

SOUTHERN ENVIRONMENTAL LAW CENTER

200 WEST FRANKLIN STREET, SUITE 330
CHAPEL HILL, NC 27516-2559

Charlottesville, VA
Chapel Hill, NC
Atlanta, GA
Asheville, NC
Sewanee, TN

Telephone 919-967-1450
Facsimile 919-929-9421
selcnc@selcnc.org

April 9, 2009

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

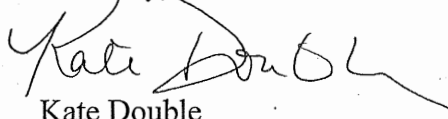
Re: Notice of Request for Contested Case Hearing –
S.C. Board of Health and Environmental Control March 12, 2009 Decision
(Board Docket No. 08-RFR-149)

Dear Ms. Shealy:

Enclosed please find for filing on behalf of Environmental Defense Fund, the League of Women Voters of South Carolina, the Sierra Club, the South Carolina Coastal Conservation League, and the South Carolina Wildlife Federation an original and one copy of a Notice of Request for Contested Case Hearing, along with a check for the \$250.00 filing fee. Please file the original and return a file-stamped copy to me in the enclosed self-addressed, stamped envelope. By copy of this letter, I am serving a copy of the Notice on all parties and counsel.

Thank you for your assistance. Please do not hesitate to contact me if you have any questions.

Sincerely,



Kate Double

Enclosures

cc (w/encl.): Lisa Lucas Longshore
Sara Bazemore, Esq.
Ben A. Hagood, Jr., Esq.
Elizabeth Henry Warner, Esq.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Environmental Defense

Fund, et al.)
(Your name))

v.)

S.C. Board of Health & Environmental Control;)
(The name of the agency you are appealing))
S.C. Dept. of Health & Environmental Control)

NOTICE OF REQUEST FOR CONTESTED
CASE HEARING

DATE: April 9, 2009

DOCKET NO. -ALJ- - -
(to be assigned by ALC)

Notice is hereby given that Environmental Defense Fund, et al (your name) does hereby appeal the decision issued by the above named agency and received on 3/13/09 (date), a copy of which is attached. **(YOU MUST ATTACH A COPY OF THE DECISION OR DOCUMENT DESCRIBING THE AGENCY ACTION YOU ARE APPEALING IN ORDER TO HAVE YOUR CASE PROCESSED)**. Please provide a brief statement regarding the issue(s) for which the hearing is requested and the relief requested: On March 12, 2009, the South Carolina Board of Health and Environmental Control ("the Board") issued a written decision affirming the Department of Health and Environmental Control's ("DHEC") staff decision to approve Air Quality Construction Permit No. 1040-0113-CA for Santee Cooper's Proposed Pee Dee Generating Station ("the Permit"). The Board's decision to affirm the DHEC staff decision was erroneous because the Permit fails to comply with applicable federal and state law. Therefore, Petitioners request that the court vacate the Board's decision and the Permit, and remand this matter to DHEC. A statement regarding the issues for which the hearing is requested, and the relief requested, is attached to this Notice as Attachment B. Petitioners reserve the right to add other and additional issues as this matter proceeds and new information becomes available.

Enclosed is a check money order cash in the amount of \$ 250 for the applicable filing fee in this matter.

Please see next page

Print your name _____

Mailing Address _____

Telephone Number _____

Are you represented by an attorney? Yes No
J. Blanding Holman IV

Attorney's name
PO Box 609

Mailing Address
Charleston, SC

City, State, Zip code
(843) 720-5240

Telephone Number _____

J. Blanding Holman IV (GT)

Sign your name
Attorney for Environmental Defense Fund, et al
City, State, Zip Code
Florence County
County of residence or of permit/license at issue

