



**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

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Our Mission We use our legal expertise to protect land, water and communities across South Carolina.

October 22, 2025

VIA EMAIL & U.S. MAIL

Honorable Jana E. Shealy,
Clerk, SC Administrative Law Court
1205 Pendleton Court, Suite 224
Columbia, SC 29201

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Re: Friends of Horse Creek Valley v. SCDES & Rabbit Hill Class 2 Landfill
Docket No.: 24-ALC-07-0316-CC

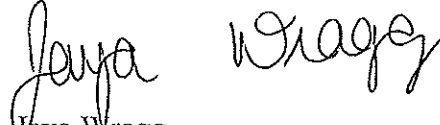
Dear Ms. Shealy,

Please find enclosed Petitioner's Motion for Reconsideration along with the required \$50 filing fee, which is being filed on behalf of the Friends of Horse Creek Valley. By copy of this

Board of Directors - Jerry Schulze, Chairperson, J. Mac Bennett, Keith Bowers, Jamelle Ellis,
Terry Grayson-Caprio, Liz Igleheart, Tom Kester, Bess Lochocki, Michelle Mapp, Carla Pinckney,
Cynthia Powell, Greg VanDerwerker, Davis Whitfield-Cargile, Keith Williamson
Board Member Emeriti - Frances Close, Robert Schofield

letter I am serving counsel for all parties. Please return a clocked-in copy self-addressed, stamped envelope provided. Thank you for your kind consideration.

Respectfully,


Jaya Wragg
Legal Assistant

cc: Counsel of Record

between replacement and expansion, consistent with the Solid Waste Policy and Management Act's Demonstration of Need requirement set forth in S.C. Code Ann. § 44-96-290(E). A replacement facility may only replicate existing, necessary capacity and may not increase it.

By accepting the Respondent's characterization of a 292.5-acre, 107,500-ton facility as a replacement for a 2.3-acre, 57,500-ton landfill, the Court effectively permitted an expansion variance to operate under the guise of a replacement variance. That interpretation nullifies the plain text of section (D)(6)(e) and undermines the mandatory Demonstration of Need process required for expanded facilities.

B. MISAPPREHENSION OF THE RULES OF STATUTORY CONSTRUCTION

The Court misapplied the governing principles of statutory and regulatory interpretation by: (a) relying solely on the regulation's plain language despite ambiguity in its intent and scope; (b) failing to give effect to the Legislature's intent as the cardinal rule of construction; (c) adopting an interpretation that produces an absurd and unlawful result; (d) failing to harmonize the regulation with its enabling statute; and (e) disregarding the settled principle that any ambiguity must be resolved to ensure a just, equitable, and reasonable operation of the law. Collectively, these errors produced an overly literal reading that disregards the Solid Waste Policy and Management Act's (SWPMA) substantive purpose and structure.

C. FAILURE TO GIVE EFFECT TO THE SWPMA'S MANDATORY DON REQUIREMENT

The Court failed to recognize that the demonstration of need requirement in S.C. Code Ann. § 44-96-290(E) applies unequivocally to all new or expanded solid-waste management facilities and may not be waived by regulation. By declining to enforce this requirement, the Court effectively subordinated a controlling statutory mandate to an agency regulation.

D. FAILURE TO RECOGNIZE THE STATUTE'S SUPREMACY OVER REGULATION

Even if the Court's interpretation of Regulation 61-107.17(D)(6) were correct, the Solid Waste Act's express statutory requirements must prevail where a regulation or agency interpretation conflicts with the statute's plain terms and intent, and the Order therefore inverted this hierarchy by granting controlling effect to the regulation instead of the governing statute.

E. ERRONEOUS CHARACTERIZATION OF SUBSECTION (D)(6)(e) AS MERELY PROCEDURAL

The Court erred in construing Regulation 61-107.17(D)(6)(e) as a procedural timing provision rather than a substantive restriction on the scope of landfill variances. The regulation provides that an eligible facility may apply for a variance to replace or expand the volume of an existing facility but may not operate under both at the same time. This prohibition reflects the Department's intent to preserve a clear line between replacement and expansion and to prevent the misuse of the Demonstration of Need process.

Its structure and placement within Regulation 61-107.17(D)(6) demonstrate that subsection (e) was intended to define and limit when a facility may replace or expand capacity, not to prescribe only when such a variance may be sought. Treating it as a procedural provision deprives subsection (e) of independent meaning and purpose and allows an expansion variance to proceed under the guise of replacement, contrary to both the regulation's text and the legislative intent of the Solid Waste Policy and Management Act.

F. OVERLOOKING SUBSECTION (D)(6)(E)'S PURPOSE AS A SAFEGUARD

The Court failed to recognize that subsection (D)(6)(e) was specifically designed to prevent misuse of the demonstration of need variance, by ensuring that an applicant cannot evade the need requirement through reclassification. Respondent's simultaneous claim of both "replacement" and "expansion" exemplifies the misuse the regulation was intended to prevent.

G. MISAPPREHENSION OF THE REGULATION'S CAPACITY LIMITATIONS

The Court mistakenly assumed that the annual rate of disposal limit is the only applicable constraint on the replacement facility. The regulation and governing statute impose additional quantitative and qualitative limitations on facility size, volume, and service-area expansion that the Court's analysis did not address.

H. CUMULATIVE IMPACT OF ERRORS

Taken together, these misapprehensions undermine the integrated framework of the SWPMA and Regulation 61-107.17 by allowing an applicant to expand under the guise of replacement without satisfying the mandatory Demonstration of Need and consistency review required by the record and the statute. This outcome contravenes legislative intent and erodes the safeguards established to ensure rational and environmentally sound waste-management planning.

CONCLUSION

Reconsideration is necessary to correct manifest errors of law and fact and to prevent a miscarriage of justice. The Court's Order misapprehended the plain language of Regulation 61-107.17 and overlooked the mandatory statutory preconditions set forth in § 44-96-290(E). Because these errors go to the core jurisdictional and statutory limits on agency permitting authority, reconsideration is essential to ensure faithful application of South Carolina law and to preserve these issues for any subsequent review.

For these reasons, Petitioner respectfully requests that the Court:

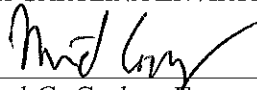
1. Alter or amend its October 14, 2025 Order to vacate the grant of summary judgment to Respondents and to grant Petitioner's Motion for Summary Judgment;
2. Reverse the South Carolina Department of Environmental Services' Phase I Determination approving Hilltop C&D's "replacement facility" application;

3. Find that Hilltop C&D's proposal constitutes an expansion within the meaning of S.C. Code Ann. § 44-96-290(E) and Regulation 61-107.17(D)(6)(e); and

4. Grant such other and further relief as the Court deems just and proper, including remand to the Department for proceedings consistent with this ruling and the Solid Waste Policy and Management Act.

Respectfully submitted,

SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT



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Attorneys for Petitioner Friends of Horse Creek Valley

October 22, 2025
Georgetown, S.C.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Friends of Horse Creek Valley,

Petitioner,

vs.

Hilltop C&D, LLC, and South Carolina
Department of Environmental Services,

Respondents

Docket No. 24-ALC-07-0316-CC

CERTIFICATE OF SERVICE

I hereby certify that on this date I have served Petitioner's Motion for Reconsideration by depositing same in the U.S. Mail to the parties addressed to:

Etta R. Williams Linen
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2600 Bull Street
Columbia, SC 29201

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Respectfully submitted,

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Jaya Wragg, Legal Assistant

October 22, 2025
Georgetown, S.C.