

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Walter Buchanan,)	Docket No. 24-ALJ-07-0367-CC
)	
Petitioner,)	
)	
v.)	ORDER DENYING MOTION
)	FOR RECONSIDERATION
South Carolina Department of)	
Environmental Services and Silfab Solar,)	
)	
Respondents.)	
_____)	

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Motion for Reconsideration (Motion) filed by Walter Buchanan (Petitioner) on January 2, 2025. This Court previously issued an Order of Dismissal on December 23, 2024, granting a Joint Motion to Dismiss filed by the South Carolina Department of Environmental Services¹ (DES or Department) and Silfab Solar (Silfab). Importantly, Petitioner failed to respond to the Department’s Motion to Dismiss. *See* SCALC Rule 19 (“[f]ailure of a party to timely file a response may be deemed a consent by that party to the relief sought in the motion or petition.”).

Now, in its Motion, Petitioner requests the Court reconsider its legal analysis under the guise of the discovery of new evidence. On January 10, 2025, Silfab filed its Response to the Motion.

For the reasons stated below, Petitioner’s Motion is denied.

DISCUSSION

As grounds for his Motion for Reconsideration, Petitioner cites to Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRCP). Rule 59(e), SCRCP, provides for the timeframe to file a motion to alter or amend the judgment in Circuit Court, which is inapplicable to this case. *See* SCALC Rule 68 (“the South Carolina Rules of Civil Procedure and the South Carolina Appellate Court Rules, in contested cases and appeals respectively, may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules.”).

¹ Prior to July 1, 2024, the Department was recognized as the Department of Health and Environmental Control. South Carolina Act No. 60 of 2023 and section 1-30-140 of the South Carolina Code (Westlaw Edge through 2024 Act No. 210).



The applicable rules in this case are the Rules of Procedure for the Administrative Law Court (SCALC Rules). SCALC Rule 29(D) governs a motion for reconsideration in this case and provides, in relevant part: “[a]ny party may move for reconsideration of a final decision of an administrative law judge in a contested case to alter or amend the final decision, subject to the grounds for relief set forth in Rule 59, SCRCP.” “In cases permitting an agency to reconsider its decision, courts have emphasized that an agency’s power to reconsider or rehear a case is not an arbitrary one, and such power should be exercised only when there is justification and good cause; i.e., newly discovered evidence, fraud, surprise, mistake, inadvertence or change in conditions: *Bennett v. City of Clemson*, 293 S.C. 64, 66-67, 358 S.E.2d 707, 708-09 (1987) (citing 2 Am.Jur.2d, Administrative Law, § 522 et seq. (1962 & Supp. 1986)).

Nevertheless, in considering Petitioner’s arguments, it is also important to recognize that “[a] party cannot use Rule 59(e) [SCRCP,] to present to the court an issue the party could have raised prior to judgment but did not.” *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990); *see e.g., Poch v. Bayshore Concrete Prods./S.C., Inc.*, 386 S.C. 13, 31, 686 S.E.2d 689, 699 (Ct. App. 2009), *aff’d as modified*, 405 S.C. 359, 747 S.E.2d 757 (2013) (“A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not.”) “Issues which could have been presented to the court for consideration previously, but which were not, are not the proper subject of Rule 59(e) relief; the issues are waived.” *Hickman*, 301 S.C. at 456, 392 S.E.2d at 482 (quoting *Smith v. Stoner*, 594 F. Supp. 1091, 1118 (N.D. Ind. 1984)).

