coal ash in the Pickens 2
15 landfill?

16 A. Yes.

17 Q. Okay. So let's talk about the modification
18 itself. It appears -- it states this is an issuance of a
19 modified Class Two landfill permit. Was this a minor or
20 a major modification?

21 A. We issued this modification as a minor
22 modification.

23 Q. Okay. Can you tell me why?

24 A. Yes. I can. I've had to recall those
25 conversations a few times lately. But the -- basically,

1 we looked at it, and since there were no new waste
2 streams involved, and it was an optional upgrade so to
3 speak -- it was only basically, you know, making the
4 facility more environmentally protective than we had
5 already issued.

6 We felt like it was -- you know, we felt like
7 we could do it as a minor because any, you know, any
8 impact would just be positive, if they decided to install
9 the liner. And since we didn't improve any new waste
10 streams or increase in volume or anything like that, we
11 felt like an upgrade was with a minor modification.

12 Q. Okay. So since no new waste streams were added

13
14 A. Uh-huh.

15 Q. -- the liner itself does not automatically
16 modify the permit to allow a new waste stream. Is that
17 correct?

18 A. Correct.

19 MR. POLIAKOFF: Object to form, leading.

20 Q. And you said this is an upgrade because it's
21 more protective.

22 A. It's my term, but yes I considered it an
23 upgrade because it's more protective. Yes, that's fair.

24 Q. Okay. If MRR decides to install the liner in
25 its Pickens Class Two landfill --

1 Q. Okay. I'm going to hand you Plaintiff's
2 Exhibit 8, which is a December 11, 2015 letter from
3 Justin Kuhn (ph) --

4 A. Uh-huh.

5 Q. -- to MRR. Is that the request letter you were
6 just referring to from DHEC?

7 A. Yes.

8 Q. I'm sorry -- and again, you have not received a
9 response to this to date --

10 A. Not, not that I know of.

11 Q. -- to your knowledge?

12 A. Uh-uh.

13 Q. Okay. So would it be safe to say that DHEC has
14 made no determination, at this time, as to whether MRR
15 will be allowed a variance in its annual tonnage rate?

16 A. That's correct. We have made no
17 determination.

18 Q. Have you to date received a waste
19 characterization for coal combustion residuals from MRR
20 Pickens?

21 A. Not to my knowledge.

22 Q. Would it -- would you expect to know if that
23 had been received in your position?

24 A. I, I would most likely be aware of it, yes.

25 Q. So for MRR Pickens to take coal combustion in

1 residuals --

2 A. Uh-huh.

3 Q. -- at its Pickens County Class Two landfill,
4 there is still a regulatory process that is not complete
5 at this time. Is that true?

6 A. Yes.

7 Q. You mentioned earlier, legislation that has
8 been passed in South Carolina recently in March --

9 A. Yes.

10 Q. -- that deals with disposal of coal combustion
11 residuals. Is that correct?

12 A. Yes. I can't remember whether it uses the
13 term, coal combustion residuals or coal ash, but
14 something along that line.

15 Q. And it's your understanding that that is --
16 that legislation is final?

17 A. Yes.

18 Q. Okay. And have you been asked questions about
19 that legislation from any -- by anyone from Pickens
20 County?

21 A. Pickens County, define like -- do you mean, do
22 they live there? Do they work for the county? Or what
23 are you asking exactly?

24 Q. Well, I guess --

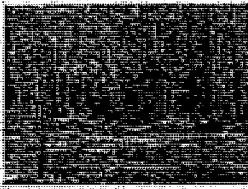
25 A. Any?

Respondent MRR Pickens, LLC

Exhibit G

Pickens County officials distressed about plan for coal ash landfill

Ron Barnett, rbarnett@greenvillenews.com 12:57 p.m. EST December 28, 2015



(Photo: Paul Brown)

A private company has entered into a preliminary agreement to undertake "a large disposal project" that could dump hundreds of thousands of tons of coal ash in Pickens County, according to the state Department of Health and Environmental Control, which has approved landfill construction plans.

The magnitude of the project would require "a significant increase" in the 70,500 tons per year the company was permitted to handle when it received approval for an unlined landfill eight years ago, a DHEC spokesman said.

DHEC has asked for more information from the company and doesn't know where the coal ash would be coming from or how much would be coming.

An attorney for the landfill property owner, MRR Pickens, LLC, declined to comment.

But county officials who have fielded calls from concerned people who live and work nearby, are distressed about the possibility of contamination from toxic heavy metals found in coal ash, a byproduct of coal-fired power plants.

Coal ash contains contaminants such as arsenic, lead, mercury, selenium, cadmium, and chromium, and has been linked to increased risk of cancer, according to the Environmental Protection Agency.

"The acceptance of coal ash in our county is just not acceptable," said County Councilman Neil Smith, who represents the area where the landfill is to be located. "And potential health problems can't be offset by the influence and the money of that industry.

"I'm upset about the state even allowing it."

The 4.61-million cubic yard landfill is under construction at the intersection of State 93 and Cartee Road between Liberty and Easley and borders the Pickens County Commerce Park.

County officials said they had no idea that the company, which had entered into a development agreement with the county in 2007 to build a landfill for construction and demolition waste, was planning to accept coal ash until they started hearing complaints from residents.

"The question I have is why wasn't there a public comment period on that that we had to go through," Smith said.

DHEC spokesman Jim Beasley said public notice will be given prior to the agency making a final decision on MRR's request to increase the volume of waste it can take.

But DHEC already approved the company's request to install a synthetic liner, which would allow it to take in coal ash, as long as its level of toxicity doesn't exceed certain parameters, he said.

At the time of the 2007 agreement, the county's landfill was nearing capacity, and the idea was for the private landfill to take over handling nontoxic waste such as wood and concrete scrap. The company was to begin construction within 30 days of receiving approval from DHEC.

But in a meeting with the Pickens County Planning Commission in January of this year, representatives of the company said they had held off developing the landfill because of the recession and now felt the time was right to move ahead with it.

They said "nothing had changed" about their plans since the 2007 agreement and that the company had donated 160 acres of the 443-acre tract to the county for use as a recreational area, under the terms of the agreement, according to minutes of the meeting.

There was no mention of coal ash in the minutes, although one commission member asked if asbestos would be allowed in the landfill and was told it could be placed in a part of the facility dedicated for that purpose.

Weldon Clark, vice chairman of the Planning Commission, said the commission gave the OK for the landfill project to proceed because it was within the county's guidelines for development.

"Basically the only thing we're charged with is enforcing the development standard ordinance," he said. "So we didn't find anything they were doing that was opposed to the development standard ordinance."

"As far as coal ash goes, depending on what goes in it, it can be a very benign substance," he added. "If you have some heavy metals in it, it can be a problem."

Last December, the EPA issued a ruling on coal ash that stopped short of labeling it as a hazardous material and left it up to states to enforce the new regulations.

Coal ash could be disposed of in an unlined, or Class 2, landfill under DHEC regulations that went into effect in 1996, according to agency documents, but the state now requires linings, Beasley said.

Some coal ash can meet the less toxic Class 2 requirements "but must be demonstrated to do so prior to disposal in this or any Class 2 landfill," he said.

The state environmental agency received a request from MRR on March 31 to modify its 2007 permit which had never been used, by adding a synthetic liner system "so the facility could potentially receive (less toxic) Class 2 coal ash from power generating utilities," Beasley said.

"Any waste received by the facility must meet Class 2 specifications even with the liner installed," he said. "Installation of the liner does not allow the facility to take (more toxic) Class 3 solid waste."

He didn't know how it would be determined whether the coal ash that would go into this landfill meets the Class 2 standard.

Frank Holleman, a senior attorney for the Southern Environmental Law Center who has been active in battling the power industry over coal ash in the Carolinas, said the toxicity of coal ash can be determined in a lab, but it's questionable how the public could be assured that what goes into the landfill meets that lower toxicity standard.

"Even though it's scientifically possible to do it, the question is are they doing it adequately," he said. "It's almost always done by paid consultant rather than independent scientists."

Holleman said he didn't know anything about the Pickens landfill, but experience with others around the Southeast gives evidence that the public has reason to be concerned.

"These facilities can be done well and they can be done badly," he said.

SCE&G, for example, has a coal ash landfill outside Columbia and there have been no complaints or problems.

But a TVA landfill in Alabama "has been a source of constant problems."

And in some cases the state and local governments "get left holding the bag," he said.

"Water contaminated with coal ash pollutants has been known to move more than a mile from coal ash dump sites," according to the Southern Alliance for Clean Energy's Southeast Coal Ash website. "Dry landfills also pose dangers to drinking water and aquatic life, and damage air quality when the fine dust from these containment facilities is blown into surrounding neighborhoods."

Amy Armstrong, an attorney for the South Carolina Environmental Law Project, said MRR, which stands for Materials Recovery and Recycling, tried to open landfills in Laurens and Marlboro counties but couldn't get permits approved. MRR Pickens is a division of MRR Southern, LLC, based in Raleigh.

The one in Marlboro County would have had capacity to take in a quarter million tons of waste annually.

In that county, residents waged a public campaign against the plan and MRR sued them for defamation. A federal judge threw out the lawsuit, saying the company hadn't given evidence that the citizens group knowingly made false statements and did so out of malice.

Armstrong cited a DHEC report that showed that South Carolina has more than enough capacity to handle all its own waste.

No coal ash from Duke Energy is destined for any landfill in Pickens County, according to company spokeswoman Danielle Peoples.

Duke, which has two retired coal-fired plants in the state, sends some ash to a site in Homer, Ga., and announced plans last week to store 2.2 million tons of coal ash in a lined landfill that would be on site at the W.S. Lee Station in Anderson County.



THE GREENVILLE NEWS

Opposition grows to proposed coal ash dump in Pickens County

(<http://www.greenvilleonline.com/story/news/local/pickens-county/2015/12/28/pickens-county-council-consider-resolution-proposed-coal-ash-dump/77970592/>)

Read or Share this story: <http://grnol.co/1YIML2I>

BACON LABOR DAY

SEPT 4-5

SIMPSONVILLE CITY PARK

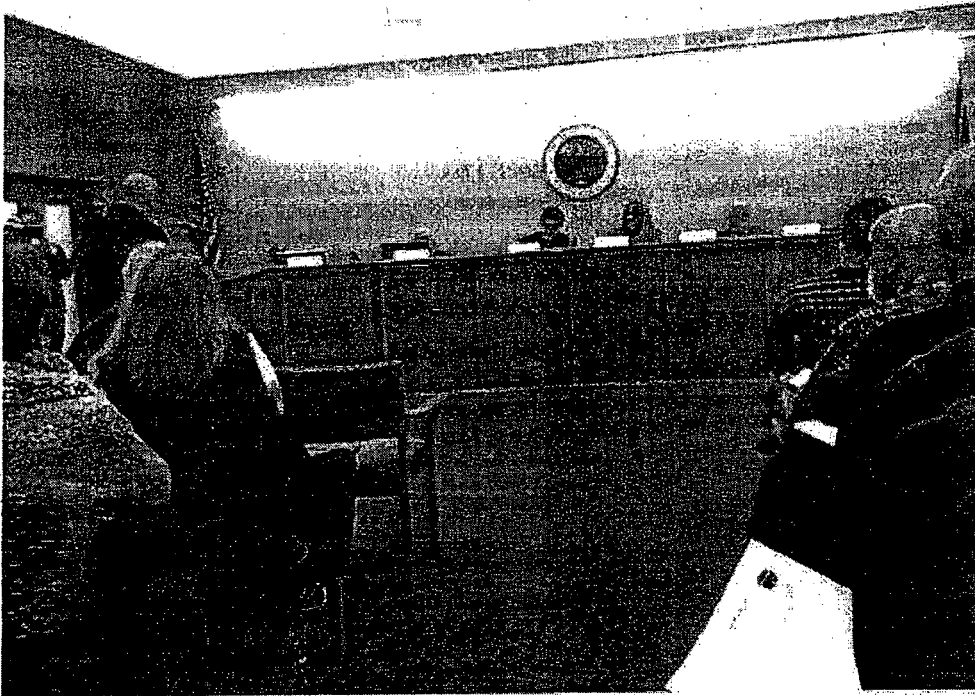
FOOD VENDORS ★ CRAFT BEER ★ CAR SHOW

ARTISANS & CRAFTERS ★ ENTERTAINMENT ★ KIDS AREA

MORE INFO & TICKETS

Pickens County Council approves resolution opposing coal ash landfill

 Ron Barnett, rbarnett@greenvillenews.com 8:44 p.m. EST January 4, 2016



(Photo: Ron Barnett)

66CONNECTTWEETLINKEDINCOMMENTEMAILMORE

PICKENS -- Pickens County Council told an overflow crowd Monday that it will fight a company's plans to bring thousands of tons of coal ash to a landfill near Liberty and will go to court if necessary to stop it.

"We are prepared to defend you," Council Chairman Jennifer Wills declared, drawing applause from the audience of more than 100, many of whom came to urge the council to take action.

The council gave unanimous approval to a resolution urging the state Department of Health and Environmental Control to reject a variance requested by Raleigh-based MRR Pickens, LLC that would allow it to undertake a major coal ash disposal project.

The company has not responded to questions from *The Greenville News*.

Council members asked the county attorney to brief them in closed session on legal options to stop the project.

In a public session portion of the meeting, 10 people spoke against allowing coal ash disposal here.

"My opinion on it is if the folks in North Carolina want a Class 3 landfill to dump coal ash in, they can dig a hole up there and dump it in. We don't want it here," Eric Boughman, mayor of Liberty, said as the crowd cheered.

"I'm gonna holler as loud as I need to to stop this," he said. "We don't need to be a dumping ground for anybody."

Pree Hamilton, who lives across the road from the landfill site on land that has been in her family for five generations, said she feels like "the wolves are at the back door."

"I will protect it with my life, she said. "I don't want to see it changed."

A manufacturers group in Pickens County also went on record opposing the landfill, citing environmental and economic concerns.

Manufactures Caring for Pickens County, a nonprofit organization that works to improve education, social responsibility and economic development in the county, issued a statement in advance of the meeting.

"MCPC (Manufactures Caring for Pickens County) is opposed to this landfill proposal due to the lack of any published study on the environmental impact, the economic impact, or the suitability of the current site to contain the toxins," the statement says. "The transport method of coal ash to the site, the remoteness of this site to the power generation plants responsible are also concerns and unknown at this time."

The state Department of Health and Environmental Control has approved the company's plan to install a synthetic liner in the landfill it has been approved to build along State 93 and Cartee Road.

Such a lining would allow it to deposit a type of coal ash that is considered less toxic than the type most dangerous because of heavy metals.

But DHEC is awaiting more information from the company on how much coal ash it would put in the landfill, where it would be coming from, and how it would ensure that it meets the less toxic standards.

The manufacturers group said it is "deeply concerned" in part because the proposed site is near many of their facilities at the Pickens County Commerce Park and along State 93.

"It is inconceivable that such a project would be approved without considering the impact on the health and well-being of those most directly affected, not to mention the potential business and financial damage to companies located in the Commerce Park and other nearby areas."

MRR received approval to build a landfill there in 2007, which was to be designed for construction and demolition debris. But the landfill was never built because of the recession that followed, company officials told the county Planning Commission last year.

The company submitted a request to DHEC a few months ago, saying it had made tentative arrangements to undertake "a large disposal project" involving coal ash.

It told DHEC it needed "a significant increase" in the amount of material it would be allowed to dispose of, which was limited to 70,500 tons per year.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Pickens County,

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control and MRR Pickens,
LLC,

Respondents.

Docket No.: 16-A1J-07-0164-CC

**REPLY TO RESPONDENTS'
MEMORANDUM IN OPPOSITION TO
MOTION FOR LEAVE TO INTERVENE
BY PICKENS COUNTY, ROBERT L.
TRABER, MATTHEW S. STONE,
RANDOLPH E. REVIS, SR., BY P.R.
RANDY MARTIN, TONY CHARPING
AND RANDALL KING**

TO: ETTA R. WILLIAMS LINEN, ESQ., ATTORNEY FOR RESPONDENT SOUTH
CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND
JESSICA J.O. KING, ESQ., ATTORNEY FOR RESPONDENT MRR PICKENS, LLC:

Pickens County and Robert L. Traber, Matthew S. Stone, Randolph E. Revis, Sr. by P.R.
Randy Martin, Tony Charping and Randall King (hereinafter, "Intervenors") hereby reply to the
Memorandum in Opposition to Motion for Leave to Intervene filed by Respondents South Carolina
Department of Health and Environmental Control (DHEC) and MRR Pickens, LLC (MRR).

**I. Renewal of Request to Hear and Determine the Motion for Leave to Intervene Prior to
ruling Upon Motions to Dismiss**

As stated by Pickens County during the telephone conference with this Court on September
7, 2016, Pickens County and the Intervenors (Traber, Stone, Revis, Charping and King) respectfully
request that the Motion for Leave to Intervene be heard and determined prior to this Court's
consideration and ruling upon Respondents' Motions to Dismiss. These Intervenors have serious
positions to advance, which are separate, apart and in addition to, the positions of Pickens County.
These Intervenors should be allowed to have their positions considered, in conjunction with this

Court's consideration and ruling upon Respondents' Motions to Dismiss. The Interveners are adjoining landowners and members of the public owning real estate in extremely close proximity to the subject landfill, and will be irreparably aggrieved and adversely affected by any ruling which has the potential of upholding the Permit Modification in question.

Further, the Interveners would show that the relevant regulations require three (3) stages of Notice to adjoining landowners and to the public, including mailings to adjoining landowners (which were not done) and newspaper publications (which were not done). Such mailings, publications and other Notice, required by the regulations, are separate and apart, and in addition to, any Notice requirements to Pickens County.

(Pickens County and Interveners again refer this Court, and incorporate herein by reference, Ex. Nos. 15 through 20, attached to Pickens County's Memoranda in Opposition to Motion to Dismiss).

II. Reference to, and Emphasis Upon, Exhibits 15-20 to Pickens County's Memoranda in Opposition to Motion to Dismiss

As stated in the Motion for Leave to Intervene (p. 2), reference is made to Ex. Nos. 16-20 (Affidavits of Interveners Traber, Stone, Revis, Charping and King), and Ex. No. 15 (Affidavit of Christopher Brink, Pickens County Community Development Director), attached to Pickens County's Memos in Opposition to Motions to Dismiss.

Both SCDHEC and MRR appear to largely ignore the Affidavits of the Interveners (Ex. Nos. 16-20). In said Affidavits the Interveners show:

- (A) That they are adjoining landowners, and members of the public owning real property in close proximity to the subject landfill site.

(B) That, should the Permit Modification stand, and the landfill thereby allowed to accept coal ash/CCR and/or other Special Wastes, which are more problematic and offensive than C&D/LCD wastes, the use and enjoyment of their properties will be adversely affected, that quality of life will be adversely affected, and that their property values will be adversely affected. These legitimate concerns include the blowing of coal ash/CCR from trucks entering the landfill, the blowing of coal ash/CCR by the wind, the inherent and typical toxic components and toxic nature of coal ash/CCR, the propensity of coal ash/CCR to contaminate nearby properties such as theirs, including the soil, surface water and groundwater and air; as well as problems and potential and likely odors from other wastes.

(For further support of the inherent hazards, toxic nature, and propensity of coal ash/CCR to contaminate air, water and soil, see Ex. No. 9, Report and Affidavit of Avner Vengosh, Ph.D., attached to Pickens County's Memoranda in Opposition to Motions to Dismiss).

(C) That, despite being adjoining landowners, and being members of the public owning real property in close proximity to the subject landfill, they were never provided with any Notice of the filing of any Application for Permit Modification, nor any Notice of the preparation of a Draft Permit Modification by DHEC, nor any Notice of any final Department Decision by DHEC. In particular, they were never furnished any mailing of Notice of the Application for Permit Modification, nor any mailing of Notice of a Draft

Permit Modification by DHEC, nor any mailing of Notice of any final Department Decision. Further, they were not afforded newspaper publication of Legal Notice regarding the Application for Permit Modification, the Draft Permit, or the final Department Decision. Also, they were not afforded any opportunity for public review of any Application for Permit Modification, nor any public review of any Draft Permit, nor any opportunity to provide comments to such Application for Permit Modification or any Draft Permit, as they had never been informed of such and had never received any form of Notice of such (until quite recently). Further, they were deprived of any opportunity to review such documents, the opportunity to submit comments, the opportunity to request a public hearing, and the opportunity to offer objection and opposition to such modification.

(For the regulatory requirements of Notice to adjoining landowners and to the public, which were blatantly violated by Respondents, please see pp. 11-17 of Pickens County's Memoranda in Opposition to Motions to Dismiss).

- (D) That the Interveners would likely have taken appropriate actions in opposition to this Modification, had they received such Notices.
- (E) That the Interveners did not request a public hearing, nor did they file any appeal or request for review, because they were not provided with the required Notices of such filings and events.
- (F) That the Interveners wish to participate, along with Pickens County, to appeal the issuance of this Modification, and to oppose the issuance of such.

(Also see Ex. No. 15, Affidavit of Christopher Brink, Pickens County Community Development Director, in further support of the above).

III. The Interveners, as Adjoining Landowners and Members of the Public Owning Real Property in Close Proximity, are Entitled to Notice, Separate and Apart from, and in Addition to, Notice to Pickens County, per the Regulations

The Interveners are entitled to a service of Notices, including mailings and newspaper publications, separate and apart from, and in addition to, the Notices for Pickens County. Pickens County, by virtue of its being the Local Host Government, and Development Partner (per the Host Agreement and Development with MRR), and by virtue of its being an "affected person" per S.C. Code Sec. 44-1-60 (E), was entitled to Notice (particularly by MRR). But the Interveners - being adjoining landowners and members of the public (owning real property in close proximity) - were entitled to a series of specific Notices, required by the regulations. As to these Interveners, the Respondents utterly and completely failed to provide the Notices, which are absolutely required by Regulations: R-61-107.19, Part I. D. 2. c.; R. 61-107.19 Part IV, H.; R. 61-107.19, Part IV., I. 2.; R. 61-107.19, Part I. D. 2. e.; R. 61-107.19, Part I, D. 2. f.; and R. 61-107.19, Part I, D. 2. g.

Of the above-cited regulations, all mandatory, not a single Notice required therein was furnished to adjoining landowners or to members of the public (i.e., the Interveners).

Should this Court determine that Pickens County itself was entitled to Notice, or received somehow sufficient Notice, there still remain the complete and utter failures of Notice, required by the regulations, to adjoining landowners and to the public (i.e., the Interveners). Aside from any rights which Pickens County itself may have, the rights to Notice of the adjoining landowners and the members of the public (here, the Interveners) have rights, pursuant to said regulations, to Notice. Respondents violated such regulations by failing to provide such Notices.

Also, as referenced on pp. 14-15 of Pickens County's Memoranda in Opposition to Motions to Dismiss, R. 61-107.19, Part IV. H. requires Notice to be published in a newspaper, regardless of whether the Modification is a "major" or "minor." Further, R. 61-107.19, Part IV. I. 2., for "new construction," (which applies here), requires the Draft Permit to be available for public review and comment pursuant to Part I., Section D of the Regulation. Again, there was a complete violation of these particular regulations, which absolutely required to Notice whether or not the Modification and/or "new construction" was "major" or "minor." (See pp. 11-17 of Pickens County's Memoranda in Opposition, for further discussion of the regulations violated).