Are you represented by a CPA? Yes No

CPA's name _____

Mailing Address _____

City, State, Zip Code _____

Telephone Number _____

CERTIFICATE OF SERVICE

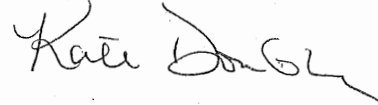
I hereby certify that I, Kate Double (your name), on the 9 day of April, 2009, in Chapel Hill (city), South Carolina, served a copy of the foregoing Request for Contested Case Hearing on all parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows:

Name of person/Agency served: Lisa Lucas Longshore, Clerk
Address: SC Board of Health and Environmental Control
City, State, Zip Code: 2600 Bull Street
Columbia, SC 29201

Name of person/Agency served: Sarah Bazemore, Esq.
Address: SC DHEC - Office of General Counsel
2600 Bull Street
City, State, Zip Code: Columbia, SC 29201

Print your name Kate Double

Sign your name



- 1) You must complete the **Request for Contested Case Hearing** on the reverse side of these instructions and mail it to the Administrative Law Court at the following address with the appropriate filing fee or Request for Waiver Form:

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

A copy of the Request must also be served on the agency from which you are appealing. If you do not know, you should contact the agency to determine the name of the person to be served with this document.

- 2) **In order for your case to be processed by the ALC, a copy of the decision or document that you are appealing must be attached to the Request for Contested Case Hearing.**

CERTIFICATE OF DATE OF MAILING

I, Kate Double, certify that on this 9th day of April, 2009, I deposited the Request for Contested Case Hearing in the United States Mail, first-class postage prepaid, addressed to:

Clerk's Office
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201



Kate Double

Names and Addresses of Petitioning Parties:

Environmental Defense Fund
4000 Westchase Boulevard
Suite 510
Raleigh, NC 27607

League of Women Voters of South Carolina
1 Johnson Road
Charleston, SC 29407

SC Coastal Conservation League
PO Box 1765
Charleston, SC 29402

South Carolina Wildlife Federation
215 Pickens Street
Columbia, SC 29205

Sierra Club
1314 Lincoln Street, #211
Columbia, SC 29201

Attachment A

S.C. Board of Health and Environmental Control March 12, 2009 Decision

(Docket No. 08-RFR-149)

BOARD:
Paul C. Aughtry, III
Chairman
Edwin H. Cooper, III
Vice Chairman
Steven G. Kisner
Secretary



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

S.C. Board of Health and Environmental Control
2600 Bull Street, Columbia, SC 29201
Telephone: (803) 898-3309 Fax: (803) 898-3393

BOARD:
Henry C. Scott
M. David Mitchell, MD
Glenn A. McCall
Coleman F. Buckhouse, MD

March 12, 2009

Via U.S. Mail Certified

91 7108 2133 3935 6746 1357

Gudrun Thompson, Esquire
Southern Environmental Law Center
200 West Franklin Street, Suite 330
Chapel Hill, NC 27516-2559

91 7108 2133 3935 6746 1364

J. Blanding Holman, IV, Esquire
Southern Environmental Law Center
38 Broad Street, Ste. 200
Charleston, SC 29401

91 7108 2133 3935 6746 1371

Ben Hagood, Esquire
Hagood & Kerr, PA
654 Coleman Blvd.,
Mt. Pleasant, SC 29464

Via Interagency Mail

Sara P. Bazemore, Esquire
SCDHEC – Office of General Counsel
2600 Bull Street
Columbia, SC 29201

RE: **Docket No. 08-RFR-149 – Final Agency Decision – Environmental Defense Fund, League of Women Voters of South Carolina, the Sierra Club, the South Carolina Coastal Conservation League and the South Carolina Wildlife Federation v. South Carolina Department of Health and Environmental Control and Santee Cooper**

Please find enclosed the Final Agency Decision in the above referenced matter.