Here, Petitioner asks that this Court reconsider its Order of Dismissal because it obtained new evidence via Freedom of Information Act (FOIA) requests that was “not within Petitioner[’s] possession at the time Petitioner filed for contested case hearing with this Court.” However, Petitioner did not provide any information on when he received this “new evidence” or why it could not have been obtained by due diligence before the Court issued its Order of Dismissal. In fact, Petitioner did not even provide a reason for his failure to timely respond to the Motion to Dismiss, other than stating he “acknowledges [he] did not pursuant to Rule 19 of the SCALC Rules timely file a response but respectfully disagrees that this omission is deemed consent to the relief sought by Petitioners.” Yet, the Court’s Rules of Procedure specifically provide that “[f]ailure of a party to timely file a response may be deemed a consent by that party to the relief sought in the

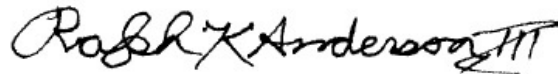
motion or petition.” Enforcement of court rules is ordinary practice and thus, I find Petitioner’s argument unavailing.

Accordingly, Petitioner’s Motion is denied.

ORDER

IT IS THEREFORE ORDERED that Petitioner’s Motion for Reconsideration is **DENIED.**

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

January 17, 2025
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Perez
Judicial Law Clerk

January 17, 2025
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Walter Buchanon,)	Docket No. 24-ALJ-07-0367-CC
)	
Petitioner,)	
)	
v.)	ORDER OF DISMISSAL
)	
South Carolina Department of)	
Environmental Services and Silfab Solar,)	
)	
Respondents.)	
_____)	

This matter is before the South Carolina administrative Law Court (Court) pursuant to a Joint Motion to Dismiss (Motion) filed by the South Carolina Department of Environmental Services (Department) and Silfab Solar (Silfab) (collectively, Respondents) on November 27, 2024. As of the date of this Order, Petitioner has not filed a response to the Motion. Pursuant to Rule 19 of the Rules of Procedure of the South Carolina Administrative Law Court (SCALC Rules), “[f]ailure of a party to timely file a response may be deemed a consent by that party to the relief sought in the motion or petition.” As a result, the Court finds that Petitioner’s failure to respond is deemed consent to the relief sought by Respondents. Accordingly, as explained further below, Respondents’ Motion to Dismiss is granted.

BACKGROUND

On March 1, 2024, the Department’s predecessor,¹ the South Carolina Department of Health and Environmental Control (DHEC), issued an air quality permit to Silfab for the construction of solar cell and panel production facility in Fort Mill, South Carolina. Specifically, the permit authorizes construction of solar cell and module manufacturing equipment and processes, associated chemical storage tanks, and an emergency generator, and also establishes applicable emission limits, source testing, monitoring, recordkeeping, and reporting requirements. Under the issued permit, facility equipment and operations includes, emissions of hydrochloric

¹ On July 1, 2024, the South Carolina Department of Health and Environmental Control (SCDHEC) was abolished and the administrative authority to regulate permits pursuant to the National Pollutant Discharge Elimination System Permit Program (NPDES) was transferred to the newly-created South Carolina Department of Environment Services (SCDES). See Act No. 60, 2023 S.C. Acts, 302-27 (implementing government agency restructuring); S.C. Code Ann. § 1-30-140 (Westlaw Edge through 2024 Act No. 210).



acid (HCl) and hydrogen fluoride (HF). Pursuant to Regulation 61-62.5 of the South Carolina Code of Regulations (2012), Standard No. 8, *Toxic Air Pollutants* (Standard 8), the facility used air dispersion modeling to demonstrate compliance with applicable ambient standards for HCl and HF under Standard 8.

Then, on March 13, 2024, several community members filed a request for a DHEC Board review of the permit's issuance pursuant to subsection 44-1-60(E)(2) of the South Carolina Code (2008). On April 17, 2024, the Board declined a final review, and thus the issued permit became the final agency decision.