IV. Respondents' Claims that Coal Ash/CCR and Special Wastes will not Result from this Modification are Unavailing, due to MRR's Continued Efforts

DHEC, in its Memorandum in Opposition to Motion for Leave to Intervene, claims that coal ash/CCR will not be deposited into this landfill. (See DHEC Memorandum in Opposition, pp. 4-5). This statement contravenes the continuing efforts by MRR to deposit coal ash/CCR into this landfill.

MRR in its Memorandum in Opposition to Motion for Leave to Intervene, incredibly claims that the Permit Modification "does not include the addition of any waste stream - including coal ash - to the 2008 Permit. It is simply the option to install a liner" (p. 10). Such allegation by MRR is misleading, is a misrepresentation, and contravenes the extreme efforts by MRR to this day, to place coal ash/CCR into this C&D/LCD Landfill, through this Modification.

MRR further claims, again incredibly, that, "the Minor Permit Modification is the option to install a liner. A liner does not permit disposal of a particular waste stream - including but not limited to coal ash." (p. 13). Again, such statement belies the continuing efforts by MRR to deposit coal ash/CCR into this landfill.

In complete contradiction of MRR's claims noted above, MRR has engaged in, and continues to actively pursue, the following:

- (A) MRR has filed a \$25 Million lawsuit against Pickens County and the named individual members of the Planning Commission, because of resistance to allowing coal ash/CCR. (See Ex. 1, Verified Complaint and Petition for Appeal, by MRR, in Common Pleas Court). In said verified Complaint, MRR states the following:

50. MRR Pickens has the right to accept, subject to DHEC approval, all coal combustion residuals (CCR) and other wastes not listed in Appendix I that demonstrate similar properties to the wastes listed

(MRR Verified Complaint, para. 50, p. 9, Ex. 1).

- (B) MRR, in its Motion in Common Pleas Court for an Emergency Preliminary Injunction (Ex. 2, MRR's Motion for an Emergency Preliminary Injunction) states:

9. As a Class Two Landfill, MRR Pickens is capable of accepting certain CCR waste. Based on its Class Two Permit, MRR Pickens has a legal right to accept, subject to DHEC approval, CCR and other wastes that demonstrate similar properties to the wastes listed in Appendix I
10. MRR Pickens has reached a preliminary agreement with a third-party to accept CCR waste for disposal in its Class Two Landfill.

(MRR Motion, p. 3, Ex. 2).

(C) MRR's attorney's statements to the Court

At a hearing before the Court of Common Pleas, on February 18, 2016, attorney for MRR Pickens Robert F. Goings made the following statements to the Court, as argument for its Motion for Injunction:

And all of this is an attempt to prohibit the type of class 2 waste that we're lawfully allowed to accept. And that waste Your Honor, is CCR, which stands for coal combustion residuals or often referred to as coal ash.

(Ex. 3, Transcript of February 18, 2016 Common Pleas Hearing, p. 5).

The Court: Okay, Let me ask you this one question just to clarify. The contract on which the Plaintiff intends to bid includes the dumping of coal ash, is that correct?

Mr. Goings: That's my understanding, Your Honor, yes, sir.

(Ex. 3, Transcript of February 18, 2016 Common Pleas Hearing, p. 13).

As all parties are aware, the South Carolina Legislature passed Act 138 of 2016, (S.C. Code Sec. 58-27-255), signed into law on March 2, 2016, requiring coal combustion residuals to be placed into a Class Three Landfill (with several limited exceptions). Yet as recently as August 1, 2016, MRR Pickens' attorney Robert F. Goings stated the following to the Court:

The legislature, in their infinite wisdom, created a lot of exceptions to this legislation, okay. That's the reason why they haven't filed a motion to dismiss this case on the legislation **because it really doesn't do anything. It was more for – it is more for reelection efforts than anything. Because you can still bring coal ash in a Class II landfill under that legislation.**

(Ex. 4, Transcript of August 1, 2016 Hearing in Common Pleas, p. 26). (emphasis added).

MRR makes its intentions quite clear, even following the recent legislation – to deposit coal combustion residuals, a/k/a coal ash, into this C&D/LCD Landfill.

The statements by Respondents, particularly MRR, to the effect that the changes to the landfill are minor, and that a liner is more protective, and implying that coal ash/CCR is not its intent, are misleading and contradict MRR's ongoing efforts to deposit coal ash into this landfill.

The landfill was intended by Pickens County, as well as the public and adjoining landowners, to accept only C&D/LCD wastes. In the original 2008 Permit, the Special Conditions stated "all other wastes are prohibited." MRR's intent, and its active efforts, are to deposit coal ash/CCR into this landfill which was intended only for C&D/LCD wastes.

V. Respondents Indicate that the Only Change to the Original Permit is Addition of a Liner

Throughout their Memoranda in Opposition to Motion for Leave to Intervene, Respondents only reference the liner as though it were being installed to further protect the public. Respondents ignore the other "major" modifications – the design changes, the alternate design, changes from Class Two to Class Three characteristics, the removal of the Special Condition, that "all other wastes are prohibited," to allow "any other waste approved by the Department . . . , " and changes to provisions for final cover. (See pp. 5-10 of Pickens County's Memoranda in Opposition to Motions to Dismiss, for further details of these major modifications.)

Further, Kent Coleman, while still Director of the Division of Mining and Solid Waste Management at DHEC, testified at his deposition that these modifications were design changes that meet the regulatory definition of "major modification." (See pp. 6-10 of Pickens County's Memoranda in Opposition to Motions to Dismiss, as well as Ex. 4 to Petitioners' Memoranda, Deposition of Kent Coleman). Further, Mr. Coleman admitted that he knew that MRR was considering placing coal ash into this landfill when it applied for the Permit Modification. (See Ex. 4 to Pickens County's Memoranda in Opposition to Motions to Dismiss, p. 189).

VI. Allegations of Prejudice to MRR

MRR includes in its Memorandum the incredible claim that MRR's rights will be "prejudiced." (MRR Memorandum in Opposition to Motion for Leave to Intervene, pp. 15-17). Pickens County and the Interveners crave reference to Pickens County's Memoranda in Opposition to Motions to Dismiss, for a history of MRR's activities and clandestine activities, to bring about a major modification of the C&D/LCD Permit, to allow deposit of coal ash, with no Notice to its Host and Development Partner Pickens County, and with no Notice to adjoining landowners or to the public. Further, Pickens County and Interveners crave reference to the following Exhibits to Pickens County's Memoranda in Opposition to Motions to Dismiss:

- Exhibits 1, 2, 3 - showing the meetings between MRR and DHEC where it was agreed that modification of the Class Two Landfill Permit to meet the requirements of Class Three Landfills, would be called a "minor" permit modification.
- Exhibit 4 - Kent Coleman Deposition - showing that the modifications meet the definition of "major," yet DHEC and MRR still called it "minor."
- Exhibits 6, 7, 8 - Affidavits of Wesley Hulsey, Christopher Brink and Gerald Wilson, showing the history, including the misrepresentations by MRR to the County Planning Commission and to the County.
- Exhibit 9 - Report and Affidavit of Avner Vengosh, showing harms and damages of coal ash.

Throughout 2014 and most of 2015, MRR prepared and filed extensive engineering reports with DHEC, for the purpose of making these major modifications to this C&D/LCD Permit, while continuing to represent during that same period to the Planning Commission and the County that no

liner would be needed and that no changes were being made to the original 2008 Permit. MRR actively sought to conceal these efforts to modify the Permit from its Host and Development Partner Pickens County, and from adjoining landowners and from the public. Yet MRR now claims prejudice.

VII. Respondents Fail to Address the Failures of Notice, Required by Regulations, to Adjoining Landowners and to the Public (i.e., the Interveners)

Any defense to the blatant violations and failures of Notice to adjoining landowners and to the public is missing from Respondents Memoranda. While Respondents offer arguments regarding alleged Notice to Pickens County, the Notices required by the regulations to adjoining landowners and to the public, including failures of required mailings and required publications are telling. Respondents have no legitimate defense to these failures of Notice to adjoining landowners and to the public.

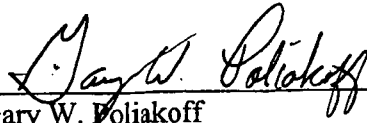
Respondents allege that the Interveners failed to exhaust administrative remedies. Such allegations are unavailing. The adjoining landowners and the public were never provided with the series of Notices required by the regulations. They had no knowledge and no Notice, and no opportunity to be heard, or to participate in the permitting process, as required by the regulations.

CONCLUSION

Respondents argue at length about alleged notice to Pickens County. They have no legitimate defense to the failures of Notice to adjoining landowners and to the public, all required by the regulations. These Interveners are entitled to participate and to be heard. Respondents' Motions to Dismiss must be denied. Then Interveners will have their lawful and legitimate opportunity to appear and oppose this modification on the merits.

Respectfully submitted,

September 14, 2016



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ATTORNEYS FOR PICKENS COUNTY

STATE OF SOUTH CAROLINA 2016 FEB 1, PM 1:34 IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS CLERK OF COURT THIRTEENTH JUDICIAL CIRCUIT
PICKENS COUNTY
MRR Pickens, LLC, SOUTH CAROLINA CIVIL ACTION No.: 2016-CP-39-100
Plaintiff,
vs.
County of Pickens and William Cato, Weldon
Clark, Robert Ballentine, Jo Johnston, Dennis
Reinert, and Bob Young, individually and in
their official capacity as appointed members of
the Pickens County Planning Commission,
Defendants.

**VERIFIED COMPLAINT AND
PETITION FOR APPEAL**

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

PARTIES

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

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

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

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

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

6. Jurisdiction and venue is proper in Pickens County.

FACTUAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24. On November 20, 2014, MRR Pickens submitted to the County its Letter of Intent, attached as Exhibit H, and Application for Land Use Review Hearing, attached as Exhibit I, for its Class Two Landfill.

25. The Application for Land Use Review Hearing stated the proposed land use of the Subject Property was a "SCDHEC Permitted Class 2 Landfill."

26. The Letter of Intent stated: "[t]he project will include . . . approximately 60 acres of lined landfill disposal area, and various sediment and erosion control structures." (emphasis added).

27. On January 12, 2015, the Planning Commission held a public meeting and unanimously approved MRR Pickens' Land Use Approval request. Attached as Exhibit J are minutes from Planning Commission Meeting of Jan. 12, 2015.

28. On January 13, 2015, the Planning Commission issued its land use approval to MRR Pickens to construct and operate a Class Two Landfill on the Subject Property ("Land Use Approval"). The Land Use Approval is attached as Exhibit K.

29. The Land Use Approval did not place any conditions on the approval, including conditions on the type of Class Two waste that could be disposed of in the landfill. Further, only DHEC, not the County, is vested with the authority to control and enforce the type of waste proper for disposal in the Class Two Landfill.

30. In 2015, MRR Pickens actively began developing its Class Two Landfill.

31. To date, MRR Pickens has spent approximately 3.9 Million Dollars (\$3,900,000.00) for the approved proposed use of the Subject Property as a Class Two Landfill.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

-DHEC Solid Waste Permitting Regulations-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

84. MRR Pickens lacks any other legal remedy.

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

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

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

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

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

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

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

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

FOR A FOURTH CAUSE OF ACTION
(Breach of Contract)

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

91. MRR Pickens and the County entered into lawful and binding contracts regarding the use and development of the Subject Property.

92. In consideration of the Development Agreement, MRR Pickens conveyed approximately 39 acres to the County to allow further expansion of its future industrial park.

93. In consideration of the Development Agreement, MRR Pickens dedicated and deeded to the County approximately 162.2 acres for use as a County recreational facility or other uses.

94. The County contracted to allow MRR Pickens to develop the Subject Property as a Class Two Landfill.

95. The Defendants materially breached the Development Agreement, Amended Development Agreement, and the Land Use Approval by ordering MRR Pickens to cease and desist any and all activities at the Subject Property as of January 11, 2016.

96. The Defendants further advised MRR Pickens that the alleged violation of the Land Use Approval warrants criminal liability.

97. As a result of the County's breach of the Development Agreement, Amended Development Agreement, and Land Use Approval, the County has directly and proximately caused MRR Pickens to incur irreparable harm, in addition to actual, consequential, and incidental damages and lost profits that exceed Thirty Million and 00/100 dollars (\$30,000,000.00).

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

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

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

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

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

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

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

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

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

FOR A SIXTH CAUSE OF ACTION
(Promissory Estoppel)

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

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

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

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

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

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

FOR A SEVENTH CAUSE OF ACTION
(Regulatory Taking)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1) Appellate relief pursuant to S.C. Code Ann. § 6-29-1150;

2) Issuance of a Writ of Mandamus;

3) Declaratory Judgment;

4) For actual, incidental, and consequential damages;

5) Preliminary and permanent injunctive relief;

6) For an award of the attorney's fees and costs;

7) Prejudgment interest; and

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

Dated this 30th day of January 2016.

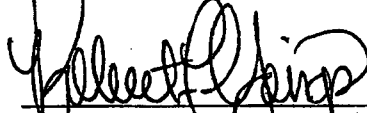
Respectfully Submitted,

WILLIAMS MULLEN



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ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

MRR Pickens, LLC,

Plaintiff,

vs.

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

Defendants.

2016 FEB 11 PM 1:34 IN THE COURT OF COMMON PLEAS

CLERK OF THE TENTH JUDICIAL CIRCUIT

PICKENS COUNTY

SOUTH CAROLINA CIVIL ACTION No.: 2016-CP-39-

**PLAINTIFF MRR PICKENS, LLC'S
MOTION FOR AN EMERGENCY
PRELIMINARY INJUNCTION**

TO: THE ABOVE-NAMED DEFENDANTS

PLEASE TAKE NOTICE the Plaintiff MRR Pickens, LLC ("MRR Pickens"), by and through its undersigned counsel, moves pursuant to Rule 65 of the South Carolina Rules of Civil Procedure for a Preliminary Injunction against the Defendants' termination of MRR Pickens' legal rights to develop and operate a Class Two Landfill on the Subject Property as described in the Complaint. This motion is supported by the *Verified* Complaint and Petition for Appeal and the Affidavits of F. Norbert Hector, Jr., attached as **Exhibit 1** and Scott L. Brown, P.E., attached as **Exhibit 2**. In support of this motion, MMR Pickens will respectfully show the following:

1. MRR Pickens has lawfully obtained a permit from the South Carolina Department of Health and Environmental Control ("DHEC") and entered into a binding Development Agreement with Pickens County to develop and operate a Class Two Landfill. In consideration for these agreements, MRR Pickens has, *inter alia*, (1) conveyed 39 acres to the County for use in its future industrial park; (2) gifted real property to Pickens County appraised for One Million One Hundred Seventy Thousand and 00/100 dollars (\$1,170,000.00); and (3) agreed to accept

waste generated by the County at a greatly reduced gate rate. To date, MRR Pickens has invested over Three Million Nine Hundred Thousand and 00/100 dollars (\$3,900,000.00) into the Subject Property.

2. MRR Pickens received its final land use approval from the Defendants on January 13, 2015. The Land Use Approval did not contain any conditions, including no conditions or limitations on the type of Class Two waste that could be disposed of in the landfill.

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

4. On January 11, 2016, Pickens County unexpectedly terminated the landfill operation and ordered MRR Pickens to immediately cease and desist any and all activities at the Subject Property based on unsubstantiated rumors and "media reports". Pickens County threatened MMR Pickens with criminal prosecution, significant fines and jail time if it conducted any activities on the Subject Property.

5. Pickens County made this unlawful and hasty decision without affording MMR Pickens prior notice, the opportunity for a hearing, or due process rights.

6. This decision by Pickens County on January 11, 2016 to terminate the Land Use Approval is overly broad and completely deprives MMR Pickens of the use and enjoyment of the Subject Property which Pickens County had contractually agreed in the Development Agreement could be operated as a Class Two Landfill.

7. Pickens County's decision to terminate MRR Pickens' landfill business was based upon false accusations that MRR Pickens was constructing a *Class Three* landfill based on a preliminary agreement to accept coal combustion residuals (CCR) waste. Pickens County is not

allowed to usurp the role and responsibilities of DHEC in solid waste regulations, or dictate what types of Class Two waste that MRR Pickens is allowed to accept. DHEC – *NOT* Pickens County – is vested with the sole authority to control and enforce the type of waste proper for disposal in the Class Two Landfill.

8. MRR Pickens is not attempting to construct or operate a Class Three landfill and will not accept waste that is not allowed for a Class Two landfill under solid waste laws and regulations.

9. As a Class Two Landfill, MMR Pickens is capable of accepting certain CCR waste. Based on its Class Two Permit, MRR Pickens has a legal right to accept, subject to DHEC approval, CCR and other wastes that demonstrate similar properties to the wastes listed in Appendix I of R. 61-107-19, or waste that test less than ten (<10) times the maximum contaminant level (MCL) as published in R. 61-58, State Primary Drinking Water Regulation.

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

11. The CCR that MRR Pickens would accept does meet the regulatory requirements for its permitted and approved Class Two Landfill.

12. MRR Pickens has been informed by the generator of the CCR that it will be deemed "Non-Responsive" and considered ineligible to receive the CCR Class Two waste as a result of Pickens County's actions that terminate its land use approval.

13. The deadline for MRR Pickens to submit required documentation to accept CCR that meets its Class Two Landfill Permit requirements is on or before the end of February 2016.

14. Pickens County is not prejudiced by the granting of injunctive relief during the pendency of this litigation because MRR Pickens has not finalized the construction of the

landfill, and the landfill will not be operational and capable of accepting the CCR waste until it receives future building permits and DHEC approvals

15. The harm is irreparable as MRR Pickens is being (a) threatened with criminal prosecution, (b) denied the ability to access or conduct any activities on the Subject Property, (c) prevented for performing a time sensitive agreement that is expected to generate profits of approximately Thirty Million and 00/100 (\$30,000,000.00) dollars [is this the correct number?] to MRR Pickens; and (d) denied the very existence of MMR Pickens' business that will result in a loss of goodwill and other losses that cannot be easily calculated into pecuniary terms.

16. A preliminary injunction is reasonably necessary to protect the legal rights of MRR Pickens pending in this action. MRR Pickens would respectfully show that it: (1) would suffer irreparable harm if the injunction is not granted; (2) will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). MRR Pickens is not required to prove an absolute legal right when seeking a preliminary injunction, only a "fair question" to raise as to the existence of such a right. *AJG Holdings, LLC v. Dunn*, 674 S.E.2d 505, 382 S.C. 43 (S.C. App. 2009); *Williams v. Jones*, 92 S.C. 342, 347, 75 S.E. 705, 710 (1912).

17. The purpose of an injunction is to preserve the status quo and prevent possible irreparable injury to a party pending litigation. "Irreparable injury does not mean that the injury is beyond the possibility of compensation in damages." Flanagan, J., *South Carolina Civil Procedure*, 3rd Ed. (S.C. Bar. 2010) p. 533. Irreparable harm is found to prevent misappropriate or denial of the use of property, to prevent a regulatory taking of one's property rights, or the loss of business. In *Levine v. Spartanburg Reg'l Services Dist.*, 626 S.E.2d 38, 367 S.C. 458 (S.C. App. 2005), the South Carolina Court of Appeals recognized that appellate courts have upheld

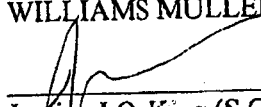
injunctive relief in cases to prevent the loss of a business opportunity, loss of business goodwill, and economic loss threatens the very existence of a plaintiff's business.

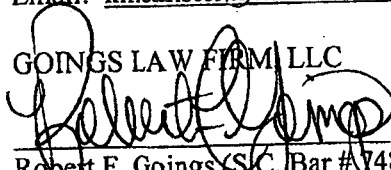
WHEREFORE, MRR Pickens requests an Order granting a Preliminary Injunction that enjoins Pickens County from taking any further action to suspend, terminate, fail to permit, or refusing to allow MRR Pickens from developing and operating its permitted and approved Class Two Landfill on the Subject Property and allowing it to accept waste allowed by DHEC and the Solid Waste regulations for a Class Two Landfill. MRR Pickens requests this Order must be entered on or before February 24, 2016. Further, MRR Pickens request such other relief as this Court may deem just and proper.

Dated this 1st day of February, 2016.

Respectfully Submitted,

~~WILLIAMS MULLEN~~


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ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

MRR PICKENS, LLC

PLAINTIFF)

vs.

COUNTY OF PICKENS, ET AL

DEFENDANTS)

) COURT OF COMMON PLEAS
) 2016-CP-39-100
)
)
)

COPY

) TRANSCRIPT OF RECORD
)
)

February 18, 2016
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

A P P E A R A N C E S:

ROBERT F. GOINGS, ESQ.
JESSICA J.O. KING, ESQ.
KIP MCALISTER, ESQ.
Attorneys for the Plaintiff

GARY POLIAKOFF, ESQ.
RAYMOND P. MULLIMAN, JR., ESQ.
KEN NORSWORTHY, ESQ.
Attorneys for the Defendants

APRIL HERRON
Official Court Reporter

1 this Class 2 landfill. MRR Pickens has a legally
2 vested right pursuant to South Carolina law to
3 operate this landfill.

4 However, Your Honor, last month after my client
5 has incurred nearly 4 million dollars developing the
6 landfill, the county has shut down our rights to
7 operate, Your Honor. And all of this is an attempt
8 to prohibit the type of Class 2 waste that we're
9 lawfully allowed to accept. And that waste, Your
10 Honor, is CCR, which stands for coal combustion
11 residuals or often referred to as coal ash.

12 Your Honor, the actions of the county has
13 completely shut down our ability to do business. And
14 they've done that with threats of criminal
15 prosecution and civil fines. And the record will
16 reflect that the actions of the county were
17 overreaching and heavy handed in an attempt to
18 prevent the type of waste that DHEC says that we're
19 allowed to accept. And the important part of this
20 motion, Your Honor, is that every single day that
21 we're ordered to cease and desist from developing and
22 operating our Class 2 landfill, we continue to miss
23 out on business opportunities, business goodwill and
24 we are not able to continue our viable business.

25 Pickens County does not have the authority to

1 permitted in a Class 3 landfill. That's what their
2 letter says. I think after they sent the letter,
3 they started looking for the first time at what the
4 law said. Because the law clearly allows coal ash to
5 be submitted in a Class 2 landfill. So much so that
6 Pickens County has now been lobbying its legislative
7 delegation and the General Assembly to enact a law
8 that changes, and with a number of exceptions,
9 changes the destination of coal ash. So, it can only
10 be put into a Class 3 based on the language that they
11 want. So, now they -- they now know what we're doing
12 is completely lawful. So, what they did is run down
13 to Columbia to the General Assembly to try to get
14 the law changed. All the while MRR Pickens has been
15 following the law.