Sincerely,

Lisa Lucas Longshore
Clerk

OGC #20830

**SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
FINAL AGENCY DECISION**

**In Re: Staff Decision dated December 16, 2008, to issue Air Quality Construction Permit
No. 1040-0113-CA for the Santee Cooper Pee Dee Generating Station, Florence County**

Board Docket No. 08-RFR-149

*Appearances: J. Blanding Holman, Esquire and Gudrun Thompson, Esquire, for Requestors
Southern Environmental Law Center on behalf of Environmental Defense Fund,
League of Women Voters of South Carolina, the Sierra Club, the South Carolina
Coastal Conservation League, and the South Carolina Wildlife Federation.*

*Ben A. Hagood, Jr., Esquire, for the South Carolina Public Service Authority
Santee Cooper, Permittee*

*Sara P. Bazemore, Esquire, for South Carolina Department of Health and
Environmental Control*

This matter comes before the South Carolina Board of Health and Environmental Control (Board) for final review pursuant to S.C. Code Ann. § 44-1-60. On December 16, 2008, following three years of gathering and reviewing information, engaging in numerous public participation forums, and conducting thorough technical and regulatory analyses, the Department issued Air Quality Construction Permit Number 1040-0113-CA to Santee Cooper for the construction of a Pee Dee Generating Station to be located near Kingsburg in Florence County. This Air Quality Construction Permit includes a final Prevention of Significant Deterioration (PSD) Permit for all PSD-regulated air pollutants and a final Notice of Maximum Available Control Technology (MACT) Approval for hazardous air pollutants. The Requestors filed a timely request for final review and a review conference was held on February 12, 2009. The Board affirms the Department's decision to issue the above-referenced permit.

The South Carolina Legislature granted the Department of Health and Environmental Control authority under the South Carolina Pollution Control Act (PCA), S.C. Code Ann. § 48-1-10 et seq., to promulgate rules and regulations and implement the PCA "to maintain reasonable

standards of purity of the air and water resources of the State, consistent with the public health, safety and welfare of its citizens, maximum employment, the industrial development of the State, the propagation and protection of terrestrial and marine flora and fauna, and the protection of physical property and other resources.”¹ The PCA further states, “[i]f, after appropriate public comment procedures,² as defined by department regulations, the department finds that the discharge from the proposed outlet or source will not be in contravention of provisions of this chapter, a permit to construct and a permit to discharge must be issued to the applicant.”³ The Department is responsible for implementing federal and state laws and regulations applicable to air quality standards, including air permitting review.

The Department’s review of an air permit is subject to applicable air regulations. Requestors have raised numerous issues of concern. Many of these issues are relevant to an air permit review. However, some issues, such as water issues and ash ponds, while related to the operation of this plant, are beyond the scope of review of an air permit. These related issues will be properly reviewed and analyzed in the Department’s review of other permits submitted by

¹ S.C. Code Ann. § 48-1-20.

² When a PSD permit application is submitted to the Department, the Department has the regulatory responsibility to act on that application in a timely manner, to provide notice to the public, and to provide opportunity for the public to make comments. In this matter, the Department went beyond the required public participation measures. On July 12, 2007, the Department conducted a Question and Answer public meeting. On October 9, 2007, the Department placed the PSD Preliminary Determination and draft PSD construction permit on public notice. A public hearing was held on November 8, 2007. Following requests for extensions of the public comment period and realization of a needed change in the draft permit, on December 7, 2007, the Department extended the public comment period through January 22, 2008. The Department received comments by letter, email and web response from numerous individuals and groups.

Santee Cooper submitted its MACT application on June 30, 2008. On July 22, 2008, the Department held a public meeting to explain the MACT application and answer questions. On September 23, 2008, the Department placed its Notice of MACT Approval (NOMA) on public notice. A public hearing was held on October 23, 2008 and the official public comment period closed on November 6, 2008. Following a thorough review of these comments, on December 16, 2008, the Department issued its Final Determination document. This included the final PSD construction permit, which incorporated the emission limits determined under the MACT Approval.

The Department also prepared a lengthy Response to Comments document to address the concerns raised during the public comment periods. Further, the Department created a summary table for the public explaining any and all changes made between the draft and final decisions. All of these documents, as well as supporting documents, were made available in a regularly updated, user-friendly format via the agency website.

³ S.C. Code Ann. § 48-1-100.