On June 4, 2024, Silfab informed DHEC that it needed to modify its proposed stack heights to ensure compliance with county requirements regarding building/equipment height. Stack height is a parameter used to determine compliance with state and federal ambient air quality standards. Condition I.1 of the permit provides in relevant part that “[a]ny changes in the parameters used in [the facility’s air dispersion modeling] demonstration may require a review by the facility to determine continuing compliance with [the state and federal ambient air quality] standards.” This language implements Section II.C of Standard 8, which states that “[c]hanges in ... parameters will require a review by the facility to determine if they have an adverse impact on the compliance demonstration.” Accordingly, DHEC informed the facility that it needed to submit an updated air dispersion modeling analysis to verify that the changed stack height and any additional changed modeling parameters would maintain compliance with applicable air quality standards.

On July 3, 2024, Silfab submitted updated modeling forms, including the updated modeling parameters. The updated modeling parameters included updates to stack height, stack diameter, and exit velocity, and accounted for two buildings being constructed nearby. The Department² documented its review of the updated modeling in an “Air Compliance Analysis Summary Sheet” (Summary Sheet) dated July 22, 2024. Then, on July 30, 2024, the Department sent a letter to Silfab acknowledging its receipt of Silfab’s plans to install four boilers exempt from construction permitting requirements—a matter unrelated to the facility’s updated modeling analysis. The letter also reiterated what was stated in the Summary Sheet, specifically that the Department reviewed the facility’s updated modeling analysis, and that Silfab had demonstrated continued compliance

² At this time, the Department was no longer DHEC.

with the applicable standards. Importantly, the letter notes that, because the updated parameters were submitted in accordance with Section I.1 of the facility's permit, a construction permit revision was not required and was not being issued.

On August 14, 2024, Petitioner, on his behalf and on the behalf of others, filed a Petition for Review (Petition) to the Department seeking review of the Department's July 30 letter. Two days later, the Department's general counsel notified Petitioner, through his counsel, that DHEC was abolished, and that the review process previously available before the DHEC Board under section 44-1-60 was no longer applicable.

Petitioner then filed a request for contested case hearing form with this Court as well as an Agency Information Sheet and Notice of Appearance on September 9, 2024.^{3, 4} However, the form did not specifically identify the intended Petitioner(s) and identified only the submitting attorney, Mr. J. Cameron Halford, by name. In addition to those documents, Petitioner submitted the Department's March 1, 2024 decision issuing the permit to Silab, its August 14 Petition to the Department and the Department's August 16 letter to its Petition. Yet, in its actual request, Petitioner claims to be seeking review of only an unnamed July 30, 2024 "decision" because it resulted in a "violation of substantive due process and error of law denying proper notice and opportunity to be heard, thus denying contested case status," pursuant to the South Carolina Constitution. Moreover, the contested case form did not include an original signature and the filing of the Agency Information Sheet was improper as the agency, the Department in this case, is responsible for its filing. As a result, on September 10, 2024, the ALC Clerk of Court (Clerk) sent a memorandum to Petitioner explaining the signature deficiency, the Agency Information Sheet was also returned. Then, on October 5, 2024, Petitioner corrected the deficiency.⁵ The case was then assigned on October 16, 2024.

³ Curiously, the "Agency Information Sheet and Notice of Appearance" erroneously filed on behalf of the Petitioner on August 29, 2024, identified Andy Lytle, Dave Phelps, Garry Griffith, and Carolina Land as putative "appellants." However, Petitioner's cover letter indicates Walter Buchanon as the only Petitioner.

⁴ The documents were dated August 29, 2024; however, the Court did not receive them until September 9, 2024. *See* SCALC Rule 4.

⁵ Although Respondents believe it was filed on September 9, 2024, it was filed on October 5, 2024. When the Clerk sent the memorandum, the Clerk also returned the original request for contested case hearing form that had already been stamped as filed on September 9. Petitioner then resubmitted this form by placing a wet signature on top of the original form. To avoid confusion, the Clerk file stamped the cover letter that Petitioner included with the resubmission, thus indicating the filing was perfected on October 5, 2024.