16 Now, this is important to understand. The
17 termination notice doesn't say you can't accept coal
18 ash. The termination notice doesn't say you cannot
19 accept coal combustion residuals, the termination
20 notice says you cannot even operate a Class 2
21 landfill, your business is shut down.

22 MRR Pickens has spent nearly 4 million dollars
23 to get to where they are, okay. And we need a
24 preliminary injunction for this reason. There is
25 waste that my client will be able to bid on around

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

MRR PICKENS, LLC

PLAINTIFF)

vs.

COUNTY OF PICKENS, ET AL

DEFENDANTS)

COURT OF COMMON PLEAS

2016-CP-39-100

COPY

TRANSCRIPT OF RECORD

August 1, 2016
Pickens, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

A P P E A R A N C E S:

ROBERT F. GOINGS, ESQ.
JESSICA KING, ESQ.
Attorneys for the Plaintiff

GARY W. POLIAKOFF, ESQ.
AMY SNYDER, ESQ.
Attorneys for the Defendants

APRIL HERRON
Official Court Reporter

1 to the media as the bad people, as the people that
2 are lying, subterfuge and all that kind of stuff. We
3 just have to sit and listen to it. All we want to do
4 is operate pursuant to what Pickens County agreed
5 that we were allowed to operate to. Not only in the
6 development agreement, the host agreement, not only
7 with what DHEC has given us, but what they said in
8 open court back in February, that they'll let us
9 begin construction pursuant to the 2008 permit.

10 He mentions the litigation, as if the litigation
11 absolutely closes its case. Well, it doesn't. The
12 legislature, in their infinite wisdom, created a lot
13 of exceptions to this legislation, okay. That's the
14 reason why they haven't filed a motion to dismiss
15 this case on the legislation because it really
16 doesn't do anything. It was more for -- it is more
17 for reelection efforts than anything. Because you
18 can still bring coal ash in a Class II landfill under
19 that legislation.

20 All we want to do, Your Honor, is do what the
21 Court tells us we can do and that is at this point in
22 time, operate pursuant to that 2008 permit. Because
23 everyday that goes by, these people right here, have
24 lost a lot of money. They've given Pickens County 45
25 million dollars worth of property and they get

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Pickens County,

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control and MRR Pickens,
LLC,

Respondents.

DOCKET NO. 16-ALJ-07-0164-CC

**RESPONDENT MRR PICKENS, LLC'S
MOTION TO STAY DISCOVERY
DURING PENDENCY OF
MOTION TO DISMISS**

TO: GARY J. POLIAKOFF, ESQUIRE, ATTORNEY FOR PETITIONER PICKENS
COUNTY, AND ETTA R. WILLIAMS LINEN, ESQUIRE, ATTORNEY FOR
RESPONDENT SOUTH CAROLINA DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL

YOU WILL PLEASE TAKE NOTICE that Respondent MRR Pickens, LLC ("MRR Pickens"), by and through counsel, pursuant to South Carolina Administrative Law Court Rules ("ALC Rule(s)") 19 and 21, and Rule 26(c) of the South Carolina Rules of Civil Procedure ("SCRCP"), hereby moves the Administrative Law Court ("ALC" or "Court") stay all discovery in this matter until such time as the Court adjudicates the Motion to Dismiss, filed by MRR Pickens contemporaneously herewith and issues a final decision on same.¹

Rule 26(b)(1), SCRCP, provides that parties "may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." However, Rule 26(c) provides that "[u]pon motion by a party . . . and for good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect a party or

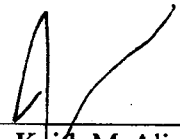
¹ Prior to the date of filing of this Motion (on July 20, 2016), Petitioner served Respondent MRR Pickens with written discovery and notices of deposition which require responses within the next 30 days. Therefore, MRR Pickens respectfully requests this Court for an immediate hearing (by conference call or in person) if a ruling cannot be made without a hearing in the near future.

person from annoyance, embarrassment, oppression, or undue burden by expense, including . . . that the discovery not be had.” Similarly, ALC Rule 21(A) provides “[u]pon motion for good cause shown or upon his own motion, discovery may be expanded or curtailed by the administrative law judge.”

WHEREFORE, in the interest of judicial economy and efficiency, and to avoid undue burden and expense on the parties, MRR Pickens respectfully requests an order, pursuant to Rule 26(c), SCRPC, and ALC Rule 21(A) staying discovery in this action pending issuance of a final decision upon Respondent MRR Pickens’ Motion to Dismiss.

Respectfully submitted, this the 29 day of July, 2016.

WILLIAMS MULLEN



A. Keith McAlister, Jr. (S.C. Bar # 78213)
Jessica J.O. King (S.C. Bar # 11202)
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**ATTORNEYS FOR RESPONDENT
MRR PICKENS, LLC**

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Pickens County,

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control and MRR Pickens,
LLC,

Respondents.

Docket No.: 16-AIJ-07-0164-CC

**PETITIONER'S MEMORANDUM
IN OPPOSITION TO
MOTION TO STAY DISCOVERY
DURING PENDENCY OF
MOTION TO DISMISS**

MRR has moved to stay all discovery during the pendency of the Motions to Dismiss. While Pickens County does not object to staying discovery issues which are solely related to the merits of this case, Pickens County does require some discovery related to issues in the pending Motions to Dismiss. It is necessary for the Court and all parties to develop a full record of material and relevant issues prior to ruling upon such Motions.

Prior to the filing of the pending Motions to Dismiss by DHEC and MRR, Pickens County served (on July 21, 2016) the following on the Defendants:

- Notice of Deposition (to depose Chris Roof of MRR on August 15, 2016 and Joan Litton of DHEC on August 16). (Ex. 1).
- Interrogatories to MRR. (Ex. 2).
- Production Requests to MRR. (Ex. 3).
- Requests for Admissions to MRR. (Ex. 4).
- Interrogatories to DHEC. (Ex. 5).
- Production Requests to DHEC. (Ex. 6).

- Requests for Admissions to DHEC. (Ex. 7).

(Affidavits of Service are attached as Ex. 8).

Pickens County would show, that in order for a full record to be presented to this Court for its consideration of the Motions to Dismiss, the following issues require discovery and must be fully developed prior thereto:

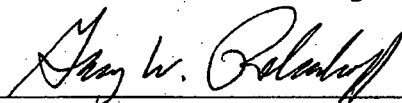
- (1) All issues regarding whether the Permit Modification was a "major" or a "minor" Modification.
- (2) All issues regarding any alleged Notice, or lack thereof, to the public, to adjoining landowners, and to Pickens County (and its citizens and residents, taxpayers and property owners), of the Application for Permit Modification, the Draft Permit, and the final Department Decision.
- (3) All issues regarding any opportunity for the public, adjoining landowners, and/or Pickens County (and its citizens and residents, taxpayers and property owners) to review and comment upon the Application for Permit Modification, the Draft Permit and/or the final Department Decision, and/or to request a Public Hearing, and/or to participate and be heard in any manner.
- (4) All issues regarding the types of wastes that would be allowed by this Modification (as being a substantial change to the facility and its operations).
- (5) All issues regarding communications, meetings and conversations between MRR and DHEC in 2014 and 2015 concerning this proposed Permit Modification.

Regarding the depositions of Mr. Roof and Ms. Litton, noticed for August 15 and 16, 2016, respectively, counsel for both DHEC and MRR requested that these be rescheduled. Counsel for Pickens County agreed to these requests, and all parties agreed and consented to propose an extension of Discovery to October 14, 2016. Thereafter, MRR and DHEC both filed Motions to Dismiss.

Petitioner Pickens County respectfully requests that this Court allow a period of 90 days for discovery directly related to the five issues stated above, all material and relevant to the issues presented in the Motions to Dismiss, or in the alternative, for dismissal and denial of the two Motions to Dismiss.

Respectfully submitted,

August 18, 2016



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ATTORNEYS FOR PICKENS COUNTY

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Pickens County,

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control and MRR Pickens,
LLC,

Respondents.

Docket No.: 16-A1J-07-0164-CC

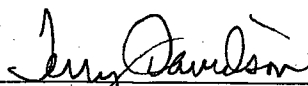
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of ***PETITIONER'S MEMORANDUM IN OPPOSITION TO MOTION TO STAY DISCOVERY DURING PENDENCY OF MOTION TO DISMISS*** has been duly served upon counsel of record, on **August 18, 2016**, via U.S. Mail with proper postage affixed thereto and addressed as follows:

Etta R. Williams Linen, Esq.
SCDHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201

Jessica J.O. King, Esq.
WILLIAMS MULLEN
P.O. Box 8116
Columbia, SC 29202

August 18, 2016



Terry Davidson
Paralegal

POLIAKOFF & ASSOCIATES, P.A.

Exhibit 1

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

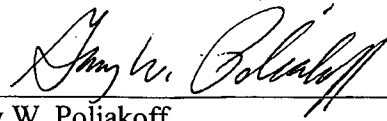
Pickens County,	)	
	)	Docket No.: 16-A1J-07-0164-CC
Petitioner,	)	
	)	
vs.	)	NOTICE OF DEPOSITIONS
	)	
South Carolina Department of Health and	)	
Environmental Control and MRR Pickens,	)	
LLC,	)	
	)	
Respondents.	)	
	)	

TO: DEFENDANTS SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND MRR PICKENS, LLC AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that in accordance with Rule 30 of the South Carolina Rules of Civil Procedure, the undersigned Attorney for the Plaintiff will take, or cause to be taken, before a Notary Public, the discovery deposition of the person(s) named below on the date and time listed below at the location(s) listed below, at which time and place you are notified to appear and take such part in the examination as you may be advised as shall be fit and proper. This deposition will be recorded by stenographic means. Plaintiff will provide a court reporter.

<u>Deponent</u>	<u>Date & Time</u>	<u>Location</u>
Chris Roof	August 15, 2016 - 10:00 a.m.	5842 Faringdon Place, Suite 1 Raleigh, NC, or, if such location is not available, at a designated location in Raleigh, NC
Joan Litton	August 16, 2016 - 10:00 a.m.	SCDHEC Headquarters, Bull Street, Columbia, SC, or, if such location is not available, at a designated location in Columbia, SC

July 20, 2016



Gary W. Poliakoff

atty@gpoliakoff.com

Raymond P. Mullman

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ATTORNEYS FOR PICKENS COUNTY

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Pickens County,	)	
	)	Docket No.: 16-A1J-07-0164-CC
Petitioner,	)	
	)	
vs.	)	INTERROGATORIES TO
	)	MRR PICKENS, LLC
South Carolina Department of Health and	)	
Environmental Control and MRR Pickens,	)	
LLC,	)	
	)	
Respondents.	)	
	)	

TO: MRR PICKENS, LLC AND ITS ATTORNEYS:

PURSUANT TO RULE 33 OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE, you are hereby required to answer all Interrogatories below as set forth under Section (b) and to serve said Answers upon the undersigned within the time provided in said Rule.

These Interrogatories are continuing, and the Defendant(s) is(are) obliged to change, supplement and correct his(their) answers to conform to all available information, including such information as first becomes available to the Defendant(s) after his(their) answers hereto are served.

INSTRUCTIONS AND DEFINITIONS

A. In answering these Interrogatories, furnish all information which is available to the Defendant(s), including information which is in the possession of the Defendant's attorneys, investigators for his(their) attorneys, independent accountants, officers, employees or agents, and not merely information from the Defendant's own corporate files or records.

B. If the Defendant(s) cannot answer any of the following Interrogatories in full, answer to the extent possible, specifying the reasons why he(she) is unable to answer the remainder, and provide whatever information the Defendant(s) has concerning the unanswered portions, including the source or sources from which further information may be obtained.

C. If the records or information is not reasonably available to the Defendant(s) in precisely the form requested, or for the particular date or period specified, but could be supplied in a modified form and/or for a slightly different date or period, then the Defendant is requested to respond to that Interrogatory by stating the extent, if any, to which such records or information relate to the subject matter thereof, together with an estimate of the information which the Defendant(s) is able to provide on the basis of available records or information. Estimates should be indicated to be such.

D. Whenever the Defendant(s) response to an Interrogatory mentions a person, set forth with specificity the following information with respect to each such person.

- (1) Name and last known home address and telephone number;
- (2) Occupation and last known employment, business address and telephone number;
- (3) Business or other relationship of such person to the Defendant(s); and
- (4) Position and title that person presently has and the position and title held by that person at the time referred to in the Interrogatory.

E. If any document which the Defendant(s) is asked to identify is no longer complete or has been altered, state in what respect the document is incomplete or altered and explain the reasons therefor. If any such document is no longer in existence or no longer in the Defendant's possession, custody or control, state the disposition which was made of the document, the reasons for such disposition, the date of the disposition, the identity of the person(s) ordering, authorizing and supervising such disposition and the person performing such disposition, the substance or contents or contents of the document disposed of, and the identity of all persons having knowledge of the contents thereof.

F. After each response to each of the following Interrogatories, identify each person who participated in the preparation of, or was consulted about, the answer to the Interrogatory.

G. If any document or portion thereof is or will be withheld because of a claim or privilege or work product:

- (1) State the basis on which the privilege is or will be claimed;
- (2) State the author of the document;
- (3) Identify each person to whom the document indicates the original or a copy thereof was sent, and any others who at any time possessed the document; and,
- (4) State the general subject matter of the document or portion thereof for which the privilege is claimed.

H. The term "document" has the broadest meaning accorded to it by civil procedure and includes, but is not limited to, typed, recorded, transcribed, punched, taped or graphic matter of every type and description, however and by whomever prepared, produced, reproduced, disseminated or made, in the actual or constructive possession, custody or control of the Plaintiff(s), including but not limited to, all writings, letters, minutes, bulletins, correspondence, telegrams, telexes, memoranda, notes, instructions, literature, work assignments, notebooks, diaries, calendars, records, agreements, contracts, notations of telephone or personal conversations or conferences, messages, interoffice or intraoffice communications, microfilm, circulars, pamphlets, studies, notices, summaries, reports, books, checks, credit card vouchers, statements of account, receipts, invoices, graphs, photographs, drafts, data sheets, data compilations, computer data sheets, computer data compilations, worksheets, statistics, speeches or other writings, tape recordings, phonograph records, data compilations from which information can be obtained or can be translated through detection devices into reasonably usable form, or any other tangible thing which records information in any way.

The term "document" shall include the original and any copies which differ in any manner whatsoever from the original (whether different from the original because of notes made on such copy or otherwise), and any drafts thereof. For purposes of this definition, a document is within the

possession or control of his(their) attorneys, investigators for his(their) attorneys, independent accountants, directors, trustees, officers, employees, or agents, or any person acting on behalf of or in concert with him(them) or with any of these persons, or otherwise under his(their) possession or control.

I. The term "identify" or "identity" when used with respect to an individual shall mean to state the name and present or last home and business address and phone numbers of each such person. When used with respect to a corporation, "identify" or "identity" shall mean to state the corporations full name, the address or principal place of business, and the state of incorporation. When used with respect to a person other than an individual or a corporation, "identify" means to state its official name or designation and the address of its principal place of business; identify all partners or members; and state the principal activities of such entity.

J. "Identify," with reference to documents, means to state (a) the title of the document; (b) the date of the document or the date on which it was prepared; (c) the identity of the author or authors of the document; (d) the recipient(s) of the document; (e) the type of document; and (f) a description of the subject matter of the document.

If any document is not in the Defendant's possession or subject to his (their) control, state what disposition was made of it, the date of such disposition, and identify the person or persons having knowledge of its contents. When in the following Interrogatories the Defendant(s) is asked to identify a document, it will be a sufficient response to such Interrogatory, if so desired, for the Defendant(s) to attach a copy of each document with an identification of the Interrogatory or Interrogatories, or subparagraphs thereof, to which it is submitted as being responsive.

K. "Person" means and includes, without limiting the generality of its meaning, any natural person; corporate or business entity; firm; partnership; association; group; governmental body, agency or subdivision; committee; commission; or other organization or entity.

L. The term "concerning," "relate to" and "relating to" include referring to, alluding to, responding to, relating to, connected with, commenting on, in respect of, about, regarding, discussing, showing, describing, reflecting, analyzing, constituting, or in any way relevant to the specified subject within the meaning of rules of civil procedure.

M. "Communication" includes any written or oral communication.

N. As used here, the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronouns to be used, and vice versa. The use of any tense of any verb shall be considered to include also within its meaning all other tenses of the verb so used.

O. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the Interrogatory inclusive rather than exclusive.

P. "Each," "any," and "all" are both singular and plural.

INTERROGATORY NO. 1:

Give the names and addresses of persons known to the parties or counsel to be a witness concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

INTERROGATORY NO. 2:

Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

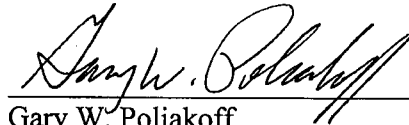
INTERROGATORY NO. 3:

List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

INTERROGATORY NO. 4:

For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses. ✓

July 20, 2016



Gary W. Poliakoff

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(864) 878-1336 fax

ATTORNEYS FOR PICKENS COUNTY

Exhibit 3

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Pickens County,	)	
	)	Docket No.: 16-A1J-07-0164-CC
Petitioner,	)	
	)	
vs.	)	PRODUCTION REQUESTS TO
	)	MRR PICKENS, LLC
South Carolina Department of Health and	)	
Environmental Control and MRR Pickens,	)	
LLC,	)	
	)	
Respondents.	)	
	)	

TO: MRR PICKENS, LLC AND ITS ATTORNEYS:

PLEASE TAKE NOTICE THAT the Plaintiff, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, hereby requests that the Defendant MRR Pickens, LLC (MRR) produce or permit the Plaintiff to inspect and copy the following documents.

As used herein, the term "document" shall mean the original, and if not available any copy of the original, of writings of every kind, including but not limited to any correspondence, drawings, changes to such correspondence and drawings, books, records, logs, reports, memoranda, abstracts, advertisements, agreements, appointment records, audio recordings, whether transcribed or not, balance sheets, bills, bills of lading, books of account, cablegrams, certificates, charters, communications, papers, transcripts of summaries of conversations, diaries, drafts, drafts of documents, electronic or mechanical recordation in whatever medium, films, financial analyses, financial statements, forms, telegrams, income statements, inter-office and intra-office communications, letters, meeting reports, minutes, notes, photocopies, photographs, press releases, prospectuses, publications, records, records of account, reports, resolutions, statements, statistical

records, studios, summaries, evaluations, and any other electronic or mechanical records or transcripts or any other device or instrument from which information can be perceived or which is used to memorialize human thought, speech or action in the possession, custody, or control of the Defendant. The term "document" shall also include copies containing information in addition to that contained in or on the original and all attachments, appendixes or enclosures. With respect to correspondence, this request also includes "blind" copies.

If any documents are withheld from production due to an alleged privilege, immunity or other objection, identify fully any such documents, give a general description of the contents thereof, and state the basis upon which the objection is based.

These Production requests are continuous in nature and must be supplemented properly if Defendants obtain further or different information before trial of this action.

(1) All documents and records which Defendant MRR intends to use, rely upon and/or introduce at trial;

(2) All documents and records which Defendant MRR intends to refer to, or rely upon, and/or which will constitute the basis for any testimony or evidence at the trial of this case;

(3) All documents and records which form the basis of any of Defendant MRR's Answers to Interrogatories and Answers to Supplemental Interrogatories;

(4) All documents and records which constitute the basis for, and/or which support, any and all claims and defenses in this case;

(5) All photographs, plats, sketches or other prepared documents in possession of Defendant MRR that relate to any and all claims and defenses in this case;

(6) All statements, written and/or recorded, of any witness in this case;

(7) All reports of all experts, with a current Curriculum vitae, data and other information considered by the expert in forming opinions, all exhibits to be used as a summary of or support for the opinions, and all treatises, texts or authorities upon which the expert especially relied;

(8) All incident reports, accident reports, and investigative reports and materials pertaining to the incident in question, in the control and/or possession of Defendant MRR;

(9) Copies of all documents obtained by Defendant MRR or anyone acting on their behalf via Subpoena Duces Tecum, authorization form, or other legal process.

(10) Please provide a copy of any and all documents which reflect Notice and/or opportunity for comment or review, regarding the Permit Modification of August 10, 2015, Permit No. LF2-00003, to Pickens County, to the Public, and/or to any and all affected parties.

(11) Please provide a copy of:

- all correspondence from, or on behalf of, MRR, to SCDHEC, regarding the Highway 93 Class 2 Landfill (a/k/a the Highway 93 C&D Landfill), from January 1, 2013 to the present.

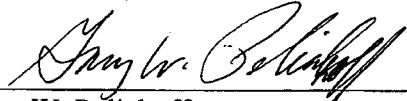
- all records and documents, studies and/or reports of kind, from, or on behalf of, MRR, to SCDHEC, regarding the Highway 93 Class 2 Landfill (a/k/a the Highway 93 C&D Landfill) from January 1, 2013 to the present.

- all correspondence, records and documents of any kind, from SCDHEC to MRR, regarding the Highway 93 Class 2 Landfill (a/k/a the Highway 93 C&D Landfill), from January 1, 2013 to the present.

- all emails from MRR to SCDHEC, from January 1, 2013 to the present, regarding the Highway 93 Class 2 Landfill (a/k/a the Highway 93 C&D Landfill).

- all emails from SCDHEC to MRR, from January 1, 2013 to the present, regarding
the Highway 93 Class 2 Landfill (a/k/a the Highway 93 C&D Landfill)

July 20, 2016



Gary W. Poliakoff
atty@gpoliakoff.com
Raymond P. Mullman
POLIAKOFF & ASSOCIATES, P.A.
P.O. Box 1571
Spartanburg, SC 29304
(864) 582-5472 (864) 582-7280 fax

Kenneth S. Roper, Esq.
ken@roperlawfirm.com
ROPER LAW FIRM, LLC
P.O. Box 246
Pickens, SC 29671
(864) 878-1577 (864) 878-1336 fax

ATTORNEYS FOR PICKENS COUNTY

Exhibit 4

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Pickens County,	)	
	)	Docket No.: 16-A1J-07-0164-CC
Petitioner,	)	
	)	
vs.	)	REQUESTS FOR ADMISSIONS
	)	TO MRR PICKENS, LLC
South Carolina Department of Health and	)	
Environmental Control and MRR Pickens,	)	
LLC,	)	
	)	
Respondents.	)	

PURSUANT TO RULE 36(a) S.C.R.P., the undersigned attorney for the Petitioner requests Defendant MRR Pickens, LLC to make the following admissions for the purpose of this action only, and subject to all pertinent objections to admissibility which may be interposed at the trial within 30 days after service of this request.

1. Please admit the genuineness and authenticity of the copy of the Deposition Transcript of Kent M. Coleman, taken by Gibson Reporting on March 8, 2016, 233 pages of testimony, plus Certificate of Reporter and 12 Exhibits, in the case of MRR Pickens, LLC v. County of Pickens, et al., C.A. No. 2016-CP-39-100.

2. Please admit that the testimony of Kent M. Coleman, as appears in the Deposition Transcript of his testimony taken on March 8, 2016, in the case of MRR Pickens, LLC v. County of Pickens, et al., C.A. No. 2016-CP-39-100, is the sworn testimony of Mr. Coleman as reflected therein.