Santee Cooper. The Department's review of future permit applications will be subject to applicable public notice and public comment requirements, and any subsequent permit decisions issued by the Department in regard to the proposed Santee Cooper facility will be subject to appeal by proper parties.

The Board's decision is based on the Department's lengthy final decision document, the Request for Final Review submitted by the Requestors on December 31, 2008, and the written submissions and oral presentations provided by the parties. The Board heard from all of the parties in this matter at the Final Review Conference on February 12, 2009. Following this review and conference, the Board concludes that Department staff properly evaluated applicable law and policies in issuing Air Quality Construction Permit No. 1040-0113-CA to the Permittee. The Board finds that the issues raised by the Requestors in the Request for Final Review and at the Final Review Conference were thoroughly considered and addressed by the staff within the existing regulatory framework applicable to a PSD construction permit including applicable MACT requirements. The Board's review includes, but is not limited to, the following issues raised by the Requestors during the February 12, 2009 review conference: 1) the need for the plant and cleaner alternatives to coal combustion; 2) permit emission limits on hazardous air pollutants; 3) the decision not to establish emission limits and controls for Carbon Dioxide (CO₂); 4) PM_{2.5} emission limits; and 5) issuance of air quality permit prior to the Army Corps of Engineers' issuance of the Environmental Impact Statement for this project. Each of these issues is addressed below.

1) Need for the Plant and Cleaner Alternatives to Coal Combustion

The Requestors asserted that the Department must consider whether the plant is needed and whether cleaner options are available. Under the regulatory review framework for air

quality permits, the Department is required to review an application for a proposed project as submitted by the applicant to determine whether it meets the air quality standards of current air regulatory requirements. Neither the statute nor PSD implementing regulations provide for the Department to conduct a needs analysis for the Pee Dee generating facility. Rather, the Department's legal role is to evaluate whether the proposed facility will comply with all applicable PSD permit requirements and complete a review of the proposed permit in accordance with the provisions of Section 165(a)(2) of the Clean Air Act.

With respect to alternatives, Section 165(a)(2) requires that the Department provide the public with opportunity to comment on the proposed permit for the Pee Dee facility during a public hearing and through the submission of written comments "on the air quality impact of such source, alternatives thereto, control technology requirements, and other appropriate considerations." The record demonstrates that the Department reviewed the proposed permit in accordance with this statutory requirement and the PSD implementing regulations. Among other things, the Department held a public hearing on the draft PSD permit on November 8, 2007, and provided interested parties the opportunity to submit written or oral comments on all aspects of the proposed facility, including alternatives and other statutory factors identified above. Many interested parties submitted comments, which the Department reviewed and considered in making its Final Determination. The specific evaluation of whether this plant is needed is not within the purview of the Department's review of an air quality permit application. The regulations require the Department to review an application as submitted; therefore, the analysis of need and alternative energy generation methods is more properly considered by the applicant in drafting its application.

2) Hazardous Air Pollutants (HAPs) Emission Limits

The Requestors maintain that the Department conducted a flawed Maximum Achievable Control Technology (MACT) analysis for Hazardous Air Pollutants (HAPs) that would be emitted from the proposed Pee Dee facility. HAPs, including mercury, are a defined list of pollutants which require stringent emission limits developed through a case-by-case analysis of the Maximum Achievable Control Technology. In response to this requirement,⁴ Santee Cooper submitted its MACT application on June 30, 2008. The MACT application enables the Department to set case-by-case limits on hazardous air pollutants where no specific EPA MACT standards have been promulgated.