DISCUSSION

Respondents argue the case should be dismissed because it not a contested case and thus, the Court lacks subject matter jurisdiction. More specifically, Respondents assert the Department’s July 30th letter was not a dispositive decision and therefore does not impact any private rights or duties implicating a need for a hearing. As a secondary matter, Respondents argue the case should be dismissed because Petitioner’s request does not meet the requirements for procedural jurisdiction.

Does the Court have Subject Matter Jurisdiction?

“Subject matter jurisdiction is the power a court has to hear cases in the general class to which the proceedings in question belong.” *McCain v. Brietharp*, 399 S.C. 240, 247, 730 S.E.2d 916, 919 (Ct. App. 2012). This Court, as a creation of statute, only has those powers statutorily granted to it. *See, e.g., S.C. Dep’t of Consumer Affairs v. Foreclosure Specialists, Inc.*, 390 S.C. 182, 186, 700 S.E.2d 468, 470 (Ct. App. 2010) (“The statutes do not grant the Department or the ALC authority to exceed their statutorily granted powers.”); *Responsible Econ. Dev. v. S.C. Dep’t of Health & Env’tl. Control*, 371 S.C. 547, 553, 641 S.E.2d 425, 428 (2007) (“As a creature of statutes, regulatory bodies like DHEC have only the authority granted them by the legislature.”). With the exception of specific statutory exceptions, this Court has subject matter jurisdiction “over all appeals from final decisions of contested cases pursuant to the Administrative Procedures Act, Article I, Section 22, Constitution of South Carolina, 1895, or another law.” S.C. Code Ann. § 1-23-600(A) of the South Carolina Code (Supp. 2024). Subsection 48-6-30(A) of the South Carolina Code (Supp. 2024) specifically gives this Court jurisdiction over contested cases generated by Department decisions

involving the **issuance, denial, renewal, suspension, or revocation of permits, licenses, certificates, or other actions of the department which may give rise to a contested case**, except a decision to establish a baseline or setback line, must be made using the procedures set forth in this section.

S.C. Code Ann. § 48-6-30(A) (emphasis added).⁶ A “contested case” is a proceeding in which the legal rights, duties, or privileges of a party are required by law or by Article I, Section 22,

⁶ Moreover, subsection (D)(2) provides:

[w]ithin thirty calendar days after the mailing of a decision pursuant to item (1), an applicant, permittee, licensee, certificate holder, or **affected person** desiring to contest the department decision may request a

Constitution of the State of South Carolina, 1895, to be determined by an agency or the Administrative Law Court after an opportunity for hearing. S.C. Code Ann. § 1-23-505(3) (Supp. 2024).

Here, Petitioner’s request challenges the Department’s July 30th letter which acknowledged Silfab’s review and update of its modeling data. Notably, the letter did not issue or modify Silfab’s permit. Rather, it merely memorialized that Silfab’s April 17, 2024 permit remained in compliance with applicable standards. In addition, the regulations which implement the licensing and review of Silfab’s permit do not provide for a contested case hearing for review of updated modeling parameters. In fact, to the contrary, Standard 8 within the regulations and Condition I.1 of the permit itself expressly address modeling parameter changes by requiring the facility to conduct a review to verify continued compliance.

Because Silfab’s submission of the updated air dispersion modeling analysis did not trigger a legal duty for the Department to review or issue a final decision regarding the facility review, the Department’s July 30th letter cannot be described as a “contested case” as defined under the Administrative Procedures Act (APA). *Amisub of SC, Inc. v. S.C. Dep’t of Env’tl. Control*, 403 S.C. 572, 596, 743 S.E.2d 786 (2013) (holding letter from DHEC did not give rise to final agency decision subject to a contested case proceeding because DHEC owed no legal duty to issue staff decision). As a result, this Court does not have jurisdiction to review Petitioner’s challenge to the July 30 letter. *See* § 1-23-600(D).