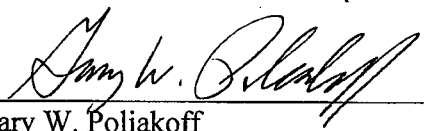
3. Please admit that MRR Pickens, LLC provided no notice or opportunity for comment or review, of the Permit Modification of August 10, 2015, Permit No. LF2-00003, to the Public.

4. Please admit that MRR Pickens, LLC provided no notice or opportunity for comment or review, of the Permit Modification of August 10, 2015, Permit No. LF2-00003, to Pickens County.

5. Please admit that SCDHEC provided no notice or opportunity for comment or review, of the Permit Modification of August 10, 2015, Permit No. LF2-00003, to the Public.

6. Please admit that SCDHEC provided no notice or opportunity for comment or review, of the Permit Modification of August 10, 2015, Permit No. LF2-00003, to Pickens County.

July 20, 2016



Gary W. Poliakov
atty@gpoliakov.com
Raymond P. Mullman
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(864) 878-1577 (864) 878-1336 fax

ATTORNEYS FOR PICKENS COUNTY

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Pickens County,	)	
	)	Docket No.: 16-A1J-07-0164-CC
Petitioner,	)	
	)	
vs.	)	INTERROGATORIES TO
	)	SOUTH CAROLINA DEPARTMENT OF
South Carolina Department of Health and	)	HEALTH AND ENVIRONMENTAL
Environmental Control and MRR Pickens,	)	CONTROL
LLC,	)	
	)	
Respondents.	)	
	)	

**TO: SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL AND ITS ATTORNEYS:**

**PURSUANT TO RULE 33 OF THE SOUTH CAROLINA RULES OF CIVIL
PROCEDURE**, you are hereby required to answer all Interrogatories below as set forth under
Section (b) and to serve said Answers upon the undersigned within the time provided in said Rule.

These Interrogatories are continuing, and the Defendant(s) is(are) obliged to change,
supplement and correct his(their) answers to conform to all available information, including such
information as first becomes available to the Defendant(s) after his(their) answers hereto are served.

INSTRUCTIONS AND DEFINITIONS

A. In answering these Interrogatories, furnish all information which is available to the
Defendant(s), including information which is in the possession of the Defendant's attorneys,
investigators for his(their) attorneys, independent accountants, officers, employees or agents, and not
merely information from the Defendant's own corporate files or records.

B. If the Defendant(s) cannot answer any of the following Interrogatories in full, answer
to the extent possible, specifying the reasons why he(she) is unable to answer the remainder, and
provide whatever information the Defendant(s) has concerning the unanswered portions, including
the source or sources from which further information may be obtained.

C. If the records or information is not reasonably available to the Defendant(s) in
precisely the form requested, or for the particular date or period specified, but could be supplied in
a modified form and/or for a slightly different date or period, then the Defendant is requested to
respond to that Interrogatory by stating the extent, if any, to which such records or information relate
to the subject matter thereof, together with an estimate of the information which the Defendant(s)
is able to provide on the basis of available records or information. Estimates should be indicated to
be such.

D. Whenever the Defendant(s) response to an Interrogatory mentions a person, set forth with specificity the following information with respect to each such person.

- (1) Name and last known home address and telephone number;
- (2) Occupation and last known employment, business address and telephone number;
- (3) Business or other relationship of such person to the Defendant(s); and
- (4) Position and title that person presently has and the position and title held by that person at the time referred to in the Interrogatory.

E. If any document which the Defendant(s) is asked to identify is no longer complete or has been altered, state in what respect the document is incomplete or altered and explain the reasons therefor. If any such document is no longer in existence or no longer in the Defendant's possession, custody or control, state the disposition which was made of the document, the reasons for such disposition, the date of the disposition, the identity of the person(s) ordering, authorizing and supervising such disposition and the person performing such disposition, the substance or contents or contents of the document disposed of, and the identity of all persons having knowledge of the contents thereof.

F. After each response to each of the following Interrogatories, identify each person who participated in the preparation of, or was consulted about, the answer to the Interrogatory.

G. If any document or portion thereof is or will be withheld because of a claim or privilege or work product:

- (1) State the basis on which the privilege is or will be claimed;
- (2) State the author of the document;
- (3) Identify each person to whom the document indicates the original or a copy thereof was sent, and any others who at any time possessed the document; and,
- (4) State the general subject matter of the document or portion thereof for which the privilege is claimed.

H. The term "document" has the broadest meaning accorded to it by civil procedure and includes, but is not limited to, typed, recorded, transcribed, punched, taped or graphic matter of every type and description, however and by whomever prepared, produced, reproduced, disseminated or made, in the actual or constructive possession, custody or control of the Plaintiff(s), including but not limited to, all writings, letters, minutes, bulletins, correspondence, telegrams, telexes, memoranda, notes, instructions, literature, work assignments, notebooks, diaries, calendars, records, agreements, contracts, notations of telephone or personal conversations or conferences, messages, interoffice or intraoffice communications, microfilm, circulars, pamphlets, studies, notices, summaries, reports, books, checks, credit card vouchers, statements of account, receipts, invoices, graphs, photographs, drafts, data sheets, data compilations, computer data sheets, computer data compilations, worksheets, statistics, speeches or other writings, tape recordings, phonograph records, data compilations from which information can be obtained or can be translated through detection devices into reasonably usable form, or any other tangible thing which records information in any way.

The term "document" shall include the original and any copies which differ in any manner whatsoever from the original (whether different from the original because of notes made on such copy or otherwise), and any drafts thereof. For purposes of this definition, a document is within the

possession or control of his(their) attorneys, investigators for his(their) attorneys, independent accountants, directors, trustees, officers, employees, or agents, or any person acting on behalf of or in concert with him(them) or with any of these persons, or otherwise under his(their) possession or control.

I. The term "identify" or "identity" when used with respect to an individual shall mean to state the name and present or last home and business address and phone numbers of each such person. When used with respect to a corporation, "identify" or "identity" shall mean to state the corporations full name, the address or principal place of business, and the state of incorporation. When used with respect to a person other than an individual or a corporation, "identify" means to state its official name or designation and the address of its principal place of business; identify all partners or members; and state the principal activities of such entity.

J. "Identify," with reference to documents, means to state (a) the title of the document; (b) the date of the document or the date on which it was prepared; (c) the identity of the author or authors of the document; (d) the recipient(s) of the document; (e) the type of document; and (f) a description of the subject matter of the document.

If any document is not in the Defendant's possession or subject to his (their) control, state what disposition was made of it, the date of such disposition, and identify the person or persons having knowledge of its contents. When in the following Interrogatories the Defendant(s) is asked to identify a document, it will be a sufficient response to such Interrogatory, if so desired, for the Defendant(s) to attach a copy of each document with an identification of the Interrogatory or Interrogatories, or subparagraphs thereof, to which it is submitted as being responsive.

K. "Person" means and includes, without limiting the generality of its meaning, any natural person; corporate or business entity; firm; partnership; association; group; governmental body, agency or subdivision; committee; commission; or other organization or entity.

L. The term "concerning," "relate to" and "relating to" include referring to, alluding to, responding to, relating to, connected with, commenting on, in respect of, about, regarding, discussing, showing, describing, reflecting, analyzing, constituting, or in any way relevant to the specified subject within the meaning of rules of civil procedure.

M. "Communication" includes any written or oral communication.

N. As used here, the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronouns to be used, and vice versa. The use of any tense of any verb shall be considered to include also within its meaning all other tenses of the verb so used.

O. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the Interrogatory inclusive rather than exclusive.

P. "Each," "any," and "all" are both singular and plural.

INTERROGATORY NO. 1:

Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

INTERROGATORY NO. 2:

Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

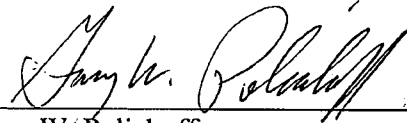
INTERROGATORY NO. 3:

List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

INTERROGATORY NO. 4:

For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

July 20, 2016



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Raymond P. Mullman
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ATTORNEYS FOR PICKENS COUNTY

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Pickens County,	)	
	)	Docket No.: 16-A1J-07-0164-CC
Petitioner,	)	
	)	
vs.	)	REQUESTS FOR PRODUCTION TO
	)	SOUTH CAROLINA DEPARTMENT OF
South Carolina Department of Health and	)	HEALTH AND ENVIRONMENTAL
Environmental Control and MRR Pickens,	)	CONTROL
LLC,	)	
	)	
Respondents.	)	
	)	

**TO: SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL AND ITS ATTORNEYS:**

PLEASE TAKE NOTICE THAT the Plaintiff, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, hereby requests that the Defendant South Carolina Department of Health and Environmental Control (SCDHEC) produce or permit the Plaintiff to inspect and copy the following documents.

As used herein, the term "document" shall mean the original, and if not available any copy of the original, of writings of every kind, including but not limited to any correspondence, drawings, changes to such correspondence and drawings, books, records, logs, reports, memoranda, abstracts, advertisements, agreements, appointment records, audio recordings, whether transcribed or not, balance sheets, bills, bills of lading, books of account, cablegrams, certificates, charters, communications, papers, transcripts of summaries of conversations, diaries, drafts, drafts of documents, electronic or mechanical recordation in whatever medium, films, financial analyses, financial statements, forms, telegrams, income statements, inter-office and intra-office communications, letters, meeting reports, minutes, notes, photocopies, photographs, press releases,

prospectuses, publications, records, records of account, reports, resolutions, statements, statistical records, studios, summaries, evaluations, and any other electronic or mechanical records or transcripts or any other device or instrument from which information can be perceived or which is used to memorialize human thought, speech or action in the possession, custody, or control of the Defendant. The term "document" shall also include copies containing information in addition to that contained in or on the original and all attachments, appendixes or enclosures. With respect to correspondence, this request also includes "blind" copies.

If any documents are withheld from production due to an alleged privilege, immunity or other objection, identify fully any such documents, give a general description of the contents thereof, and state the basis upon which the objection is based.

These Production requests are continuous in nature and must be supplemented properly if Defendants obtain further or different information before trial of this action.

(1) All documents and records which Defendant SCDHEC intends to use, rely upon and/or introduce at trial;

(2) All documents and records which Defendant SCDHEC intends to refer to, or rely upon, and/or which will constitute the basis for any testimony or evidence at the trial of this case;

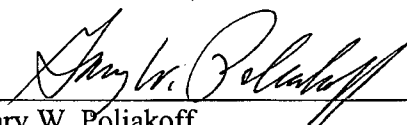
(3) All documents and records which form the basis of any of Defendant SCDHEC's Answers to Interrogatories and Answers to Supplemental Interrogatories;

(4) All documents and records which constitute the basis for, and/or which support, any and all claims and defenses in this case;

(5) All photographs, plats, sketches or other prepared documents in possession of Defendant SCDHEC that relate to any and all claims and defenses in this case;

- (6) All statements, written and/or recorded, of any witness in this case;
- (7) All reports of all experts, with a current Curriculum vitae, data and other information considered by the expert in forming opinions, all exhibits to be used as a summary of or support for the opinions, and all treatises, texts or authorities upon which the expert especially relied;
- (8) All incident reports, accident reports, and investigative reports and materials pertaining to the incident in question, in the control and/or possession of Defendant SCDHEC;
- (9) Copies of all documents obtained by Defendant SCDHEC or anyone acting on their behalf via Subpoena Duces Tecum, authorization form, or other legal process.
- (10) Please provide a copy of any and all documents which reflect Notice and/or opportunity for comment or review, regarding the Permit Modification of August 10, 2015, Permit No. LF2-00003, to Pickens County, to the Public, and/or to any and all affected parties.

July 20, 2016



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ATTORNEYS FOR PICKENS COUNTY

Exhibit 2

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Pickens County,	)	
	)	Docket No.: 16-A1J-07-0164-CC
Petitioner,	)	
	)	
vs.	)	REQUESTS FOR ADMISSIONS TO
	)	SOUTH CAROLINA DEPARTMENT OF
South Carolina Department of Health and	)	HEALTH AND ENVIRONMENTAL
Environmental Control and MRR Pickens,	)	CONTROL
LLC,	)	
	)	
Respondents.	)	
_____	)	

PURSUANT TO RULE 36(a) S.C.R.P., the undersigned attorney for the Petitioner requests Defendant South Carolina Department of Health and Environmental Control (SCDHEC) to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial within 30 days after service of this request.

1. Please admit the genuineness and authenticity of the copy of the Deposition Transcript of Kent M. Coleman, taken by Gibson Reporting on March 8, 2016, 233 pages of testimony, plus Certificate of Reporter and 12 Exhibits, in the case of MRR Pickens, LLC v. County of Pickens, et al., C.A. No. 2016-CP-39-100.

2. Please admit that the testimony of Kent M. Coleman, as appears in the Deposition Transcript of his testimony taken on March 8, 2016, in the case of MRR Pickens, LLC v. County of Pickens, et al., C.A. No. 2016-CP-39-100, is the sworn testimony of Mr. Coleman as reflected therein.

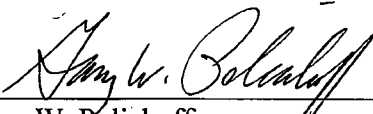
3. Please admit that SCDHEC provided no notice or opportunity for comment or review, of the Permit Modification of August 10, 2015, Permit No. LF2-00003, to the Public.

4. Please admit that SCDHEC provided no notice or opportunity for comment or review, of the Permit Modification of August 10, 2015, Permit No. LF2-00003, to Pickens County.

5. Please admit that MRR Pickens, LLC provided no notice or opportunity for comment or review, of the Permit Modification of August 10, 2015, Permit No. LF2-00003, to the Public.

6. Please admit that MRR Pickens, LLC provided no notice or opportunity for comment or review, of the Permit Modification of August 10, 2015, Permit No. LF2-00003, to Pickens County.

July 20, 2016



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ATTORNEYS FOR PICKENS COUNTY

Exhibit 8

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Pickens County,	)	Docket No.: 16-A1J-07-0164-CC
	)	
Petition,	)	AFFIDAVIT OF SERVICE
	)	
vs.	)	
	)	
South Carolina Department of	)	
Health and Environmental	)	
Control and MRR Pickens LLC,	)	
	)	
Respondents.	)	
	)	

The undersigned, Debbie Brothers being duly sworn, says that she served the foregoing: **COVER LETTER, INTERROGATORIES TO MRR PICKENS, LLC, INTERROGATORIES TO SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, REQUESTS FOR ADMISSIONS TO MRR PICKENS, LLC, REQUESTS FOR ADMISSIONS TO SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, PRODUCTION REQUESTS TO MRR PICKENS, LLC, REQUESTS FOR PRODUCTION TO SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND NOTICE OF DEPOSITIONS** the above captioned action upon defendant **SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL** by delivering the same to:

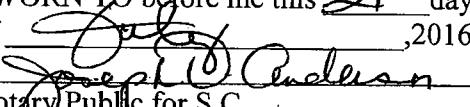
() the individual personally, or

(X) **DONNA HOLLOMAN, Legal Assistant to Etta R. Williams Linen, Esquire,**
Office of General Counsel person served as authorized/designated to accept service for

the defendant and leaving with him/her one (1) copy of the same at **2600 Bull Street, Columbia, SC** on the **21st day of July, 2016**, at **8:53a.m.**

The Affiant further says, that upon information and belief, she know the person so served to be the defendant mentioned and described in the documents served and that the affiant is not a party to nor interested in the action.


Debbie Brothers

SWORN TO before me this 21st day
of July, 2016

Notary Public for S.C.
My Commission Expires: 7 Dec 2019

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

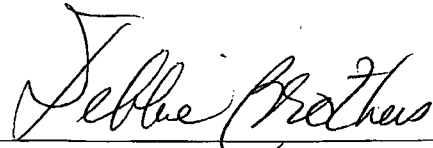
Pickens County,	)	Docket No.: 16-A1J-07-0164-CC
	)	
Petition,	)	AFFIDAVIT OF SERVICE
	)	
vs.	)	
	)	
South Carolina Department of	)	
Health and Environmental	)	
Control and MRR Pickens LLC,	)	
	)	
Respondents.	)	

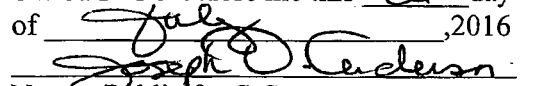
The undersigned, Debbie Brothers being duly sworn, says that she served the foregoing: **COVER LETTER, INTERROGATORIES TO MRR PICKENS, LLC, INTERROGATORIES TO SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, REQUESTS FOR ADMISSIONS TO MRR PICKENS, LLC, REQUESTS FOR ADMISSIONS TO SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, PRODUCTION REQUESTS TO MRR PICKENS, LLC, REQUESTS FOR PRODUCTION TO SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND NOTICE OF DEPOSITIONS** the above captioned action upon **ROBERT F. GOINGS, ESQUIRE** by delivering the same to:

() the individual personally, or

(X) **REBECCA ELLER, Office Manager** person served as authorized/designated to accept service and leaving with him/her one (1) copy of the same at **Goings Law Firm, LLC, 914 Richland Street Suite A101, Columbia, SC** on the **21st day of July, 2016**, at **9:10 a.m.**

The Affiant further says, that upon information and belief, she know the person so served to be the individual mentioned and described in the documents served and that the affiant is not a party to nor interested in the action.


Debbie Brothers

SWORN TO before me this 21st day
of July, 2016

Notary Public for S.C.
My Commission Expires: 7 Dec 2019

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

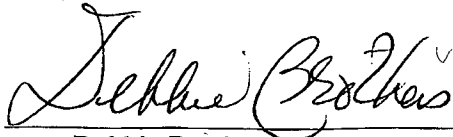
Pickens County,	)	Docket No.: 16-A1J-07-0164-CC
	)	
Petition,	)	AFFIDAVIT OF SERVICE
	)	
vs.	)	
	)	
South Carolina Department of	)	
Health and Environmental	)	
Control and MRR Pickens LLC,	)	
	)	
Respondents.	)	
	)	

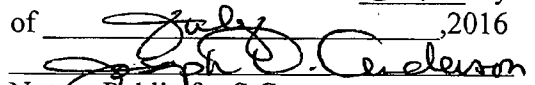
The undersigned, Debbie Brothers being duly sworn, says that she served the foregoing: **COVER LETTER, INTERROGATORIES TO MRR PICKENS, LLC, INTERROGATORIES TO SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, REQUESTS FOR ADMISSIONS TO MRR PICKENS, LLC, REQUESTS FOR ADMISSIONS TO SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, PRODUCTION REQUESTS TO MRR PICKENS, LLC, REQUESTS FOR PRODUCTION TO SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND NOTICE OF DEPOSITIONS** the above captioned action upon **JESSICA J.O. KING, ESQUIRE** by delivering the same to:

() the individual personally, or

(X) **ALLEN KEITH MCALISTER, JR.,** Associate person served as authorized/designated to accept service and leaving with him/her one (1) copy of the same at **Williams Mullen, 1441 Main Street, Suite 1250, Columbia, SC** on the **21st day of July, 2016, at 9:25 a.m.**

The Affiant further says, that upon information and belief, she know the person so served to be the individual mentioned and described in the documents served and that the affiant is not a party to nor interested in the action.


Debbie Brothers

SWORN TO before me this 21st day
of July, 2016

Notary Public for S.C.
My Commission Expires: 7 Dec 2019

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2017-000066

RECEIVED
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SC Court of Appeals

Pickens County,

Appellant,

vs.

South Carolina Department of Health and Environmental Control and
MRR Pickens, LLC,

Respondents.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

- I. Did the Administrative Law Court err in dismissing Pickens County's challenge to a DHEC permitting decision as untimely, prior to resolving whether DHEC had complied with the proper notice procedures for that decision?
- II. Did the Administrative Law Court err in dismissing Pickens County's challenge to a DHEC permitting decision on the basis of administrative exhaustion, when DHEC acted outside the scope of its authority in relation to the issuance of such decision and when Pickens County's challenge raises issues of critical public interest?
- III. Did the Administrative Law Court err in denying Pickens County the opportunity for discovery, while granting Respondents' motions to dismiss based on evidence outside of the pleadings and resolving conflicting evidence in favor of Respondents?
- IV. May Respondents shield themselves with the doctrine of administrative exhaustion when any such failure on the part of Appellant is directly attributable to Respondents' misrepresentations and misinformation?
- V. Should an administrative decision issued through an improper process and for an improper purpose be protected by the filing deadlines established for challenging a validly issued administrative decision and by the doctrine of administrative exhaustion?
- VI. Did the Administrative Law Court err in dismissing this case on the basis of timeliness, prior to resolving the status of proposed intervenors who have different bases for asserting timeliness?

I. STATEMENT OF THE CASE

This matter is before the Court on appeal from an order of the South Carolina Administrative Law Court (“ALC”) dismissing challenges to the permit modification issued to MRR Pickens, LLC (“MRR”) by the South Carolina Department of Health and Environmental Control (“DHEC”). On August 10, 2015, DHEC issued the permit modification to MRR to allow certain class three landfill features to be installed in its previously permitted class two landfill, on which construction had not begun (the “Permit Modification”). DHEC decided to issue the Permit Modification for MRR’s class two landfill in Pickens County (“the County”) as a “minor” modification under DHEC’s regulations, rather than a “major” modification, a decision which holds significant implications for public notice and public involvement in DHEC’s regulatory process.

On March 23, 2016, the County filed a request for review before the DHEC Board. On April 21, 2016, the DHEC Board denied review. On May 19, 2016, Pickens County filed a request for contested case hearing in the ALC. On July 28, 2016, DHEC filed a motion to dismiss. On July 29, 2016, MRR filed a motion to dismiss and a motion to stay discovery. On August 18, 2016, Robert L. Traber, Matthew S. Stone, Randolph E. Revis, Sr. by P.R. Randy Martin, Tony Charping and Randall King, (collectively “Neighboring Property Owners”), filed a motion to intervene. On September 7, 2016, Judge Robinson held a conference call with the parties and decided, among other things, to grant MRR’s motion to stay discovery and to hold the motion to intervene in abeyance pending the court’s decision on the motions to dismiss. Judge Robinson held a hearing on the motions to dismiss on December 2, 2016. On December 12, 2016, the ALC dismissed the case by order, for failure to exhaust administrative remedies, based on the purported untimeliness of Pickens County’s request for review before the DHEC Board. On January

11, 2017, Pickens County filed a notice of appeal in this Court. On March 29, 2017, Neighboring Property Owners filed a motion to be included as parties to this appeal. This Court denied that motion on the basis that the Neighboring Property Owners were not aggrieved by an order, because the ALC had never ruled on their motion to intervene.

II. ARGUMENT

As will be explained fully herein, Appellant has a number of independent bases for relief upon which this Court should reverse the ALC's order of dismissal and remand this case for consideration on the merits.