A case-by-case MACT analysis involves a four-step technical review process established in federal and state regulations.⁵ The review begins with a determination of what is the best-controlled similar source. Next, an emission limit referred to as a "MACT floor" is established based upon the control of emissions that is actually achieved in practice by the best-controlled similar source. Then, the emissions limit may be further refined through establishment of a "beyond-the-floor" analysis. This step of the MACT analysis considers the cost of achieving further emissions reductions and any non-air quality health and environmental impacts and energy requirements of achieving these further emissions reductions. Finally, through an

⁴ In May 2005, the EPA promulgated the Clean Air Mercury Rule (CAMR) which established a mercury emission limit for new sources and a national cap-and-trade program. On February 8, 2008, following completion of the public comment period for the draft PSD permit, the U.S. Court of Appeals for the D.C. Circuit vacated the CAMR. At the time of the mandate implementing the CAMR vacatur, no federal guidance was available on whether 112(g) MACT applications were required. The Department took the initiative and required Santee Cooper to submit a case-by-case MACT Application for its proposed plant, in accordance with Section 112(g) of the Clean Air Act. The Department deemed it prudent to require such an application and proceed with the MACT review for sources of HAPs, including mercury. The EPA has since issued a memorandum clarifying that 112(g) MACT applications and a subsequent Notice of MACT Approval are indeed required pursuant to the federal Clean Air Act when a new major source of hazardous air pollutants is proposed to be constructed and a MACT standard has not yet been finalized by the EPA. The proposed Pee Dee facility would exceed the HAP major source threshold, which is one that has the potential to emit over 10 tons per year of a single HAP and over 25 tons per year of all HAPs air pollutants in combination.

⁵ S.C. Code Regs. § 61-62.63.41.

extensive review of available information the Department established emissions limits for particular pollutants, including mercury.

The Department considered several different limits for mercury throughout the application process, as the applicable regulations changed.⁶ Santee Cooper proposed a mercury limit that results in maximum potential annual emissions of 57 lb/yr per unit in its MACT application. The Department proposed a lower mercury limit that results in maximum potential annual emissions of 46.3 lb/yr per unit in the Notice of MACT Approval. The Department properly retained the more stringent mercury control level for the annual limit of 46.3 lb/yr per unit in its final determination and permit.

The Department properly exercised its authority to include additional permit conditions to monitor and control mercury emissions. One additional permit condition requires Santee Cooper to conduct a six-month trial of a sorbent injection technology, known as Activated Carbon Injection or ACI, to determine that technology's mercury removal and cost effectiveness. If this technology proves to be effective in removing mercury at a reasonable cost, this technology can be made a permanent requirement of the permit. The permit also requires Santee Cooper to leave space in its facility design in the event that future technologies become available for additional mercury control. Another additional permit condition requires Santee Cooper to install an ambient mercury monitor near the site to assist the Department with its statewide mercury study.

⁶ The Federal Clean Air Mercury Rule (CAMR) would have allowed Santee Cooper to emit up to 112 pounds per year (lb/yr) of mercury for each boiler. The Department determined that Santee Cooper could meet a lower limit using the air pollution control devices Santee Cooper proposed in its application. The Department exercised its regulatory authority and proposed a lower limit of 69 lb/yr of mercury for each unit in its draft PSD permit placed on public notice on October 7, 2007, instead of the Federal CAMR limit. When CAMR was vacated by the Federal Courts on February 8, 2008, the Department required Santee Cooper to submit a 112(g) MACT application.

Instead of setting emissions limits for each individual HAP for each source, the EPA and states have consistently used surrogates to regulate HAP emissions since 1990. Using surrogates entails the grouping of similar HAPs and regulating one pollutant that represents a particular group. The Department narrowed the HAPs into three groups: acid gases such as hydrochloric acid and hydrogen fluorides, non-mercury particulate matter such as nickel, and organic HAPs such as toluene and benzene. Using surrogates has been upheld by the courts as an acceptable and practical way of regulating large groups of emissions. The Department properly conducted the four-step MACT analysis for the HAPs to be emitted by this facility, including mercury, and lawfully established appropriate emission limits based upon such analysis.

