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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. 2017-000066

Pickens County,Respondent,

v.

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

**REPLY BRIEF OF PETITIONER
SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL**

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ARGUMENT

I. If this Court deems the classification of the permit modification relevant in light of Pickens County's actual notice, the Department is entitled to deference.

Contrary to Pickens County's position, the South Carolina Court of Appeals committed error of law when it made a determination that the permit modification at issue is a major modification. Pickens County argues deference to the Department is not warranted because the Court of Appeals' classification determination was made in the context of the judicial determination of timeliness. Regardless of the context in which the determination was made, the Court of Appeals should have considered and given deference to the Department's classification of the permit modification because such classification was determined based on the agency's interpretation of its technical regulations and the court does not have a compelling reason to determine otherwise. *See Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014) (reemphasizing the deference doctrine in South Carolina provides that courts defer to an administrative agency's interpretations concerning its own regulations "unless there is a compelling reason to differ").

Because there has been no showing in the record that the Department's interpretation of a statute or regulation was erroneous or controlled by an error of law, there was no compelling reason for the Court of Appeals not to defer to the Department's interpretation of the permit modification. *See Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440–41, 581 S.E.2d 836, 838–39 (2003). Deference is appropriate in this case, because the record shows the Department reviewed the modification application and its own solid waste permitting regulations to determine the classification and the Department properly determined the modification was a minor modification. Regulation 61-107.19 defines major modifications as follows: "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.” Reg. 61-107.19. Part I.B.48(a) & (b) (emphasis added). Pursuant to this regulation, the Department correctly determined the modification to be minor because no changes were proposed which substantially altered the facility or its operations, no new waste streams were involved, and there was no requested increase in the maximum volume of waste. Further, the Department determined that the proposal to install a liner is an optional upgrade that does not vary from the design prescribed in the regulation and, in fact, is neither prohibited nor required by the regulation. The Court of Appeals did not identify any compelling reasons to determine otherwise and failed to give the appropriate deference to the Department’s rational interpretation of its regulation.

CONCLUSION

Pursuant to the foregoing, the Court of Appeals’ failure to consider and grant the Department the deference it is owed constitutes reversible error. For this reason and all those previously stated in prior filings by the Department, the Administrative Law Court’s Order should be re-instated with Pickens County’s appeal being dismissed with prejudice.

Respectfully submitted,

/s/ Etta R. Williams Linen

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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

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