SUMMARY OF ARGUMENT

On the whole, this case can be conveniently thought of as encompassing three main questions: (1) whether the modifications DHEC authorized to MRR's landfill are "minor" or "major" under DHEC's regulations; (2) whether the challenges to those modifications brought by Pickens County and the Neighboring Property Owners are administratively barred on the basis of timeliness; and (3) whether the modifications are justifiable under DHEC's landfill regulations (the merits). A major part of this appeal relates to the order in which these questions should have been considered by the ALC.

The ALC's order of dismissal is the proverbial example of putting the cart before the horse. First of all, under the circumstances presented here, it is a logical impossibility to properly assess timeliness prior to addressing whether DHEC's authorized modifications are actually "minor." Yet, the ALC does exactly that, determining the County's challenge to be untimely under a statute (S.C. Code § 44-1-60) that is predicated on proper notice and process being provided by DHEC, while declining to consider persuasive argument and evidence that DHEC failed significantly in its public notice obligations. Issuance of a landfill

permit modification under the “minor” designation effectively takes place outside of public knowledge and view. On the other hand, “major” modifications require multiple levels of direct public notice, which would have included notice to the County and the other individuals who sought to be admitted as parties in this appeal. In treating this landfill modification as “minor,” seemingly for the very purpose of shielding the action from the public, DHEC denied the County proper notice and procedure, and such action therefore cannot trigger the time limitations applied by the ALC. In this regard, the ALC failed by not taking up the “minor” versus “major” distinction before granting dismissal. Making matters worse, the ALC also granted dismissal prior to considering intervention of the Neighboring Property Owners. The logic of the ALC’s dismissal of Pickens County, which is based on informal notice provided to the County, falls apart completely when applied to the Neighboring Property Owners. The ALC offered no explanation in its dismissal order or otherwise for simply never addressing the status of these individuals with the largest personal stake in DHEC’s decision.

On top of ignoring necessary components of the timeliness analysis, the ALC improperly applied legal principles upon which the timeliness requirement is inapplicable in this instance. When DHEC acts outside the scope of its authority and impedes public notice and participation, the agency cannot then lean upon the concepts of timeliness and administrative exhaustion to protect its action. The underlying permit decision at issue in this case was issued through an improper process and for an improper purpose, and state precedent strongly reflects that such decision is not then shielded by the requirement of administrative exhaustion, nor the filing deadlines that would apply for a validly issued administrative decision. Further, even counting from DHEC’s dubious issuance of the “minor” modification, courts retain the inherent ability

to equitably toll the administrative deadlines at play in this case, but the ALC's consideration of its authority in this regard was fundamentally flawed.

Finally, the ALC relied on outside evidence submitted by the Respondents in support of their motions to dismiss, while denying Pickens County the opportunity to conduct the discovery necessary to counter that evidence or to support its own contentions. The ALC's conclusions on dismissal necessarily required the weighing of disputed evidence, and that weighing did not land in favor of Pickens County. The ALC effectively converted the proceedings to summary judgment, while artificially limiting the scope of analysis and misapplying the standard of review, all to Pickens County's significant detriment.

On the independent basis of any of these arguments, as explained and expounded upon herein, reversal is appropriate.

STATEMENT OF FACTS

The Initial Plan for the Landfill:

By at least 2007, MRR was pursuing construction of a landfill at 2180 Greenville Highway in Liberty, Pickens County, South Carolina. (R. p. 303, ¶ 3). This pursuit included discussions and negotiations with Pickens County, in order to accomplish compliance with the County's development standards and comprehensive plan. These discussions led to the parties executing a Development Agreement and Host Agreement for the landfill. (See R. pp. 361-80). These agreements specify that MRR will develop and operate a "Construction and Demolition ('C&D') and Land Clearing Debris ('LCD') landfill" and that Pickens County will serve as the Host Local Government for such operation. (R. pp. 362-63). The Host Agreement requires MRR to comply with DHEC's applicable rules and requirements and to simultaneously submit to Pickens County all reports submitted to DHEC. (*Id.* ("All reports required to

be submitted to DHEC by MRR Pickens, LLC must be simultaneously submitted to the County Administrator.”)) In both Agreements, waste disposal is limited to the types of materials designated in the DHEC regulations as “Class Two,” such as C&D, LCD, and yard trash. (R. pp. 364, 372).

Following execution of these agreements with the County, DHEC issued MRR a Class 2 C&D landfill permit, Permit No. LF2-00003 (“2008 Permit”), on November 3, 2008. (R. p. 164). The 2008 Permit contained the following special condition as to the nature of waste authorized for disposal: “This permit is limited solely to the disposal of items listed in Appendix I of R.61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill.” (Id.). Regulatory Appendix I, as referenced in the special condition, lists “acceptable waste for class two landfills” and contains materials typically associated with land clearing, yard work, and construction, such as: brush and limbs, logs, rock, masonry, paint cans, glass, pipes, and plaster. R. 61-107.19, Appendix I. Certainly no materials akin to coal ash are listed; indeed, less hazardous materials like tar are specifically excluded. See Id. at note 3. The Host Agreement, Development Agreement, and 2008 Permit are consistent in terms of the nature of waste authorized for disposal.

The 2008 Permit was also in accord with the Pickens County’s Solid Waste Management Plan (“SWMP”), which is a local planning document required by state law. See S.C. Code § 44-96-80. Consistency with the SWMP is a necessary prerequisite to obtaining a landfill permit. S.C. Reg. 61-107.19, Part I, D(2). Pickens County’s SWMP prohibits “Special Waste” from being deposited in Pickens County and excludes all Class Three landfills (designed to accept more dangerous and undesirable wastes) from being located in the County. (R. p. 359). The SWMP contrasts Class Two Landfills with Class Three Landfills, which are designed to receive wastes such as sludge and incinerator ash. (Id.).

For the years from 2008 to 2014, MRR delayed proceeding with development of the landfill for which it had received approval, informing DHEC each year that the economic downturn warranted postponement of development, and requesting and obtaining permit extensions. (R. p. 389, ¶ 11).

The Modification Process Between MRR & DHEC:

In 2014 and 2015, MRR and DHEC conducted a series of meetings and discussions regarding modifications to the landfill design in the 2008 Permit. (R. p. 166). At no time during these meetings and interactions was notification provided to Pickens County, Neighboring Property Owners, the public, or anyone outside of MRR, its consultant, and DHEC. (R. p. 163). Neither MRR nor DHEC sought to verify with Pickens County whether the design modifications under discussion would conform with the Pickens County SWMP, Host Agreement, or Development Agreement. (*Id.*). During this period, MRR's engineering consultant submitted several engineering drawings and reports to DHEC that reflect a plan to effectively convert the Class 2 landfill reflected in the 2008 Permit into a Class 3 landfill.¹ (R. p. 166). Those reports reflect the following observation from MRR's consultant: **"During recent meetings between MRR and DHEC, it was confirmed that a modification of the Class Two Landfill Permit to meet the requirements of Regulation R.61.107.19 Part V Class Three Landfills would require a minor permit modification."** (*Id.* (emphasis added)). In other words, DHEC communicated to MRR during these surreptitious meetings that MRR could modify the design of its landfill that had been presented

¹In layman's terms, Class Three landfills are the most hazardous and obtrusive of the classes provided in DHEC's landfill regulations. As a consequence, these landfills require more stringent design specifications, larger buffers between environmental resources and neighboring property, and larger buffers between each other. *See* R.61.107.19, Part V. Class Three landfills must have liners because the facilities can be used for disposal of municipal solid waste, industrial solid waste, sewage sludge, and incinerator ash. *Id.*

to Pickens County and the public, so as to accept significantly more hazardous materials, while satisfying only the substantially diminished public notice and review requirements for a “minor permit modification.”

The purpose of the course of action between MRR and DHEC, including DHEC’s “confirmation” that this would be a “minor modification,” was to bypass notifying Pickens County and the public of this landfill design change that was certain to be highly controversial. (R. p. 170). DHEC’s “minor” label on MRR’s modification substantially reduced the Respondents’ public notice obligations and prevented affected parties, such as Pickens County and Neighboring Property Owners, from participating in the agency process. DHEC’s regulations require “major” permit modifications to go through the same permitting process as new landfills, including the requirements for public notification and participation. See S.C. Reg. 61-107.19, Part IV, I.2; S.C. Reg. 61-107.19, Part I, D(2). The public notice requirements for new landfills / major modifications include five separate local newspaper publications and five separate instances of direct notice by mail to adjoining landowners and affected parties, occurring at all stages of the permitting process from pre-application to final decision. See S.C. Reg. 61-107.19, Part I, D(2)(a)-(g). The culmination of these required notifications would have been DHEC’s notice of department decision on the permit, published and mailed to affected persons along with “instructions on how to request a final review conference and the time frame for filing such a request.” Id. at D(2)(g); (R. pp. 490-92). None of these notice requirements were followed in relation to the Permit Modification. Instead, acting under the “minor modification” moniker, DHEC and MRR did not provide contemporaneous notice in any form

to any member of the public and did not provide any form of notice to Pickens County until months after the Permit Modification had been issued. (R. p. 163).²

In reality, the modifications from the 2008 Permit can only be reasonably interpreted as “major,” per DHEC’s regulatory definition, and DHEC’s agreement with MRR to characterize these modifications as “minor” was erroneous. “Modification,” under DHEC’s landfill regulations, includes any “changes to a solid waste landfill.” S.C. Reg. 61-107.19, Part I, B(48). The modification is then categorized as either “minor” or “major” by definition as follows:

- a. “Minor modification” means a change that keeps the permit current with **routine changes to the facility or its operations, or an administrative change**; and,
- b. “Major modification” means a change that **substantially alters the facility or its operations**, e.g., tonnage increase above 25%, any volumetric capacity increase, **alternate designs** that vary from the design prescribed in this regulation.

Id. (emphasis added). Under no conception of the words could the changes authorized by the Permit Modification be considered “routine” or “administrative.”

Rather, on August 10, 2015, when DHEC issued the Permit Modification to MRR, it authorized significant changes from the 2008 Permit, including: the addition of a landfill liner, which is a characteristic of Class Three landfills and is not present in any other Class Two landfill in the state, (R. pp. 164, 285-87); other design changes from Class Two to Class Three characteristics, including changes in the final landfill

²Even with the “minor” label on the modification, the regulations still require MRR to publish a public notice in the newspaper and provide DHEC with adjacent landowners’ contact information. S.C. Reg. 61-107.19, Part IV, H.2e. & H.3. No such publication or adjacent landowner information was provided in relation to the Permit Modification. Minor modifications also require DHEC and MRR to demonstrate or determine consistency with the Pickens County SWMP and other local ordinances. Id. at Part IV.H.1.b. No consistency demonstration or determination was undertaken by DHEC or MRR. If this had been done, it may have provided the County with some opportunity for notice and involvement during the application process.

cover, (R. p. 164-65); elimination of language prohibiting “all other wastes” and replacement of that language with an allowance for “any other waste approved by the Department,” (R. p. 468); and allowance for disposal of “special wastes”, which are defined as “nonresidential or commercial solid wastes, other than regulated hazardous wastes, that are either difficult or dangerous to handle and require unusual management at municipal solid waste landfills,” (S.C. Code § 44-96-390; R. p. 229).³

Both the 2008 Permit and the 2015 Permit Modification were issued and signed by Kent Coleman, then director of the Division of Mining and Solid Waste Management at DHEC. In a related case pending in Common Pleas Court, MRR Pickens, LLC v. Pickens County, et al., Mr. Coleman was deposed on March 8, 2016, with counsel for MRR and DHEC present. Mr. Coleman provided sworn testimony as to the “major” / “minor” distinction as follows:

- Coleman admitted that the definition of “major modification” in the relevant regulation includes “alternate designs.” (R. p. 242, line 11-p.243, line 6; p. 243, lines 20-21).
- Coleman admitted that the definition of “minor modification” does not include “alternate designs.” (R. p. 243, lines 7-10).
- Coleman admitted that he previously, in a letter signed by him on August 10, 2015, accompanying the Permit Modification, characterized the Permit Modification as an “alternate liner design” and as a “design change.” (R. p. 243, line 20-p. 245, line 2).

³MRR’s application for the Permit Modification asks for approval to accept “certain special wastes” into its landfill. (R. p. 276). Further, the August 2015 engineering report from MRR’s consultant included disposal of “special wastes” and was incorporated into the Permit Modification. (R. p. 468-69). Finally, the 2008 Permit contained a clause prohibiting all other wastes, and the Permit Modification contained no such clause, instead allowing any other wastes approved by DHEC. (R. p. 468).

- Coleman admitted that the Permit Modification was a “design change.” (R. p. 245, lines 3-16).
- Coleman admitted that when DHEC determines a proposed landfill change to be a “major modification,” that “we would have followed our normal process, which would include [notice to] adjacent owners, concerned parties, local governments.” (R. p. 246, lines 13-22).

Mr. Coleman also engaged in the following exchange, which Appellant takes as equivalent to a direct admission that the Permit Modification is “major”:

Q. In answers to Ms. King’s questions one time today, you said this was a “new design for the landfill.” Is that a fair statement?

A. Yeah, I mean it is.

Q. Okay.

A. It was a new design.

Q. And I wrote down also a quote earlier today when your answer to Ms. King’s questions that this was “essentially the same design as a Class Three.”

A. Yes, I recall saying that, yes.

Q. Alright. And that is basically the change from the ‘08 to the 2015 modification was essentially the same design as a Class Three. Is that right?

A. Yes, uh-huh.

Q. So in other words, what we’re doing is changing a Class Two by adding Class Three features. It became essentially the same design as a Class Three.

(objection)

A. The design became very similar to a Class Three, yes.

(R. p. 249, line 25-p. 251, line 7).

In addition to his testimony bearing on DHEC’s misclassification of the Permit Modification, Coleman offered testimony regarding the waste that would now be disposed in MRR’s landfill. Such

testimony illuminates the purpose behind DHEC and MRR's actions and explains why issuance of the Permit Modification without any notice to the public was an egregious breach:

- Coleman admitted that C&D landfills are not required to have liners. (R. p. 251).
- Coleman admitted that MRR's landfill would be the first commercial Class Two landfill in South Carolina to have a liner. (R. p. 286).
- Coleman admitted that he knew MRR was considering placing coal ash into this landfill when it applied for the Permit Modification. (R. p. 282).
- Coleman admitted that coal ash would not have been allowed or accepted under the 2008 Permit. (R. p. 288).
- Coleman admitted that MRR's Permit Modification application asks to accept "certain special wastes" into this landfill, even though such wastes, by statute, must be placed in Class Three landfills. (R. p. 276-78).
- Coleman admitted that MRR submitted stability calculations that would be appropriate for coal ash, in addition to stability calculations for C&D waste, so it was clear to DHEC that MRR was planning to put both types of waste in the modified landfill. (R. p. 282).

In short, the purpose of MRR seeking the Permit Modification was to redesign the landfill to accept coal ash, and such objective was accomplished in a manner intended to deny such information to Pickens County and the public.

Disposal of coal ash (a/k/a coal combustion residuals or CCR) has been extraordinarily controversial in recent years, especially in South Carolina. Coal ash requires special handling due to its propensity to create dust, its propensity to contain toxic substances, and its propensity to contaminate

groundwater and surface water. (R. p. 167). It is on this basis that coal ash qualifies as a “special waste” under South Carolina law, unsuitable for disposal in a Class Two landfill. (Id.). Coal ash contains toxic chemicals, such as mercury, lead, and arsenic. (R. p. 308). Coal ash is also a known carcinogen and is highly soluble in water, which causes leaching and water contamination issues for the environment when not properly protected. (R. p. 309-10). Leaching of toxic elements of coal ash would be especially problematic for a Class Two landfill because it contains domestic materials that induce low pH and low dissolved oxygen. (R. p. 310). This creates a mixture that “would inevitably generate leaching process of CCR and mobilization of toxic contaminants to landfill effluents that could be leaked to the environment.” (Id.) Even the addition of a liner would not be sufficient prevent the release of coal ash into the environment from a Class Two landfill. (Id.) In addition to surface water and groundwater contamination, disposal of coal ash can also lead to tiny coal ash particles blowing up into the atmosphere, which transports to nearby populations where it can be respired into human lungs. (R. p. 311).

In short, there are ample reasons for Pickens County and the public to have serious concern about the disposal of such waste in their community and ample reasons why the addition of such waste to a landfill originally designed to accept construction material should never have been authorized in a manner that is hidden from the public. Yet that is what DHEC accomplished in issuing the Permit Modification as “minor.” Despite the fact that the Neighboring Property Owners live adjacent to, or in immediate proximity of, the landfill, and despite the fact that Pickens County owns adjacent property and has many bases upon which to be deemed an “affected party,” DHEC only sent the Permit Modification to MRR and its consultants. (See R. pp. 162-63, 406-07).

Pickens County’s Involvement with the Landfill Modification:

During the time that MRR was designing its modification and communicating with DHEC, MRR made direct willful misrepresentations to Pickens County and the Pickens County Planning Commission regarding the nature of the landfill facility and its operation. (R. p. 168). Mr. Dan Moore of MRR appeared before the Pickens County Planning Commission in 2015, for the purpose of securing a land use approval, and indicated that there were “no changes” from the Class Two landfill design approved in 2008. (R. p. 298). He made no mention of MRR’s ongoing meetings with DHEC, the engineering reports for the Permit Modification that had already been submitted to DHEC, nor coal ash. (R. p. 298-99). Mr. Moore stated, when directly questioned about a liner, that there would be no liner required. (R. p. 299). Thus, in addition to receiving no contemporaneous notice of DHEC’s permitting process, the County was prevented from learning of the Permit Modification through active misrepresentation.

Months after the Permit Modification had been issued, Pickens County finally heard that MRR might be changing the landfill design to accept coal ash. (R. p. 304, ¶6). Pickens County officials then submitted a Freedom of Information Act request and sought a meeting with DHEC in an attempt to learn what was going on with the landfill. (R. p. 304-05). On December 15, 2015, DHEC met with County officials, including Gerald Wilson, the Director of Public Works, and orally informed them that the permit had been modified four months ago. (*Id.*). It was after this meeting that Pickens County was provided a copy of the Permit Modification for the first time, by email. (R. p. 394, ¶21). However, Pickens County was informed directly by DHEC personnel that, because the Permit Modification was months old, there was nothing they could do and no right to appeal, because the modification decision process was already a done deal. (R. p. 121, line 16-p. 122, line 2, p. 152, lines 6-22). Further, the copy of the Permit Modification conveyed to Pickens County was incomplete in relation to the public notice requirements

dictated by DHEC's regulations, as it did not include any right to appeal language. See S.C. Reg. 61-107.19 Part I.D.2.g ("The Department's notice will include instructions on how to request a final review conference and the time frame for filing such a request.").

As Pickens County representatives were reading through the boxes of materials DHEC eventually produced through FOIA, MRR filed a lawsuit in the Court of Common Pleas against Pickens County and members of the Pickens County Planning Commission on February 1, 2016.⁴ This Circuit Court case provided Pickens County with the opportunity to learn, through the deposition of Kent Coleman on March 8, 2016, that the Permit Modification was issued in violation of the law. This deposition was an important revelation for the County because DHEC admitted that the modification was actually a major modification pursuant to the laws, although it was classified as a minor modification, and that multiple levels of notice and opportunities for participation in the process would have been afforded to Pickens County if the modification were properly classified. (See R. p. 300, ¶ 10). Pickens County then sought the due process that it had been denied through the secretive and illegal process that led to the issuance of the Permit Modification, by filing a request for final review with the DHEC Board on March 23, 2016. The ALC's conclusion on the timeliness of that request is what spawned this appeal.

STANDARD OF REVIEW

Under the APA, conclusions of law are reviewed *de novo* and "the Court may reverse the decision of the ALC where it is in violation of a statutory provision or it is affected by an error of law." Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env'tl. Control, 411 S.C. 16, 28, 766 S.E.2d 707, 715 (2014). In

⁴ In order to defend against this lawsuit, the County hired Counsel, Gary Poliakoff, who also represented the County subsequently in the ALC.

this case, the ALC order was issued without any findings of fact because it was decided as a matter of law before discovery was conducted. Thus, this Court should review the ALC's findings *de novo*.

When considering a motion to dismiss, the burden is on the party seeking dismissal. The court must view the facts, and make all reasonable inferences, in the light most favorable to the nonmoving party. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006).

A. The ALC Erred in Dismissing the County's Challenge Prior to Addressing Adequacy of Notice Provided to the County.

The ALC's dismissal of this case is based on Pickens County's purported non-compliance with the filing limitations set forth in § 44-1-60. That section covers the process and procedure through which DHEC staff decisions can be appealed through the DHEC Board and to the ALC in the form of a contested case. The ALC concluded: that Pickens County did not appeal DHEC Staff's decision on the minor permit modification to the DHEC Board within fifteen days, as required by § 44-1-60; that Pickens County's appeal to the DHEC Board was therefore invalid; and that Pickens County had therefore failed to exhaust its administrative remedies, necessitating dismissal. (R. p. 3). This rationale has numerous problems, the first of which is that the ALC failed to undertake the prerequisite analysis of whether such time limitations are applicable in this case.

The time limitations set forth in § 44-1-60 are contingent on DHEC's compliance with the preceding procedural and notice requirements in that section. In other words, DHEC must satisfy its obligations in issuing and noticing a decision under § 44-1-60, before the time limitations for challenging that decision are implicated. Our Supreme Court held exactly that, unequivocally, in S.C. Coastal Conservation League v. S.C. Dep't of Health & Env'tl. Control, 390 S.C. 418, 702 S.E.2d 246 (2010),

where the Coastal Conservation League filed for DHEC Board review under § 44-1-60 more than fifteen days after the DHEC staff decision. The Supreme Court determined that DHEC had failed to notify the Coastal Conservation League in the manner required under § 44-1-60 and that the time limitations in that section did not start to run until DHEC corrected its error.⁵ Id. at 430, 702 S.E.2d at 253. The plain language of § 44-1-60 also supports such conclusion, starting with the very first provision: “**All department decisions** involving the issuance, denial, renewal, suspension, or revocation of permits ... **shall be made using the procedures set forth in this section.**” (emphasis added). The procedures in § 44-1-60 particularly emphasize public notification, as reflected by the section’s second provision: “The department staff **shall comply with all requirements for public notice**, receipt of public comments and public hearings **before making a department decision.**” (emphasis added). S.C. Code § 44-1-60(B). Only after DHEC issues a staff decision in compliance with procedural and public notice requirements does subsection (E) dictate that the appeal of such decision to the DHEC Board must be filed within fifteen days. See § 44-1-60(E)(2).