3) Carbon Dioxide (CO₂) Emissions Decision;

The Requestors contend that the Department should have adopted PSD permit limits for carbon dioxide (CO₂) emissions from the Pee Dee facility. The Department acknowledges that CO₂ is an air pollutant, as was held by the U.S. Supreme Court in *Massachusetts v. EPA*. However, the Department did not include an emission limit on CO₂ in this permit because it determined that CO₂ is not a “regulated” air pollutant under the state’s PSD program, and no state or federal air regulations establish standards or require emission limits or controls for CO₂. The issues of whether CO₂ is currently considered to be a “regulated” air pollutant at the federal level and how it may be subject to emission limits or controls in the future are important matters of national significance currently being addressed by the EPA and the courts.⁷ In light of the

⁷ This past July, the EPA published an Advanced Notice of Proposed Rulemaking related to greenhouse gases (GHG), including CO₂, to gather information and determine whether it should establish controls and establish limitations for GHG emissions under the Clean Air Act. Regulating Greenhouse Gas Emissions Under the Clean Air Act; Proposed Rule, 73 Fed. Reg. 44354 (July 30, 2008). On December 18, 2008, the EPA issued a letter clarifying that CO₂ is not considered to be a “regulated” pollutant requiring emission controls. Memorandum from Stephen L. Johnson, EPA Administrator, to [EPA] Regional Administrators (Dec. 18, 2008). This EPA interpretive memorandum was also formally announced and published in the Federal Register. 73 Fed. Reg. 80300 (Dec. 31,

actions being undertaken on a national level and since no specific state requirement currently regulates CO₂ at the state level, the Board finds that the Department properly declined to conduct a BACT analysis and establish an emission limit for CO₂ in this permit.

4) PM_{2.5} Emission Limits.

The Requestors contend that the use of PM₁₀ as a surrogate for PM_{2.5} is not authorized by the Clean Air Act and that the EPA rule that allows this surrogate approach is being challenged in court. Particulate matter (PM) is emitted in many different particle sizes. PM_{2.5}, also known as PM fine, has a diameter of 2.5 micrometers or less. PM₁₀ includes all particle sizes below 10 micrometers in diameter, including PM_{2.5}. The Department established emissions limits for PM₁₀ emissions in the permit. The initial federal regulations for permitting PM_{2.5} were finalized by the EPA on May 16, 2008, and became effective on July 15, 2008. These regulations gave states that are meeting the PM_{2.5} National Ambient Air Quality Standards (NAAQS) three years to adopt an equivalent state regulation for permitting PM_{2.5} emissions. Before states can effectively set PM_{2.5} emission limits in permits, federal guidelines are needed for estimating emissions, testing and modeling of PM_{2.5}.

The EPA has not finalized these guidelines yet. Without these guidelines, states lack necessary tools to establish and enforce PM_{2.5} permit limits. Once these guidelines are finalized by EPA, we expect the Department will expeditiously move forward with adopting state regulations for permitting PM_{2.5} emissions. Until these state regulations are in place, the EPA allows states to continue permitting PM₁₀ emissions as a surrogate for PM_{2.5} emissions.⁸

2008). On February 17, 2009, the new EPA Administrator Jackson granted a petition for reconsideration of the December 18, 2008 Johnson Memo, but declined to take action to stay the effectiveness of the Johnson memo. Memorandum from Lisa P. Jackson, EPA Administrator, to Mr. David Bookbinder, Sierra Club Chief Climate Counsel (Feb. 17, 2009).

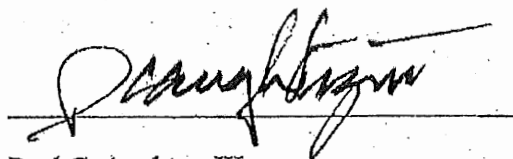
⁸ EPA issued memo, "Interim Implementation of New Source Review Requirements for PM_{2.5}" on October 23, 1997.

The Florence area is in attainment with the PM_{2.5} NAAQS. The Department's decision to use the surrogate approach for PM_{2.5} is based upon EPA guidance that was controlling at the time of the Department's determination. The fact that such guidance is being challenged in the courts does not render reliance upon it improper or invalid.