Still, Petitioner claims a right to a contested case based on Article 1, Section 3 and Section 14 of the South Carolina Constitution⁷ in his request for review before this Court. Article I, Section 3 of the South Carolina Constitution provides that “[t]he privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be

contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act. Notwithstanding Section 1-23-600(H)(1), the entirety of Section 1-23-600(H) shall apply to timely requests for a contested hearing of decisions from the Department of Environmental Services. The court shall give consideration to the provisions of Section 1-23-330 regarding the department's specialized knowledge.

S.C. Code Ann. § 48-6-30(D)(2) (Supp. 2024) (emphasis added).

⁷ Article 1, Section 14 of the South Carolina Constitution provides for the right of a trial by jury, however, this Court does not hear jury trials.

denied the equal protection of the laws. However, other than the statutory provisions granting affected persons the right to challenge the issuance of a permit pursuant to section 48-6-30, Petitioner failed to explain to this Court what legally protected right was denied in deprivation of its constitutional due process rights. Importantly, “the interests protected by the due process clause are defined not by the Constitution, but by independent sources, such as state law.” *James Acad. of Excellence v. Dorchester Cnty. Sch. Dist. Two*, 376 S.C. 293, 657 S.E.2d 469 (2008) (citing U.S.C.A. Const. Amend. 14); *Tant v. S.C. Dep’t of Corrections*, 408 S.C. 334,341, 759 S.E.2d 398 (2014) (holding that violation of due process hinges on inquiry into whether interest involved can be defined as liberty or property within the meaning of the due process clause); *U.S. Rubber Co. v. McManus*, 211 S.C. 342, 350, 45 S.E.2d 335, 338 (1947) (due process rights only vest when they are absolute, complete, and unconditional, and not dependent upon future act, contingency, or decision).

Here, Silfab’s permit was issued months prior to the Department’s July 30 letter and the terms of that permit expressly provide for the modeling parameter to be updated. Consistent with the terms of the permit, Silfab submitted updated modeling forms to the Department on July 3, 2024. Notably, the April 17, 2024 permit was not modified by the facility’s updated modeling nor by the Department’s July 30th letter of acknowledgement of continued compliance. The fact that the Department reviewed Silfab’s updated modeling and verified its continued compliance does not create a legal protected right and thus, Petitioner has failed to show a deprivation of its legal rights or privileges.⁸

Finally, as stated at the outset of this Order, Petitioner’s failure to file a response to the Motion to Dismiss is deemed consent to the relief requested by Respondents pursuant to the Court’s Rules of Procedure. *See* SCALC Rule 19(A).⁹

⁸ Quizzically, Petitioner did not contest the issuance of the permit that contained Condition I.1; thus, Petitioner waived its right to challenge that provision when it did not timely contest the permit, including Condition I.1, before this Court.

⁹ As a secondary argument, Respondents argue that even if the letter at issue was a contested case, Petitioner has failed to meet the requirements for procedural jurisdiction. The Court agrees. Rule 23(B) of the Rules of Procedure for the South Carolina Administrative Law Court (SCALC Rules) provides that “the Court may dismiss a contested case ... for failure to comply with any of the rules of procedure for contested cases, including the failure to comply with any of the time limits provided in these rules or by order of the Court.” Here, subsection 48-6-30(D)(2) of the South Carolina Code provides “thirty calendar days after the mailing of a decision” of the Department for an affected person to request a contested case hearing before this Court. The letter at issue was sent electronically on July 30, 2024. Petitioner did not specifically request, in writing, to be notified of the letter prior to it being sent. Accordingly,

IT IS THEREFORE ORDERED that the Respondents' Motion to Dismiss is **GRANTED**, and these matters are **DISMISSED** with prejudice.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

December 23, 2024
Columbia, South Carolina

Petitioner had until August 29, 2024, thirty days after electronic mailing of the letter, to file its request. However, Petitioner did not perfect its request for a contested case until October 5, 2024, thus making it untimely.

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Perez
Judicial Law Clerk

December 23, 2024
Columbia, South Carolina