It follows as a matter of precedent and statutory interpretation, and indeed as a matter of practical and logical necessity, that a DHEC decision issued without the appropriate public notice or procedure cannot be shielded from public challenge by the time limitation in § 44-1-60(E). To conclude otherwise

⁵ Particularly, the Supreme Court stated as follows:

Section 44-1-60(E) requires DHEC to simultaneously send notice of its decision to the applicant, permittee, licensee, and affected persons requesting to be notified by certified mail, and the decision becomes final fifteen days after the decision has been mailed. In this case, we find that because the League was an affected person who asked to be notified, the decision did not become final until fifteen days after DHEC mailed the decision to the League.

would set up the type of perverse incentives that are implicated in this case: that is, controversial agency decisions could be protected from legal challenge through the conscious decision to provide deficient or contorted public notice. This Court has previously rejected such possibility, holding that DHEC's failure to provide proper public notice of an action supersedes and excuses a related procedural failure in challenging such action. See Leventis v. S.C. Dep't of Health & Env'tl. Control, 340 S.C. 118, 143, 530 S.E.2d 643, 657 (Ct. App. 2000) ("DHEC's failure to provide adequate notice that the financial assurance regulations were still being considered excused Sierra Club from requesting a hearing [on those regulations]."):

If the allegations central to Appellant's case are taken as true, then the time limitations in § 44-1-60, upon which this case was dismissed, do not apply and should not have been applied by the ALC. As explained in detail above, the public notice requirements for major landfill permit modifications differ substantially from the requirements for minor modifications. If the DHEC decision at issue in this case had been treated as a major modification, Appellant would have been entitled to multiple instances of direct written notice. Even the regulations for minor modifications, though, require some form of public notice to be published. Pickens County has alleged and submitted evidence (to the extent it could while being denied discovery) of the following: that this permit modification was actually "major"; that DHEC's decision not to treat the permit modification as "major" was clearly erroneous and was the result of questionable private meetings with MRR; that Pickens county did not receive the notifications due for a major modification; that even the notifications required for a minor modification were not followed by DHEC; and that Pickens County did not receive any notice until long after the time limitations provided in § 44-1-60 had passed. (See Statement of Facts section above). If the ALC

had applied the proper standard of review to these allegations, it would have necessarily concluded that the adequacy of public notice provided under § 44-1-60 was in dispute, so application of the time limitations in § 44-1-60 could not be resolved. In short, the ALC could not, especially at this stage, resolve timeliness under § 44-1-60 without resolving adequacy of public notice under § 44-1-60. Such conclusion is dictated by the precedent of S.C. Coastal Conservation League v. S.C. Dep't of Health & Env'tl. Control.

The ALC attempts to avoid this conclusion by relying on the fact that the County received some form of notice (the details of which are disputed) of the permit modification months after it was issued, but did not take action on that notice within the fifteen-day period prescribed by § 44-1-60. (R. p. 3). However, nothing in § 44-1-60 suggests that the fifteen-day period for appealing a DHEC staff decision begins to run upon just any form of actual notice of the decision. On the contrary, such period begins to run only after DHEC issues a staff decision in compliance with the procedural and public notice requirements of that section. See S.C. Coastal Conservation League, 390 S.C. at 430, 702 S.E.2d at 253 (starting time limitation in § 44-1-60 upon DHEC's compliance with public notice requirements).⁶ If DHEC failed in its public notice obligations in relation to the permit modification, as the County has alleged and argued, it is no answer to say that the County should have known to appeal within fifteen days of getting some level of actual notice months after the improperly issued decision. The ALC explicitly concludes that regardless of whether Pickens County was "never given the notice required by regulation" and regardless of whether "DHEC improperly classified the matter as a minor

⁶Effectively, the fifteen-day window under § 44-1-60 is statutorily tolled, to begin running upon DHEC's correction of its failures in relation to public notice.

permit modification,” this case is rendered untimely based on the fact that the County eventually received actual notice of the permit decision and did not take action within fifteen days. See (R. pp. 3-4). Such rationale represents a fundamental error of law.

B. The ALC Erred in Requiring Administrative Exhaustion, when Exceptions to that Doctrine Clearly Applied.

The ALC dismissed this case under the doctrine of exhaustion of administrative remedies, based on the purported untimeliness of Pickens County’s request for review before the DHEC Board. As discussed thus far, the ALC made several errors in concluding that Pickens County’s challenge was untimely. However, even if the ALC had rightfully determined that Pickens County’s case was flawed on the basis of the exhaustion requirement, the ALC erred in failing to apply established exceptions to that requirement that are readily implicated under the circumstances at hand.

The doctrine of exhaustion of administrative remedies generally requires a person seeking relief from the action of an administrative agency to pursue all available administrative review options before seeking relief from the courts. Hyde v. S.C. Dep’t of Mental Health, 314 S.C. 207, 208, 442 S.E.2d 582, 583 (1994); Video Gaming Consultants, Inc. v. S.C. Dep’t of Revenue, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000) (noting that “[e]xhaustion is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review.”).

However, “South Carolina, like most jurisdictions, recognizes exceptions to the exhaustion of administrative remedies requirement.” Brown v. James, 389 S.C. 41, 54, 697 S.E.2d 604, 611 (Ct.

App. 2010). In other words, “[t]he general rule is that administrative remedies must be exhausted absent circumstances supporting an exception to application of the general rule.” Id. One of those exceptions is when an agency is acting outside the scope of its legally defined authority. Id. (“[An] exception to the exhaustion requirement is recognized when an agency has acted outside of its authority.”). Another exception is when a case presents issues of important public interest and resolution of those issues, despite failure to exhaust administrative remedies, would promote judicial economy. Storm M.H. ex rel. McSwain v. Charleston Cty. Bd. of Trustees, 400 S.C. 478, 487, 735 S.E.2d 492, 497 (2012). Both of these exceptions should have been applied under the circumstances.

i. Exhaustion is not Required Because DHEC Acted Outside the Scope of its Authority.

As creatures of statute, administrative bodies like DHEC have only the authority granted them by the legislature. See, e.g., Med. Soc'y of S.C. v. Med. Univ. of S.C., 334 S.C. 270, 275, 513 S.E.2d 352, 355 (1999); City of Columbia v. Bd. of Health & Env'tl. Control, 292 S.C. 199, 202, 355 S.E.2d 536, 538 (1987). Therefore, “[a]ny action taken by DHEC outside the bounds of its statutory and regulatory authority is null and void.” Triska v. Dep't of Health & Env'tl. Control, 292 S.C. 190, 194, 355 S.E.2d 531, 533 (1987). Applying that rule to the context here, when DHEC takes action outside the scope of its legal authority, the action is invalid, and exhaustion of administrative remedies doctrine cannot serve as an obstacle to challenging such action. See Brown, 389 S.C. at 56, 697 S.E.2d at 611-12.

The provision of due process is central to a valid exercise of DHEC's legal authority. Indeed, the South Carolina Constitution mandates that administrative agencies must provide due process of law

in their permitting decisions. S.C. Constit. Art. I, Sec. 22 (“No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard ... and he shall have in all such instances the right to judicial review.”). The core requirements of due process in this context are “**notice and an opportunity to be heard in a meaningful way**, and judicial review.” Ogburn-Matthews v. Loblolly Partners, 332 S.C. 551, 562 (1998). See also Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)(recognizing that the due process clause requires “notice reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”). Our Supreme Court has previously held in relation to environmental groups seeking to challenge a DHEC permitting decision that: “constitutional due process provisions, apart from the APA, are sufficient to confer the rights to notice and for an opportunity to be heard.” Stono River Env'tl. Prot. Ass'n v. S.C. Dep't of Health & Env'tl. Control, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991). In the SREPA case, the Supreme Court reversed a DHEC decision on the basis that it was issued through a process from which the environmental groups were entirely excluded, despite the groups having demonstrated a keen interest in the outcome. Id.⁷

In this case, DHEC acted outside the scope of its legal authority in denying fundamental due process to the public (particularly members of the public residing in close proximity to the landfill), the

⁷As it relates specifically to landfill permitting, the legislature has created and approved a body of laws governing DHEC that includes explicit due process and notice requirements. See South Carolina Solid Waste Policy and Management Act, S.C. Code § 44-96-10 et seq.; § 44-96-300(E) (“In making a determination under this section, the department shall comply with the notice and public hearing requirements for administrative proceedings pursuant to the South Carolina Administrative Procedures Act and with public notice requirements for permit decisions required pursuant to this chapter.”).

Neighboring Property Owners, and Pickens County, none of whom received notice, newspaper publication, mailings, or any opportunity to comment or participate in DHEC's permitting process. It is undisputed that neither Pickens County nor the Neighboring Property Owners received any form of notice contemporaneous with DHEC's permitting process and that no forms of notice were provided by DHEC during that period. Under the circumstances, such absolute denial of notice and participation to parties with a history of involvement in this landfill's permitting and with a direct health and safety interest in the subject of the permit modification necessarily constitutes a denial of due process. See SREPA, 305 S.C. at 94, 406 S.E.2d at 342.

Further, DHEC's failures in complying with its own standards for notice and opportunity to be heard both accentuate the absence of due process and constitute direct instances of the agency exceeding its legal authority. The chief example in this regard is of course DHEC's classifying of the permit modification as "minor," when it is "major" by regulatory definition, and then using that classification as a basis not to follow the public notification and participation procedures in S.C. Reg. 61-107.19, Part I, D.2. It is undisputed that DHEC and MRR did not follow these procedures in considering and issuing the Permit Modification. (R. p. 113, line 12-p. 114, line 24). DHEC would have been required to follow those procedures if the Permit Modification was classified as "major." See S.C. Reg. 61-107.19, Part I, D.2.c. ("Notice of all applications submitted to the Department for the initial construction **and major modifications** of Class Two and Class Three landfills shall be published... ." (emphasis added)). DHEC has admitted that the Permit Modification meets the regulatory definition of major. (See citations to testimony of Ken Coleman, *supra*). Thus, DHEC's labeling of the Permit Modification as minor denied contemporaneous notice and participation

opportunities that were due to Pickens County and the Neighboring Property Owners by due process and by regulation, and such action was taken outside the scope of DHEC's legal authority.

Additionally, all permit modifications, whether major or minor, must meet the application requirements of S.C. Reg. 61-107.19, Part IV, H. The requirements in this section were not enforced by DHEC, including the requirement of publishing notice of the permit application. See S.C. Reg. 61-107.19, Part IV, H.3; (R. p. 408, ¶¶ 9-11). The requirements in that section for a determination of need and a consistency determination were also abandoned entirely. See S.C. Reg. 61-107.19, Part IV, H.1; (R. p. 294-95). Thus, even if the Permit Modification was properly considered a minor modification, DHEC acted outside the scope of its authority when it issued that modification without due process and without complying with its own regulatory requirements.

As lies at the root of most of the arguments in this brief, the main point here is again that DHEC cannot attempt to shield a decision that it knew would be extremely controversial by selectively applying its regulations, including those regulations on notice and opportunity to be heard. Such actions fall outside the scope of DHEC's legal authority, constitute a violation of due process, and are excepted from the requirement of administrative exhaustion.

ii. Exhaustion is not Required Because DHEC's Actions Implicate Important Public Interests of Consequence to Future Conduct.

Courts have declined to apply administrative exhaustion when the rationale for such doctrine is outweighed by the important public interests at stake in the case. In other words, when a "case presents issues of important public interest and a resolution would promote judicial economy," it is appropriate for a court to consider the case, regardless of whether all foregoing administrative remedies

have been pursued. Storm M.H. ex rel. McSwain, 400 S.C. at 487, 735 S.E.2d at 497. See also, Cabiness v. Town of James Island, 393 S.C. 176, 712 S.E.2d 416 (2011) (addressing issues in the interest of judicial economy to supply a sufficient analytical framework for future cases); Curtis v. State, 345 S.C. 557, 549 S.E.2d 591 (2001) (recognizing that an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest).

This case presents a classic example of the circumstances under which important public interests should not be lost to a flexible rule of policy. See Ward v. State, 343 S.C. 14, 17 n. 5, 538 S.E.2d 245, 246 n. 5 (2000) (“The doctrine of exhaustion of administrative remedies is generally considered a rule of policy, convenience and discretion, rather than one of law, and is not jurisdictional.”). The important public interests at stake in this case are based first on the nature of waste that can now be disposed of in MRR’s landfill. The 2008 landfill permit was strictly limited to construction and demolition and land-clearing debris wastes. The changes authorized by the permit modification allow “special wastes,” defined by S.C. Code § 44-96-390, which are disallowed under the Pickens County Solid Waste Management Plan. “Special waste” includes coal ash (coal combustion residuals), which is significantly more dangerous and problematic for adjoining landowners, the public, and the County than the waste previously authorized for this landfill. See (R. p. 307, Report of Avner Vengosh, Ph.D.; R. p. 350, Affidavit of Shelley H. Robbins). The newly authorized waste has the potential to create serious and toxic effects from dust and ash, which can be carried by wind from transport trucks and from the landfill area to neighboring properties, and contaminate soil, surface water and groundwater, and create other problems, including property devaluation. (Id.). Under the

circumstances, the County's interests in protecting the health, safety, and overall well-being of its citizens, as well as its interests in preserving its own public authority over waste planning and land use in the county, are superior to the interests promoted by the doctrine of administrative exhaustion.

Such conclusion is apparent by comparison to the Storm M.H. ex rel. McSwain case, where the Supreme Court also applied the "public interest" exception to administrative exhaustion. That case involved a student's efforts to gain admission to a public magnet school, which served students only within Charleston County. 400 S.C. at 483, 735 S.E.2d at 494. Though the student had filed directly in circuit court, rather than pursuing the administrative steps that were available, the Supreme Court took up the case on the strength of the public interest involved. Id. at 486, 735 S.E.2d at 497. The public health and safety interests at stake in this case are akin to the public education interests implicated in Storm M.H. ex rel. McSwain. Certainly the fact that both cases involve attempted exercises of control by county entities (Pickens County and the county school board) is significant, as is the fact that the subject matter of the cases implicates areas of traditional county authority (education and land planning / waste management). In short, if the rule from Storm M.H. ex rel. McSwain is to be applied to any other set of facts, it would be difficult to find a scenario more fitting than in the case at hand.

A strong public interest is also implicated by the manner in which DHEC has carried out its decision making, so as to shield from public view and review a decision with significant public implications and interest. In this way, it is of critical importance that the lower court render a decision in this case on whether DHEC acted properly in characterizing this permit modification as "minor," so as to censure or endorse similar conduct going forward. In other words, unless it is determined as part of

this case that DHEC erred in failing to notify the public that a landfill approved for relatively innocuous waste was being modified to accept toxic coal ash, DHEC and landfill companies will remain free going forward to authorize such modifications without public knowledge and opportunity for challenge. Because other instances of such permit modifications would likely evade review, the public interest in considering the merits of this case is strong.

Pickens County and the Neighboring Property Owners did not fail to exhaust administrative remedies, because no such remedies were available at the point in time when they finally received notice of the permit modification. However, even applying administrative exhaustion as the ALC did, exceptions to such doctrine clearly apply.

C. The ALC Erred in its Application of the Appropriate Standard of Review.

Where the ALC based its dismissal on evidence outside of the pleadings; effectively converted the proceedings to summary judgment, without fair appraisal; denied Pickens County the discovery it needed to defend against evidence outside of the pleadings; and resolved contested evidence outside of the pleadings in favor of Respondents: the ALC's order cannot stand.

Based on the nature of the ALC's analysis, its ruling cannot rightfully be considered as one under Rule 12.⁸ In considering a motion to dismiss under Rule 12(b)(6), "the trial court must base its

⁸While the Respondents classified their motions to dismiss as based on lack of subject matter jurisdiction under Rule 12(b)(1), Appellant has previously explained (and the ALC confirmed) that such classification was inaccurate. See Ward, 343 S.C. at 17 n. 5, 538 S.E.2d at 246 n. 5 ("The doctrine of exhaustion of administrative remedies is generally considered a rule of policy, convenience and discretion, rather than one of law, and is not jurisdictional." (citations omitted)); Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 100, 674 S.E.2d 524, 529 (Ct. App. 2009) ("a failure to exhaust administrative remedies goes to the prematurity of a case, not subject matter jurisdiction."). The motions to dismiss are properly considered as having been brought under Rule 12(b)(6). See Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 101, 674 S.E.2d 524, 529 (Ct. App. 2009) ("The South

ruling solely on allegations set forth in the complaint.” Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. Id. The ALC plainly did not apply a Rule 12(b)(6) standard of review. If it had, it would have necessarily accepted Pickens County’s allegations that the permit modification is “major,” that the County did not receive notice due for a “major” modification, and that the purpose of mischaracterizing the modification was to avoid such public notice. See (R. pp. 162-73, Pickens County’s Request for Final Review). Pickens County’s pleadings say nothing of the subsequent “actual notice,” received months after the Permit Modification, upon which the ALC relied in finding failure to exhaust administrative remedies. All such information came from extra-pleading evidence submitted by the Respondents, and the ALC weighed that evidence against the aforementioned allegations submitted by Pickens County. In doing so, the ALC converted the Respondents’ motions to dismiss into summary judgment proceedings. See, e.g., Brown, 389 S.C. at 47, 697 S.E.2d at 607 (The court “effectively treated James’ Rule 12(b)(6) motion to dismiss as a Rule 56 motion for summary judgment as it based its ruling on allegations and information set forth outside the complaint.”); Baird v. Charleston Cty., 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999) (“the trial court ruled that it must convert them to motions for summary judgment since matters outside the pleadings were submitted by both parties and not excluded by it at the hearing.”).

Carolina Supreme Court has indicated that dismissal may be proper under Rule 12(b)(6), SCRP, for failure to state a claim where the opposing party is required to exhaust its administrative remedies as a matter of law, but failed to do so.”).

The ALC's consideration of evidence beyond the pleadings and conversion of the proceedings to summary judgment were improper under the circumstances, especially given that Pickens County was simultaneously denied the right to undertake discovery. After Pickens County served discovery requests and deposition notices, MRR moved to stay all discovery during the pendency of the motions to dismiss. Pickens County opposed such motion on the basis that the County "does require some discovery related to issues in the pending Motions to Dismiss." (R. p. 835). The County pointed to specific issues upon which discovery was necessary for the ALC to properly resolve the question of administrative exhaustion, including: whether the permit modification was minor or major, the nature of notice required for such modification, and the nature of notice provided for such modification. (R. p. 836). Basically, the County previewed all the same arguments made herein as to why timeliness and exhaustion could not be decided without resolution of those preceding issues. However, the ALC agreed to stay discovery, and Pickens County had to defend the Respondents' motions without any discovery. (R. p. 615-16).

The ALC erred in undertaking summary judgment proceedings before allowing Pickens County to conduct discovery. "[S]ummary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." Doe ex rel. Doe v. Batson, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001). See also Schmidt v. Courtney, 357 S.C. 310, 319, 592 S.E.2d 326, 331 (Ct. App. 2003) ("Because summary judgment is a drastic remedy, it must not be granted until the opposing party has had a 'full and fair opportunity to complete discovery.'"). The ALC's actions fly in the face of this unequivocal, well-established precedent, in that the court ignored Pickens County's explicit pleas that if evidence beyond the pleadings were to be considered, discovery was

necessary. The ALC also failed in alerting the parties that it would consider affidavits and extra-pleading evidence, hearing the 12(b)(6) motions as motions for summary judgment. Our appellate courts have held repeatedly that a trial court's failure to "fairly apprise" a plaintiff that the court would consider material outside the pleadings in resolving a motion to dismiss is grounds for reversal. See, e.g., Baird, 333 S.C. at 528, 511 S.E.2d at 74 ("The first indication that County's 12(b)(6) motions would be converted to summary judgment motions was the trial court's order of dismissal. Under these facts, the trial court erred in converting County's 12(b)(6) motions into motions for summary judgment."); Higgins v. MUSC, 326 S.C. 592, 486 S.E.2d 269 (Ct.App.1997) (holding that the plaintiffs had not been "fairly apprised" that the trial court would consider material outside the pleadings in support of the defendant's 12(b)(6) motion).⁹

Pickens County has been significantly prejudiced by the manner in which the ALC considered evidence in relation to the motions to dismiss, including in that: the ALC considered evidence outside of the pleadings, as submitted by Respondents; the ALC simultaneously denied the County the discovery they needed to counter Respondents' evidence; and the ALC found in favor of Respondents' evidence over the County's contradictory allegations.

D. DHEC and MRR are Estopped from Reliance Upon the Administrative Exhaustion Requirement.

⁹Proper application of the standard of review in these circumstances is reflected in this Court's opinion in Brown v. James, 389 S.C. 41, 697 S.E.2d 604 (Ct. App. 2010). In that case, the defendant filed "a motion to dismiss **under Rule 12(b)(6)**, SCRCp, or in the alternative, a motion for summary judgment under Rule 56, SCRCp," on the basis that the plaintiff had not exhausted her administrative remedies. 389 S.C. 41, 46, 697 S.E.2d 604, 607 (emphasis added). After that motion was filed, "[Plaintiff] filed a request for production of documents and requests to admit ... [and Defendant] answered the requests." Id. This Court then applied the standard of review for summary judgment. Id. at 47, 697 S.E.2d at 608.

Where Pickens County's purported failure to exhaust administrative remedies is based upon misrepresentations and misinformation provided by DHEC and MRR, those parties are estopped from invoking exhaustion as a basis for dismissal.

Equitable estoppel acts a bar to a party asserting a legal claim or defense that is contrary or inconsistent with his or her prior conduct. The essential elements of equitable estoppel are as follows:

(1) conduct which amounts to a false representation, or conduct which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts.

Strickland v. Strickland, 375 S.C. 76, 84–85, 650 S.E.2d 465, 470 (2007). The party asserting estoppel must also show a prejudicial change of position in reliance on the conduct of the party being estopped. Id. If equitable estoppel is established, a party is estopped from asserting any claim or defense inconsistent with the false representation.

Here, DHEC made false representations to Pickens County as to the availability of administrative review and is estopped from defending this case on the basis that the County relied upon such representations. When Pickens County finally heard, months after issuance of the permit modification, that MRR might be changing its landfill design to accept coal ash, the County sought a meeting with DHEC. (R. p. 304-05). During this meeting, DHEC staff told County officials that the Permit Modification had already been issued months ago and that the administrative review process was therefore a done deal, and there was nothing the County could do about it. (R. p. 121, line 16-p. 122, line 2, p. 152, lines 6-22). Pickens County relied on that false representation and did not file an

administrative appeal upon actual notice of the permit modification. Instead, it hired counsel to defend itself against a lawsuit initiated by MRR in circuit court, and it was during discovery in that lawsuit that DHEC's misrepresentation was reevaluated. As has been covered above, DHEC has a legal obligation to accurately notify the public of its administrative processes. Here, DHEC fell well short of that obligation, actually misrepresenting the availability of administrative review, and the agency must be estopped from benefitting by such misrepresentation.

DHEC's conduct in this regard is comparable to that of the administrative agency in the Ainsworth case, in which the court rejected application of administrative exhaustion, based on the agency's misrepresentation of the availability of administrative review:

With respect to defendant's argument that plaintiff failed to exhaust his administrative remedies before the Civil Service Commission, we think the circumstances of this case justify plaintiff's failure so that he will not be barred here. The Agency clearly defaulted in its obligation to plaintiff. **It not only failed to inform him of his appeal rights, it affirmatively misled him into believing that he had no rights by so stating in the separation notice.**

Ainsworth v. United States, 180 Ct. Cl. 166, 172 (1967) (emphasis added) (citing Cuiffo v. United States, 131 Ct. Cl. 60, 64, 137 F. Supp. 944, 946 (1955); Morelli v. United States, 161 Ct. Cl. 44 (1963)). The circumstances here are effectively identical, as should be the outcome.