5) Environmental Impact Statement (EIS)

The Requestors contend that the Department should have waited to issue the permit until the U.S. Army Corps of Engineers (Corps) finalizes the Environmental Impact Statement (EIS) for this project. The Department is participating with the Corps as a Coordinating Agency in the Corps' process of preparing an EIS for this project. The EIS decision is a separate regulatory requirement to this air permit. At this time, it is uncertain when the final EIS will be issued. Neither an EIS, nor any other outside analysis, is required prior to the Department's issuance of a PSD or MACT permit. The Department properly proceeded with issuance of this permit because it had all information necessary to make a decision regarding the state air quality permit.

The Board finds that the Department staff issued a technically sound and legally valid permit. Accordingly, the Board upholds the Department's decision to issue Air Quality Construction Permit No. 1040-0113-CA to the Permittee.



Paul C. Aughtry, III
Chairman
Board of Health and Environmental Control
For the Board

MARCH 12, 2009

Notice of Right to Request Contested Case Hearing Before Administrative Law Court

S.C. Code §44-1-60(F)(2) provides that within thirty days after the receipt of the Board's written final agency decision an applicant, permittee, licensee, or affected person desiring to contest the final agency decision may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act. A request for a contested case hearing before the Administrative Law Court (ALC) must be filed 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>. 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 following address:

Lisa L. Longshore
Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

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.

RECEIVED
MAR 13 2009
BY AW

Attachment B

STATEMENT REGARDING ISSUES FOR WHICH HEARING IS REQUESTED AND RELIEF REQUESTED

Pursuant to S.C. Code Ann. § 44-1-60(F)(2), S.C. Code Ann. § 1-23-600(C) and Rule 11 of the South Carolina Rules of Procedure for the Administrative Law Court, Environmental Defense Fund, the League of Women Voters of South Carolina, the Sierra Club, the South Carolina Coastal Conservation League, and the South Carolina Wildlife Federation (“Petitioners”) hereby request a contested case hearing regarding the South Carolina Board of Health and Environmental Control’s March 12, 2009 decision affirming the Department of Health and Environmental Control’s (“DHEC”) approval of Air Quality Construction Permit No. 1040-0113-CA (“the Permit”) for Santee Cooper’s proposed Pee Dee Generating Station (“the Pee Dee plant”). In support of their request for a contested case hearing, Petitioners provide this statement regarding the issues for which hearing is requested and the relief requested. Petitioners reserve the right to raise additional issues as this matter proceeds and new information becomes available.

I. Introduction

DHEC staff approved the Permit on December 16, 2008. After Petitioners submitted a Request for Final Review of the Permit on December 31, 2008, the Board held a Final Review Conference on February 12, 2009. The Board’s written decision affirming the staff’s department decision, dated March 12, 2009, was received by counsel for Petitioners on March 13, 2009.

II. The Petitioners

Environmental Defense Fund is a national nonprofit organization representing more than 400,000 members, including over 2,500 members in South Carolina. The League of Women Voters of South Carolina, a subsidiary of the League of Women Voters of the United States, is a non-profit corporation organized and existing under the laws of the State of South Carolina, with over 700 members across the state. The Sierra Club is a national grassroots conservation organization with over 750,000 members nationally and over 5,400 in South Carolina. The South Carolina Coastal Conservation League is a non-profit corporation organized and existing under the laws of the State of South Carolina, with over 4,000 members across the state. The South Carolina Wildlife Federation, an affiliate of the National Wildlife Federation, is a nonprofit citizens' conservation organization with approximately 5,200 members across the state.

The interests of Petitioners and their members will be harmed by approval of the Permit, which authorizes air pollution in excess of legal limits. Petitioners' members will suffer individual injuries by virtue of such air pollution. Specifically, the air pollution will damage Petitioners' members' health, property, and traditional way of life, in addition to harming treasured natural areas that Petitioners and their members enjoy and seek to protect. Moreover, DHEC's failure to follow the required permitting procedures and conduct the proper analysis to determine the impact of the Plant, whether it is needed, and whether alternatives exist has harmed the procedural interests of Petitioners and their members. A decision that the Permit is unlawful would significantly improve the health and welfare of Petitioners' members, by requiring DHEC to impose more stringent air pollution emissions limits at the Pee Dee plant.