For Pickens County, the false representations of DHEC were compounded by MRR, who misrepresented the fact that it was seeking to modify the landfill permit, even while it was meeting privately with DHEC for that very purpose, and despite its obligation to inform the County of such activities. As described above, during the time that MRR was designing its modification and communicating with DHEC to get approval, MRR made direct misrepresentations concerning the

landfill to Pickens County officials, for the purpose of obtaining a land use permit. MRR's representative told Pickens County Planning Commission in 2015 that there were "no changes" from the previous landfill design, that the landfill required no liner, and that any such changes would require immediate notice to the County. These representations prevented Pickens County from learning of the permit modification at issue in this case, and reliance on such representations thereby prevented the County from timely pursuing its administrative remedies. MRR is likewise estopped from benefitting by its misrepresentations. Thus, the actions of Respondents in this case are more than sufficient to trigger equitable estoppel in relation to the administrative exhaustion requirement.

F. The Fifteen-day Limitation Period for Appealing the Permit Modification is Equitably Tolled.

Equitable principles also dictate that the fifteen-day time limitation for challenging the permit modification to the DHEC Board under § 44-1-60 has been tolled since issuance of such decision. Tolling of a statute of limitations or similar deadline "is analogous to a clock stopping, then restarting. [It] may either temporarily suspend the running of the limitations period or delay the start of the limitations period." Hooper v. Ebenezer Senior Services & Rehab. Ctr., 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009). The doctrine of equitable tolling provides an independent basis upon which the ALC should have concluded that Pickens County's appeal to the DHEC Board was timely and that the County had therefore fully exhausted its administrative remedies.

"Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it." Id. "Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period **to ensure**

fundamental practicality and fairness.” Id. (internal quotation marks omitted) (emphasis added). In other words, equitable tolling is applied “in order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits.” Id. (internal citations and quotation marks omitted). This equitable power of the courts is well-recognized in South Carolina to “provide relief when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of another.” Id. at 117, 687 S.E.2d at 33.

There exists no exclusive list of the circumstances under which equitable tolling is appropriate. Id. at 116, 687 S.E.2d at 33. However, two of the circumstances often listed as a basis for such tolling are strongly implicated here: (1) “where the plaintiff, by exercising reasonable diligence, could not have discovered essential information bearing on his or her claim” and (2) “where extraordinary circumstances outside the plaintiff’s control make it impossible for the plaintiff to timely assert his or her claim.” Id. (internal quotation marks omitted).

At this point, the circumstances that justify equitable tolling have been stated repeatedly, and Appellant will not restate them again here in full. Suffice it to say that without tolling, or the application of an exception to exhaustion of remedies as discussed above, Pickens County will not get a hearing of this case on the merits challenging the issuance of the permit modification. That would be an unjust result because Appellant was purposely and improperly kept out of the process and then misled about the nature of such process. Appellant relied on DHEC’s rules and regulations to protect its rights, expecting to be notified of any significant changes to the landfill, in the same way it had been notified for the issuance of the 2008 Permit. Appellant also relied on the statements of DHEC and MRR, which caused delay in learning of the permit modification and in filing the request for DHEC Board review.

Appellant is merely seeking due process on a permit decision that has the potential to impact its property, health, environment, and community significantly. Therefore, to the extent the deadline in § 44-1-60 applies in light of all of the preceding arguments, it should be equitably tolled in the interest of justice, only to begin running upon DHEC's provision of proper notification of the permit modification and the administrative appeal process.¹⁰

G. The ALC Erred in Dismissing the County's Challenge Prior to Addressing Intervention.

Without addressing the Neighboring Property Owners' motion to intervene, the ALC dismissed this case under a rationale that would not have applied to those individuals. Just like Pickens County, the Neighboring Property Owners were provided no notice as a part of DHEC's permitting process.¹¹ Additionally, the only evidence before the ALC suggested that the Neighboring Property Owners acted promptly upon receiving first actual notice, moving to intervene in Pickens County's case that was then pending at the ALC. Nevertheless, the Neighboring Property Owners now too have effectively been

¹⁰Our Supreme Court effectively applied equitable tolling, though it did not use that terminology, in S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control, under circumstances comparable to those at hand. The Supreme Court determined that DHEC had failed to notify the Coastal Conservation League in the manner required under § 44-1-60 and that the time limitations in that section did not start to run until DHEC corrected its error. 390 S.C. 418, 702 S.E.2d 246 (2010).

¹¹All of the Neighboring Property Owners are adjoining landowners owning real property in extremely close proximity to the landfill in question. (R. pp. 397-417, Affidavits of Neighboring Property Owners). Just like Pickens County, the Neighboring Property Owners, by virtue of their proximity, would have been entitled to multiple direct notifications, had DHEC treated this permit modification as "major." However, the Neighboring Property Owners were never provided notice related to the Permit Modification from DHEC or MRR. See, e.g., (R. pp. 415-16, Affidavit of Randall King, ¶¶ 7-11)

dismissed on the basis of timeliness. The ALC erred in failing to take up intervention of these individuals who were independently entitled to review of DHEC's permitting decision.

As an initial matter, the ALC had no legal basis to simply decline action on the Neighboring Property Owners' motion to intervene. "While a court has some discretion in the manner in which it rules on motions, the court commits a clear abuse of discretion when it refuses to rule on pending motions." State ex rel. Rodriguez, 196 S.W.3d 454, 459 (Tex. App. 2006). On top of this general principle, the plain language of the Administrative Law Court Rules also strongly suggests that a court must take up and must grant intervention whenever a qualified intervenor so moves. Indeed, ALC Rule 2(H) provides that a person "properly seeking and entitled to be admitted as a party" is already a "party" to the contested case. The ALC rule on intervention provides that "[a]ny **person may intervene** in any pending contested case hearing **upon a showing**" of certain qualification. SCALCR Rule 20(B) (emphasis added). Nothing about these rules suggests that a group of people with a significant personal stake in litigation, and properly moving to intervene in that litigation, can be deferred or ignored as persona non grata. Indeed, South Carolina courts have found that movants are entitled to have intervention considered (and granted) even after completion of trial. See, e.g., Davis v. Jennings, 304 S.C. 502, 405 S.E.2d 601 (1991). The ALC's failure to issue any decision on intervention is a serious legal error.

Such error is prejudicial in this context because the Neighboring Property Owners have a different basis for asserting timeliness than does Pickens County. In other words, even if the ALC was correct in its rationale for dismissing Pickens County on timeliness (it was not), the Neighboring Property Owners' claims could not have been dismissed under that rationale. In dismissing Pickens

County, the ALC essentially holds that any failure on the part of DHEC to provide the required notice of its Permit Modification is irrelevant because “Pickens County received actual notice on multiple occasions and still failed to take prompt action.” (R. p. 4). The “actual notice” referred to by the ALC occurred in a meeting between Pickens County officials and DHEC, four months after the permit modification was issued, wherein DHEC gave oral information about the modification, and then in a subsequent email from DHEC to one of those officials, which contained the permit modification. Of course, the Neighboring Property Owners did not receive either of these forms of notice, nor any other “actual notice” that the ALC might have (improperly) found to trigger the time limitations in § 44-1-60. See, e.g., (R. p. 402, Affidavit of Matthew Stone, ¶ 14 (“[T]o this day, [I have] never been furnished with any Notice by mail, nor any newspaper Notice, nor any information by DHEC or MRR apprising [me] of the proposed Modification, nor any action having been taken thereon, nor any opportunity for review, comment, Public Hearing, appeal or request for review.”)). The ALC had no basis to conclude that the Neighboring Property Owners’ challenges to the permit modification were untimely, even under the flawed logic applied to Pickens County. In failing to even get to that question, the ALC neglected an inquiry that was necessary and material to its dismissal analysis.

i. Pickens County is Entitled to Advance this Argument on Appeal.

Under the circumstances presented, Pickens County is entitled to argue that the Neighboring Property Owners’ motion to intervene should have been considered, even though the Neighboring Property Owners, by order of this Court, are not parties to this appeal.

First of all, unless Pickens County is allowed to advance this argument, this significant oversight and error by the ALC will evade review completely. By issuing no decision on the Neighboring

Property Owners' motion whatsoever, not only did the ALC thwart continuation of this underlying case on the merits, but it also frustrated the Neighboring Property Owners' appeal rights. The Neighboring Property Owners were never formally denied intervention, so they have no denial order to independently appeal. This Court previously held exactly that in response to the Neighboring Property Owners' efforts to join this appeal. Yet, the Neighboring Property Owners' ability to challenge this project in which they have a significant personal stake has been totally eliminated based on the actions and inactions of the ALC, and this appeal is the sole opportunity for that error to be remedied. Under the circumstances, if Pickens County is not allowed to advance the argument that intervention should have been decided, that issue will entirely evade review, and the ALC's decision to simply ignore the question of intervention will receive the Court's implied imprimatur.

The relationship between the County, as Appellant, and the Neighboring Property Owners, as residents of the County, also counsels in favor of the County's ability to advance this argument. The County argued repeatedly before the ALC that it was appearing on behalf of the citizens of Pickens County and particularly on behalf of landowners adjoining the proposed landfill. (R. p. 619). The County advanced arguments specific to the Neighboring Property Owners on their behalf, noting that "[a]ll of these parties wish to have Pickens County appear and advocate on their behalf." Id. The County likewise argued that it "has standing to bring this action on behalf of the Public, all adjoining landowners, and the County itself." (R. p. 625). Further, and perhaps most significantly, when the Neighboring Property Owners moved to intervene in the ALC proceedings, that motion was termed as a request "to have Pickens County appear in their behalf and represent and advance their interests in this matter. (R. p. 709). The Motion was filed by the attorneys for Pickens County. (R. pp. 710-11).

Pickens County had a direct stake and direct involvement in the Neighboring Property Owners' efforts to intervene, as well as a proxy relationship as the municipal body in which the Neighboring Property Owners reside, and the County is therefore entitled to argue that intervention should have at least been addressed prior to dismissal.

ii. ALC's Error is not Saved by Jurisdictional Issues in the Underlying Case.

Respondents have previously argued that the Neighboring Property Owners' motion to intervene was moot, because the ALC lacked subject matter jurisdiction over the case. However, the ALC is quite clear that it does have subject matter jurisdiction over the case and that its dismissal is based on the particularities of Pickens County's compliance (or non-compliance, as the ALC concludes) with the procedural requirements of § 44-1-60.¹² The ALC's holding in this regard is consistent with well-established state precedent. See Ward v. State, 343 S.C. 14, 17 n. 5, 538 S.E.2d 245, 246 n. 5 (2000) ("The doctrine of exhaustion of administrative remedies is generally considered a rule of policy, convenience and discretion, rather than one of law, and is not jurisdictional."(citations omitted)). As explained herein, the basis upon which the ALC determined that

¹²The Order specifically states:

Both respondents have framed portions of their arguments using the term subject-matter jurisdiction. As a preliminary matter, **the Court notes that it has subject-matter jurisdiction over this case.** ... Section 44-1-60 provides that the ALC hears contested cases stemming from final DHEC decisions relating to permits. Thus, the Court has the power to hear this type of case. In addition to providing subject-matter jurisdiction over the case, section 44-1-60 also sets forth the procedural requirements for bringing a case contesting a DHEC agency decision.

(R. p. 1 (emphasis added)). It is Pickens County's failure of the procedural requirements, not the jurisdictional requirements, upon which the ALC bases dismissal.

Pickens County failed to comply with the procedural requirements of § 44-1-60 does not apply to the Neighboring Property Owners. Had the ALC taken up intervention before dismissal, the purported procedural failings of Pickens County would not have been a basis for dismissal of the entire case, much less a basis for loss of jurisdiction over the entire case.

III. CONCLUSION

For all of these reasons, the Appellant asks this Court to overturn the order of the ALC dismissing this case. Appellant seeks remand to the ALC for full discovery and a hearing on the merits of the Permit Modification for this project.

* * *

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2017-000066

Pickens County,.....Appellant,

v.

South Carolina Department of Health
and Environmental Control and
MRR Pickens, LLC,.....

Respondents,

**FINAL BRIEF OF
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STATEMENT OF THE ISSUE(S) ON APPEAL

- I. Did the Administrative Law Court correctly dismiss Appellant Pickens County's challenge to a DHEC permitting decision as untimely and for failure to exhaust administrative remedies?

I. STATEMENT OF THE CASE

This matter is before the Court on appeal from an Order of the South Carolina Administrative Law Court (“ALC”) dismissing Appellant’s challenge to the decision of South Department of Health and Environmental Control (“the Department” or “DHEC”), which granted a modification to the Class 2 Landfill Permit LF2-00003 (the “Permit”) issued to Respondent MRR Pickens, LLC (“MRR”) in 2008. On August 10, 2015, the Department staff issued a minor modification to the Permit (“Minor Permit Modification”). Appellant filed with the DHEC Board its Request for Final Review (“RFR”) of the DHEC staff Minor Permit Modification decision on March 23, 2016. On April 16, 2016, DHEC staff submitted its initial staff response to RFR with the DHEC Board setting forth its position that the request was untimely. The DHEC Board denied the RFR by letter dated April 21, 2016, making the Minor Permit Modification decision the “final agency decision”.

On May 19, 2016, Appellant Pickens County (“Appellant”) mailed its Request for a Contested Case Hearing to the ALC. On July 28, 2016, DHEC filed a Motion to Dismiss. On July 29, 2016, MRR also filed a Motion to Dismiss. Appellant filed memoranda in opposition of each motion. DHEC also filed a reply to Appellant’s memorandum in opposition to its motion. On December 2, 2016, a motion hearing was held at the ALC in Columbia, South Carolina. After consideration of the arguments and filings of all parties, the ALC issued an Order granting MRR and DHEC’s motions to dismiss on the grounds that Appellant failed to timely fulfil procedural requirements for bringing a contested DHEC case before the ALC. On January 11, 2017, Appellant filed a notice of appeal in this Court.

II. ARGUMENT

As will be explained more fully herein, Appellant presents no basis for relief upon which this Court should reverse the ALC's order of dismissal.

SUMMARY OF ARGUMENT

Appellant asserts this case involves three (3) questions: (1) whether the modification to MRR's permit was "minor" or "major" under DHEC's regulations; (2) whether the challenges to the Minor Permit Modification brought by Pickens County and neighboring property owners are administratively barred based on timeliness; and (3) whether the Minor Permit Modification is justifiable under DHEC's landfill regulations. However, because the question of timeliness is a threshold jurisdictional question, and because the ALC Order answered this question affirmatively, whether Appellant was timely is the only issue, which may properly be presented to this Court:

Whether [Appellant] has met the statutory and procedural requirements for filing a case before the ALC contesting a DHEC permit decision?

(R. p. 2).

Appellant failed to timely file a RFR of the DHEC staff decision pursuant to S.C. Code Ann. § 44-1-60(E). Appellant received various forms of notice over a period of months. However, Appellant waited months before filing a RFR, necessarily barring itself from appeal. Though Appellant erroneously contends it was never given notice as required by regulation, the record unequivocally shows the otherwise. Therefore, this appeal must be dismissed.

In part, Appellant argues it did not act because DHEC improperly classified the matter as a "minor" permit modification, which exempted DHEC from public notice and comment requirements applicable for "major" modifications. However, the matter before the ALC, which is the subject of the order on appeal, is MRR and DHEC's motions to dismiss on procedural

grounds. Whether DHEC improperly classified the modification or whether it should have granted the modification, is a matter that could only be decided by the ALC in a hearing on the merits and is not properly before this court.

Appellant also argued in part that DHEC's failure to comply with regulatory notice requirements caused it to file its RFR months late. However, this argument is foreclosed because Appellant received actual notice on multiple occasions yet failed to take timely action as required by statute. In fact, if this court were to consider the latest possible date of notice, Appellant's request remains untimely and this appeal is barred.¹

STATEMENT OF FACTS

A. Class 2 Solid Waste Permit LF2-00003

On November 3, 2008, DHEC issued the Permit to MRR to construct and operate a Class 2 Landfill on property located at 2180 Greenville Highway, Liberty, South Carolina, Pickens County (the "Highway 93 Landfill"). Prior to issuing the Permit, DHEC publicly noticed the agency decision and sent written notice to neighboring landowners and the Appellant. On March 30, 2015, Respondent applied for a modification to the Permit for the option to install a liner and associated leachate collection system. (R. p. 465). On August 10, 2015, DHEC staff issued a Minor Permit Modification, allowing MRR the option to install a liner and associated leachate collection system in the Highway 93 Landfill (the "Minor Permit Modification Decision"). (R. pp. 467 – 470).

¹ As explained in more detail herein, this argument is also foreclosed because Appellant never requested to be designated an "affected party" when MRR received its Permit in 2008.

- On February 18, 2016, Appellant attached a copy of the August 10, 2015, Minor Permit Modification Decision as Exhibit 12 to its pleading in C/A No: 2016-CP-39-100. (R. pp. 513-529; R. p. 525; See No. 12 on list of Exhibits (Feb. 18, 2016) (actual exhibits excluded).

Therefore, Appellant had actual and constructive notice and knowledge of the Minor Permit Modification Decision including: December 15, 2015; January 11, 2016; February 17, 2016; and at the latest, on February 18, 2016 (the date it used the Minor Permit Modification Decision as an Exhibit in a related State court proceeding).

STANDARD OF REVIEW

“Under the Administrative Procedures Act, the ALC presides as the fact-finder in contested cases.” White v. S.C. Dep’t. of Health & Envtl. Control, 392 S.C. 247, 252, 708 S.E.2d 812, 814 (Ct. App. 2011); see also Jones v. S.C. Dep’t. of Health & Envtl. Control, 384 S.C. 295, 303, 682 S.E.2d 282, 287 (Ct. App. 2009) (“In a contested permitting case, the ALC presides as the fact finder.”). “[T]his [c]ourt’s [review] is limited to determining whether the findings were supported by substantial evidence or were controlled by an error of law.” White, 392 S.C. at 252, 708 S.E.2d at 814 (first and third alterations in original) (internal quotation marks omitted). “In determining whether the ALC’s decision was supported by substantial evidence, this [c]ourt need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion that the AL[C] reached.” Id. (internal quotation marks omitted). “The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence.” Id. (internal quotation marks omitted).

A. The ALC correctly dismissed Appellant's challenge to the DHEC permitting decision as untimely and for failure to exhaust administrative remedies.

S.C. Code Ann. § 44-1-60 (Supp. 2015) provides the exclusive procedure for bringing a contested case regarding permitting or licensing actions taken by DHEC. S.C. Coastal Conservation League vs. S.C. Dep't of Health & Env'tl. Control, 390 S.C. 418, 423; 702 S.E.2d 246, 251 (Nov. 15, 2010); A.O. Smith Corp. v. S.C. Dep't of Health & Env'tl. Control, Docket No.: 16-ALJ-07-0082-CC, 2016 WL 2771749 (May 5, 2016); S.C. Code Ann. § 44-1-60(A). A DHEC staff decision on a permit becomes the "final agency decision" fifteen (15) calendar days after it has been mailed to the permit applicant and other affected persons who have properly requested notification, unless an RFR is filed with the DHEC Board within that time frame. S.C. Code Ann. § 44-1-60(E)(1)-(2). If an RFR is filed, the DHEC Board has three (3) choices: (1) decline in writing to review the staff decision; (2) do nothing and let the sixty (60) day time frame to hold a review conference lapse; or (3) hold a conference and/or issue its own decision in the matter. S.C. Code Ann. § 44-1-60(F). Where the DHEC Board declines in writing to conduct a final review conference, the applicant or other affected person has thirty (30) calendar days from receipt of the DHEC Board denial to file a contested case with the ALC. S.C. Code Ann § 44-1-60(G)(1). "The exclusive process established by Section 44-1-60 is the statutory equivalent of the judicial doctrine of exhaustion of administrative remedies....Under the statute, unless the steps prescribed are followed, beginning with the initial decision of the Department, a party may not bring a contested case before [the ALC]." A.O. Smith Corp., 2016 WL 2771749, at *2; see Ward v. State, 343 S.C. 14, 18-19, 538 S.E.2d 245, 247 (2000) ("The general rule is that while there are several exceptions that may be applied to the judicially-imposed exhaustion requirement, those that apply to a statutory requirement are few.")

Appellant argues it should have been notified by DHEC staff of the Minor Permit Modification Decision at the time it was made on August 10, 2015, either by Option (1) mailing the decision directly to the Appellant; and/or Option (2) by publicly noticing the decision through publication in a newspaper of general circulation.

i. **DHEC was not required to mail the Minor Permit Modification Decision to Appellant because Appellant was not an “affected person” who requested such notice.**

Option (1) is notice by direct mailing of the staff decision to Appellant. Section 44-1-60(E) requires a party, such as Appellant, to notify DHEC in writing by certified, U.S. or electronic mail, that it is an “affected person” and wishes to be notified of any subsequent decisions relating to a permit. Appellant was provided notice through direct mailing and public notice of MRR’s Permit issued in 2008. Appellant never requested in writing or otherwise that DHEC notify it of any decisions relating to the Permit. (R. p. 501; ¶ 4). Appellants were aware - since 2008 - that MRR intended to operate a Class 2 Landfill in Pickens County. In fact, as stated in Appellant’s Prehearing Statement at the ALC, Appellant and MRR executed a Development Agreement in 2008 to allow MRR to use the property for that purpose. (R. p. 17, at § 5). However, between 2008 and August 10, 2015, Appellant never requested DHEC notify it as an “affected person” for purposes of future staff decisions on the Permit. Appellant does not allege it made such a request in its filings to the ALC. Therefore, DHEC was not required to notify Appellant by mailing of the Minor Permit Modification Decision.

The ALC addressed this exact issue in a similar case where a party did not request DHEC provide notice of subsequent decisions on a previously issued permit. Hubbard v. S.C. Dep’t of Health & Envtl. Control, Docket No.: 07-ALJ-07-0594-CC, 2008 WL 2300351 (May 2, 2008). In Hubbard, the Court held where notice was not requested of future staff decisions after an initial

license or permit was issued, DHEC was not required to give subsequent notices of renewals or otherwise treat them as an “affected party.” Hubbard, 2008 WL 2300351, at *6-7. The Court further held a party cannot claim ignorance to avoid the requirement it notify DHEC of its “affected party” status to trigger future notifications of permitting decisions:

Petitioners argue they were unaware that, pursuant to § 44-1-60(E), they had to notify the Department by certified mail, return receipt requested,² that they were affected persons concerning the Department’s decision. This argument lacks credibility; all citizens in this state are presumed to know the law.

Id. at *6; citing Morgan v. S.C. Budget and Control Bd., Op. No. 4356 (S.C. Ct. App. filed Mar. 13, 2008) (Shearhouse Adv. Sh. No. 12 at 56, 62) (“[C]itizens are presumed to know the law and are charged with exercising reasonable care to protect [their] interest[s].”)

“A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review.” S.C. Code Ann. § 1-23-380(A). The exclusive process established by S.C. Code Ann. § 44-1-60 is the statutory equivalent of the judicial doctrine of exhaustion of administrative remedies. See Ward, 343 S.C. at 18-19. The South Carolina Supreme Court has held dismissal of a case is proper where there is a requirement to first exhaust administrative remedies as a matter of law. See Unisys Corp. v. S.C. Budget & Control Bd., 346 S.C. 158, 176-77, 551 S.E.2d 263, 273 (2001) (citation omitted). In this case, because Appellant failed to timely exhaust its administrative remedies through a timely RFR, the ALC properly declined to hear its appeal. See Hubbard at *8 (holding “[t]he doctrine of exhaustion of administrative remedies generally requires a person seeking relief from

² Certified mail is no longer required for notification of requests for decisions. However, notification still must be in writing and by electronic, U.S. or Certified Mail. See S.C. Code Ann. § 44-1-60 (E)(I).

the action of an administrative agency to pursue all available administrative remedies before seeking such relief from the courts.” (citing Hyde v. S.C. Dep’t of Mental Health, 314 S.C. 207, 208, 442 S.E.2d 582, 583 (1994)).

ii. **Even if the ALC found Appellant was an “affected person” requiring notice, Appellant failed to file its RFR within fifteen (15) days of DHEC's mailing of notice to Appellant.**

The seminal case on notice and timeliness of DHEC RFRs is S.C. Coastal Conservation League vs S.C. Dep’t of Health & Envtl. Control, 390 S.C. 418 (2010), where the South Carolina Supreme Court interpreted the requirements set forth in S.C. Code Ann. §44-1-60(E). In S.C. Coastal Conservation League, the appellants argued the fifteen (15) day time frame to file an RFR with the DHEC Board does not run until the “affected person” receives notice of the DHEC staff decision on a permit, not when notice of the staff decision is mailed to the applicant, as held by the lower courts in that case. The South Carolina Supreme Court disagreed and held the fifteen (15) day time frame begins to run on the day the notice is mailed to an “affected party” who requested to be notified of the staff decision. Id. at p. 252 (holding that in situations when DHEC fails to simultaneously notify the applicant, permittee, licensee, and affected persons, the latest date of mailing controls when the fifteen-day period begins to run).

Here, Appellant does not qualify as an “affected party,” entitled to mailing and notice of the DHEC staff Minor Permit Modification Decision. However, in the alternative and without waiving any arguments, even if the ALC ruled Appellant was an “affected party,” or otherwise should have received notice, Appellant failed to meet the fifteen (15) day deadline for filing its RFR to the DHEC Board. Using the time frame of fifteen (15) days after the later of mailing to the applicant and “affected party” set forth in the S.C. Coastal Conservation League decision,

DHEC staff mailed a copy of the Minor Permit Modification to MRR as applicant on August 10, 2015. (R. pp. 471-502). DHEC staff later emailed a copy of the Minor Permit Modification to Appellant on January 11, 2016. (R. pp. 508-509). Appellant did not file its RFR until seventy-two (72) days after DHEC provided it with a written copy of the Minor Permit Modification. (See generally, R. pp. 162-173). Therefore, no matter what date the Court applies, Appellant exceeded the fifteen (15) day filing period after mailing and thus failed to exhaust its administrative remedies.³

Appellant cannot request the ALC hear its review because the Court lacked appellate jurisdiction over the appeal. See Grand Bees Dev., LLC v. S.C. Dep't of Health & Envtl. Control, 2012 WL 10841840, at *1 (Ct. App. 2012)); citing Great Games, Inc. v. S.C. Dep't. of Revenue, 339 S.C. 79, 82, 529 S.E.2d 6, 7 n. 5 (2000); Allison v. W.L. Gore & Assocs., 394 S.C. 185, 188-89, 714 S.E.2d 547, 549-50 (2011) (noting it is a general rule “that an appellate body may not extend the time to appeal”). While subject matter jurisdiction may not be the issue here, **appellate jurisdiction** is and the ALC correctly held that it did not have appellate jurisdiction over the Appellant’s request where it failed to timely file its RFR with the DHEC Board. This proposition has been clarified by the South Carolina Supreme Court – holding that timely exhaustion of administrative remedies is jurisdictional in the appellate setting - and no court can find jurisdiction

³ In fact, Appellant had actual and constructive notice of the Minor Permit Modification Decision on December 15, 2016. *Id.* Appellant waited ninety-nine (99) days after it met DHEC and discussed the modification, seventy-two (72) days after it received a copy of and notified MRR of its knowledge of the modification, thirty-two (32) days after it signed an affidavit in Court of Common Pleas attesting under oath to its knowledge of the contents of the Minor Permit Modification Decision, and thirty-three (33) days after it used a copy of the Minor Permit Modification Decision as an exhibit in a civil proceeding in South Carolina. (R. p. 513-529; R. p. 525; See No. 12 on list of Exhibits (Feb. 18, 2016)).

copy of the Minor Permit Modification Decision on January 11, 2016, Appellant received actual and constructive notice of the Minor Permit Modification Decision on December 15, 2015, and Appellant failed to file a RFR of the decision within the fifteen (15) day deadline required by S.C. Code Ann. § 44-56-60(E). During the hearing on Respondents' Motions to Dismiss, the Court repeatedly asked Appellant to explain why it had not complied with the statute and filed the RFR within 15 days of receiving notice:

THE COURT: Mr. Poliakoff, in December county officials met with DHEC officials. At that point, they learned about the modification that was -- they learned about -- they got actual notification that yes, there is a modification. There was a permit issued. Why didn't the County file their Request for Review at that point?

(R. p. 106:3-10).

THE COURT: But, Mr. Poliakoff, we can't get to that issue until we get beyond did the ---

(R. p. 110:13-14).

THE COURT: Yes, but what your argument is, is that we have got a major modification as to a minor modification that was approved by DHEC.

* * *

THE COURT: But, before we get to that proof, we've got to get beyond these Motions for Dismissal which is why didn't Pickens County file their request for review earlier than. . .

MR. POLIAKOFF: It was already a done deal at that time. The permit was already issued four months. The final agency decision was already issued for four months. They assumed it was a done deal. It was a done deal. . . .

(R. pp. 110:24 – 111:13).

[MR. POLIAKOFF:] I think they made a specific request for the crucial document so I would argue at least January 11th or thereabouts is the date,

there's probably a few days after that, that they actually received that paper. The County was trying to figure out what to do, Your Honor, with a permit that there was already a final agency decision for four months before they got word one about it.

(R. p. 112:1-10) (emphasis added).

THE COURT: Yes, but subsequent to that, you did file a Request For a Review. What changed?

MR POLIAKOFF: I became involved. . . . It was a huge Motion Hearing that occupied much of February, and once we got into the case better, I figured out that we should really oppose this because this was illegally obtained. . . .

(R. p. 122:3-8).

THE COURT: And once the County learned of that permit, when did the County file their Request for Review with the Board?

(R. p. 140:20-22).

As shown above and within the Transcript of Proceeding, Appellant failed to provide any justification for failing to comply with statutory requirements to timely file its RFR but instead waited more than two (2) months after receiving a copy of the Minor Permit Modification Decision to act. Therefore, Appellant failed to exhaust its administrative remedies after actual notice, and the ALC lacked appellate jurisdiction to decide whether the Minor Permit Decision should have been publicly noticed; the issue is moot.

iv. **Equitable tolling is not warranted in this case and is not appropriate where Appellant sat on its rights.**

Appellant argues due process, public interest and urgency justify the drastic remedy of equitable tolling and an exception to the requirement that a party exhaust its administrative remedies. These claims are unsupported by any facts or matters of record and are irrelevant in this case where Appellant had actual notice and sat on its rights. Nonetheless, in a last-ditch effort to

revive its position, Appellant cites to portions of the currently incomplete deposition of Kent Coleman, former Director of DHEC's Division of Mining and Solid Waste Management, in a separate case to support its plea for equitable relief. (Appellant's Initial Brief at pp. 6-10.) Kent Coleman's testimony was not a part of the record on appeal to the ALC and is improperly used to cloud the relevant issues here.

a. This is not a "public interest case" of urgency: the Minor Permit Modification does not add coal ash as a new waste stream.

Although these facts are not properly before this Court, to the extent this Court may consider assertions relating to the merits of the case asserted by Appellant, MRR is compelled to succinctly clarify Appellant's misrepresentation of Mr. Coleman's testimony about the modification:

1. The Permit as originally issued in 2008 allowed disposal of coal ash or coal combustion residuals (CCR) that meet Class 2 testing thresholds.

Q. Would MRR's 2008 permit allow them to accept coal combustion residuals if they met the threshold and notwithstanding the new law?

A. Yes.

(R. p. 689:9-12).

2. The Minor Permit Modification for the option to install a liner was deemed "minor" because it was not a change to the waste stream and because it was more protective of the environment.

Q. Okay. So let's talk about the modification itself. It appears -- it states this is an issuance of a modified Class Two landfill permit. Was this a minor or a major modification?

A. We issued this modification as a minor modification.

Q. Okay. Can you tell me why?

A. Yes. I can. I've had to recall those conversations a few times lately. But the -- basically, we looked at it, and since there were no new waste streams involved, and it was an optional upgrade so to speak -- it was only basically, you know, making the facility more

environmentally protective than we had already issued. We felt like it was -- you know, we felt like we could do it as a minor because any, you know, any impact would just be positive, if they decided to install the liner. And since we didn't approve any new waste streams or increase in volume or anything like that, we felt like an upgrade was with a minor modification.

(R. pp. 696:17- 697:11).

3. A liner like the one at issue is more protective of the environment and the public.

Q. And in your opinion, if a permittee, came to DHEC and asked to install a liner that is not required in the regulations --

A. Uh-huh.

Q. -- would there be any reason for DHEC to deny that request?

MR. POLIAKOFF: Objection, form. Leading.

A. I -- I can't think of a reason why we would deny a liner request, if it were not required.

Q. And I guess what I'm asking, is there any negative impacts to the presence of a liner in a solid waste landfill, to your knowledge?

A. Not for the department or the environment. No.

(R. pp. 693:13- 694:1).

4. The Minor Permit Modification did not change the waste stream allowed at the Highway 93 Landfill.

Q. Does the modification alter the waste stream that MRR Pickens would be allowed to take under its '08 permit.

A. No. I mean, the regs were the same under both permits.

Q. Okay. So since no new waste streams were added

A. Uh-huh.

Q. -- the liner itself does not automatically modify the permit to allow a new waste stream. Is that correct?

A. Correct.

(R. pp. 695:8-12; 697:15-18).

5. The Minor Permit Modification is not the final agency decision which determines whether MRR is allowed take coal ash or coal combustion residuals at the Highway 93 Landfill.

Q. So for MRR Pickens to take coal combustion in residuals --

that parties given actual notice when a permit was first issued, do not necessarily have the right to future notices related to that permit. Id. Here, Appellant (and the public) received notice of the Highway 93 Permit in 2009 but did not request in writing to be treated as an “affected person” or have any other notice of future decisions relating to the Permit – including the Minor Permit Modification.

Even if the Court disagrees and Appellant was required to be provided notice, Appellant received actual notice over six (6) months ago but it did not timely file its appeal. Therefore, no lack of due process applies in this case. A **citizen** whose claim arises under the Constitution rather than under a specific statute or regulation, however, must still act to preserve his claim within a reasonable time after having received actual or constructive notice of the agency action he seeks to challenge. Smothers v. U.S. Fidelity and Guaranty Co., 322 S.C. 207, 470 S.E.2d 858 (Ct. App. 1996); citing 25 S.C. Code Ann. Regs. 61-72, §102 (Supp. 2000). Every citizen is presumed to have knowledge of the law and must exercise reasonable care to protect his interests. Id. See also Citizens for Sandy Flat vs. S.C. Dep’t of Health & Env’tl. Control, Docket No.: 01-ALJ-07-0009-CC, 2001 WL 1502396, *4 (Oct. 12, 2001)(“[o]ne cannot complain of a due process violation if [he] has recourse to a constitutionally administrative procedure but merely declines or fails to take advantage of it.”) In other words, Appellant cannot now claim that it represents “the public at large” in order to repair or resurrect its fatal flaw in failing to timely file its RFR of the Minor Permit Modification Decision.

Finally, whether administrative remedies must be exhausted is a matter within the trial judge’s sound discretion and his decision will not be disturbed on appeal absent an abuse thereof.

McSwain; citing Hyde v. S.C. Dep't of Mental Health, 314 S.C. 14, 17 n. 5, 538 S.E. 2d 245, 246 n. 5 (2000). Here, there is no evidence to support such an abuse.

c. Equitable Estoppel is not appropriate here.

Appellant further tries to avoid the consequences for its failure to exhaust its administrative remedies by stating DHEC should be equitably estopped from using the timeliness issue to dismiss the case because it misrepresented the status of the permit modification to Appellant. In all pleadings filed by Appellant at the ALC, and exhibits thereto, Appellant never alleged DHEC made misrepresentations or provided misinformation to Appellant during any meetings held prior to the filing of the RFR. Moreover, Appellant provided no reason for failing to file the appeal within fifteen (15) days of actual notice. Appellant's new accusations of misrepresentation and misinformation as grounds for equitable estoppel not properly asserted for consideration in this proceeding and not based on any facts in the record.

In its Initial Brief, Appellant now accuses DHEC of making false representations to Appellant as to the availability of administrative review of the Minor Permit Modification. Appellant, however, cites no support for this assertion. Paragraph 6 of the Affidavit of Gerald Wilson states that Appellant met with DHEC in December of 2015 to discuss the permit modification, after making a Freedom of Information Act request. (R. p. 304, ¶ 6). It does not state any facts regarding statements made by DHEC relating to Appellant or anyone else's rights to file an appeal of the Minor Permit Modification Decision. The only evidence to support that any such discussions were had was made by Gary Poliakoff, Esquire, attorney for Appellant during oral argument. Mr. Poliakoff stated: "[e]xcuse me, I'm just handed a note from a county attorney, Your Honor, and I will read it verbatim...Quote, when we met with DHEC in December, they told

B. The ALC correctly denied Pickens County's request for discovery.

On July 29, 2016, MRR moved the ALC to stay all discovery in this matter until the ALC adjudicated the Motion to Dismiss filed by MRR contemporaneously to the Motion to Stay Discovery and issued a final decision on same.

Rule 26(b)(1), SCRCF, provides parties “may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” However, Rule 26(c) provides that “[u]pon motion by a party . . . and for good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense, including . . . that the discovery not be had.” Similarly, ALC Rule 21(A) provides “[u]pon motion for good cause shown or upon his own motion, discovery may be expanded or curtailed by the administrative law judge.”

Control Bd., 346 S.C. 158, 551 S.E. 2d 263 (S.C. Aug. 14, 2001)). The Capital City Ins. case, cites Unisys Corp. v. SC Budget & Cntrl Bd. for the proposition that 12(b)(6) can be the appropriate method to dismiss a case for failure to exhaust administrative remedies. Unisys Corp. v. SC Budget and Control Bd., 346 S.C. 158, 551 S.E. 2d 263 (S.C. S.Ct. (Aug. 14, 2001)). However, Unisys involved a lawsuit filed in circuit court not as an appeal of an administrative review board's decision, but as a separate suit running parallel to the administrative process. The State moved to dismiss under Rule 12(b)(1), 12(b)(6) and 12(b)(8). The Court held that the procedure in the Procurement Code was the exclusive means of resolving the dispute and of the three motions plead, both 12(b)(6) and 12(b)(8) (since the procurement appeal was still pending) were proper bases for dismissal. Again, 12(b)(6) was not pled in this case by any party. To jump from a 12(b)(6) case to a summary judgment ruling, Appellant cites to Brown v. James, 389 S.C. 41, 48–49, 697 S.E.2d 604, 608 (Ct. App. 2010). In Brown, the lower court did not, *sua sponte*, convert the case from a Rule 12(b)(1) to a Rule 12(b)(6) motion to dismiss, then convert the Rule 12(b)(6) motion to dismiss to a Rule 56 motion for summary judgment. Rather, in that case, the Defendant Superintendent filed “a motion to dismiss under Rule 12(b)(6), SCRCF, or in the alternative, a motion for summary judgment under Rule 56, SCRCF.” Brown v. James, 389 S.C. 41, 48–49, 697 S.E.2d 604, 608 (Ct. App. 2010) The lower court there dismissed the case for failure to exhaust administrative remedies. The Court of Appeals held the lower court based its decision on facts found during discovery (which was had in that case prior to the ruling) and not simply the facts in the complaint, and thus, the case was resolved under the plead and argued motion for summary judgment under Rule 56, not Rule 12(b)(6).

Rulings of the ALC in matters involving discovery “must not be disturbed on appeal absent a clear showing of an abuse of discretion.” Hedgepath v. American Tel. & Tel. Co., 348 S.C. 340, 352, 559 S.E.2d 327, 334 (Ct.App. 2001); Bayle v. South Carolina Dep't of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct.App.2001), cert. denied. “An abuse of discretion occurs when there is no evidence to support the trial judge’ factual conclusion or when the ruling is based upon an error of law.” Id.

Here, in the interest of judicial economy and efficiency, and to avoid undue burden and expense on the parties, on September 7, 2016, the ALC correctly Ordered a stay of discovery pending final decision upon MRR’s Motion to Dismiss. (Respondents MRR and DHEC’s Joint Response in Opposition to Movant’s Motion to be included as Appellants, Exhibit D, April 10, 2017). The facts in which the Court based its decision on appeal are not in dispute: (1) DHEC provided public notice and actual notice of the 2008 permit to Appellant and all parties ; (2) no person, including the County and the interviewers requesting in writing to be treated as an “affected party” to any future decisions or the 2008 permit; (3) DHEC treated the modification in August of 2015 as “Minor” and did not public notice prior to issuance; (4) the Appellants received actual notice at the lasts on January 11, 2017; and (5) Appellants did not file their RFR with the DHEC Board until March 23, 2015. Discovery of in this case would not, could not have shed light on the only issue but the Court: why the county failed to file the RFR within 15 days of actual notice.

C. The ALC correctly dismissed the case on the basis of timeliness without addressing the request for intervention.

According to representations made by Appellant and DHEC records, Appellant received actual notice of the Minor Permit Modification in December of 2015 and received a copy of the Minor Permit Modification no later than January 11, 2016. (R. pp. 471-502; see also R. pp. 189-191) Appellant filed a RFR of the Minor Permit Modification on or about March 23, 2016. Robert

motion to intervene was filed after DHEC and COCC entered into a consent order ... there is no ongoing judicial 'action' into which Reichlyn can intervene.”).

The case of S.C. Coastal Conservation League is also instructive in this matter. In that case, the South Carolina Supreme Court held that a party that does not seek party status in the agency proceedings, as they properly could have done, removed themselves from an active role in the administrative decision making process. “Because they were not “parties,” as defined by the Administrative Procedures Act (“APA”), in the previous proceedings, Petitioners lack standing under the APA to challenge the resulting order.” S.C. Coastal Conservation League v. S.C. Dep’t of Health & Envtl. Control, 97-ALJ-07-0763-CC, 1998 WL 229742, at *3 (Apr. 14, 1998); citing Home Health Services, Inc., 379 S.E.2d at 736 (Ct. App.. 1989); David E. Shipley, South Carolina Administrative Law at 7-25 (2d ed. 1989) (to have standing to seek judicial review of an agency's decision, a person aggrieved by a final decision in a contested case must have had standing in the initial agency proceeding, and he also must have participated in the case as a “party;” and if a person “received notice and decided not to participate in the agency proceeding, then he should not have standing to secure review.”).

Because Neighboring Property Owners’ attempt to intervene in the underlying ALC case was mooted by the Court’s grant of Respondents’ Motion to Dismiss, there was no judicial action into which Neighboring Property Owners may have intervened and Neighboring Property Owners were never a party to the case.

ii. **Neighboring Property Owners’ are not a party to the underlying ALC case because they did not properly seek nor were they entitled to party status.**

In their Motion to be Included as Appellants, Neighboring Property Owners cited SCALC Rule 2(H), which defines a party to a case as “each person or agency named or admitted as a party

or properly seeking and entitled to be admitted as a party, including a license or permit applicant.” SCALC Rule 2(H). Neighboring Property Owners relied on their filing of an untimely motion to intervene to support their argument they were “properly seeking and entitled to be admitted as a party.” Id. Neighboring Property Owners were neither “properly seeking,” nor were they “entitled to be” a party to the ALC case and this Court therefore correctly decided they were not entitled to be a party to this Appeal.

South Carolina courts have held, even where a party may have been “entitled to be” a party to the underlying case, where the potential party did not “properly seek” review, it should not be entitled to seek review on appeal. Home Health Services, Inc. v. S.C. Dep’t of Health & Envtl. Control, 298 S.C. 258, 379 S.E.2d 734 (1989). Neighboring Property Owners were never a party to the underlying ALC case, nor were they “entitled to be.” There was no underlying judicial action into which Neighboring Property Owners may have intervened, so intervention was never “properly” sought.

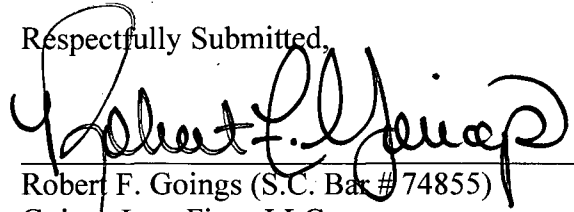
Furthermore, to become a party to this Appeal, Rule 201(b) requires Neighboring Property Owners must be “a party aggrieved by an order, judgment ... or decision” SCCAPR 201(b). Neighboring Property Owners were not “a party aggrieved by an order, ... or decision ...” because they were not a party to the ALC matter and Pickens County’s Motion on behalf of Intervenor to Intervene had been held in abeyance and not ruled upon. Moreover, after the Motion to Dismiss was issued by the ALC, Appellant did not move for reconsideration of the ALC’s Order Granting Respondents Motion to Dismiss, or request reconsideration of the ALC’s decision to hold the ruling on the Motion to Intervene in abeyance. This Court has held “the word ‘aggrieved’ refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party

of a burden or obligation.” Powell v. Bank of America, 379 S.C. 437, 447, 665 S.E.2d 237, 243 (2008) (citing Beaufort Realty Co. v. Beaufort County, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001). “A party is aggrieved by a judgment or decree when it operates on his or her rights of property or bears directly on his or her interest.” Id. In light of Powell, Neighboring Property Owners may not properly claim the ALC’s denial of subject matter jurisdiction to Appellants based on Appellants failure to timely file their appeal affects Neighboring Property Owners property rights or otherwise bears on their interests. The Court correctly denied Neighboring Property Owners Motion to be Included as Appellants.

III. CONCLUSION

For all these reasons, Respondent MRR Pickens requests this Court to affirm the Order of the ALC dismissing this case prior to discovery in this case and prior to ruling on the Motion to Intervene.

Respectfully Submitted,



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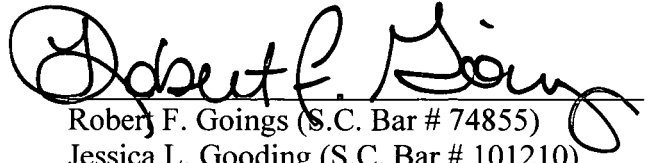
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Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert F. Goings", written over a horizontal line.

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