III. Issues to be Resolved

1. Does the Permit violate the Clean Air Act's stringent provisions for controlling Hazardous Air Pollutants ("HAPs")?
 - a. Did DHEC err in establishing a Maximum Achievable Control Technology ("MACT") limit for mercury that does not meet applicable standards?
 - b. Did DHEC err by failing to establish MACT limits for the over 60 non-mercury HAPs the Pee Dee plant will emit, and instead using non-HAP, conventional pollutants as "surrogates"?
 - c. Did DHEC err by exempting the Pee Dee plant from MACT requirements during periods of startup, shutdown, and malfunction ("SSM")?
2. Does the Permit violate Clean Air Act provisions requiring control of carbon dioxide ("CO₂") emissions?
 - a. Did DHEC err when it failed to conduct a Best Available Control Technology ("BACT") analysis and to set a BACT emissions limit or any design, equipment, work practice or operational standard for CO₂?
 - b. Did DHEC err when it failed to consider CO₂ in the BACT collateral impacts and alternatives analyses?
3. Did DHEC err by issuing the Permit without setting BACT permit limits for fine particle pollution, in violation of the Clean Air Act and its implementing regulations?
4. Does the Permit violate Clean Air Act provisions requiring control of coarse particle pollution, including particles less than 100 microns in diameter ("PM") and particles less than or equal to 10 microns in diameter ("PM₁₀")?

- a. Did DHEC err in failing to revisit the BACT analyses for PM/PM₁₀ despite a change to a particle pollution control technology that provides better control of PM/PM₁₀?
 - b. Did DHEC err in rejecting the results of emissions testing at existing coal-fired units when conducting its BACT analysis for PM/PM₁₀?
 - c. Did DHEC err in issuing the permit despite failure to give public notice of the expected impacts on ambient air quality from the Pee Dee plant's PM₁₀ emissions?
5. Did DHEC err in rendering its permitting decision based on severely flawed air quality modeling?
- a. Did DHEC err in issuing the permit based on flawed modeling of PM₁₀ impacts that failed to accurately project the ambient PM₁₀ impacts of the Pee Dee plant?
 - b. Did DHEC err in allowing Santee Cooper to use non-site-specific, low quality meteorological data in assessing air quality impacts of the Pee Dee plant?
 - c. Did DHEC err in issuing the permit despite modeling that underestimated impacts on air quality and related values at Cape Romain National Wildlife Refuge, a "Class I" area designated by Congress as worthy of the highest protection under the Clean Air Act?
6. Did DHEC err by excluding coal gasification technology from detailed consideration?
- a. Did DHEC erroneously reject coal gasification, a cleaner and more efficient process for generating electricity from coal, as BACT?

- b. Did DHEC err in refusing to analyze the collateral impacts of coal gasification (or any other BACT technology) on CO₂ emissions?
 - c. Did DHEC err in ignoring, or rejecting without adequate justification, public comments suggesting coal gasification as an alternative to pulverized coal generation?
7. Did DHEC err by failing to include an analysis of coal combustion waste impacts as part of the consideration of environmental impacts in the BACT analysis?
 8. Did DHEC err by issuing the Permit without considering relevant information that will be included in a forthcoming Environmental Impact Statement being prepared in conjunction with Santee Cooper's application for a wetlands fill permit?
 9. Did DHEC err in issuing a permit for two 660 megawatt coal-fired units, despite evidence in the record that 1320 megawatts of new coal-fired generation is not needed and that cleaner alternatives exist?
 10. Did DHEC err by refusing to exercise its authority under South Carolina law to deny the Permit when necessary to protect public health and the environment?
 11. Such other and additional issues as may be developed as this case proceeds.

IV. Relief Sought

As Petitioners will show, the Board's Decision affirming issuance of the Permit was erroneous under the applicable statutory and regulatory standards. Accordingly, Petitioners request that the Court vacate the Decision in its entirety and remand the permit to DHEC.