

MARLBORO COUNTY COUNCIL

“CALLED” MEETING & PUBLIC FORUM

MARLBORO COUNTY COURTHOUSE COURTROOM

THURSDAY, JULY 23, 2009

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| CHAIRMAN | DR. CAROLYN PRINCE |
| VICE-CHAIR | CORRIE PLATO |
| ADMINISTRATOR | CECIL KIMREY |
| COUNTY ATTORNEY | HARRY EASTERLING, JR. |

COUNCIL:

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| JEAN MCLEAN, RON MUNNERLYN, DR. CAROLYN PRINCE, STEVE BLACKMON, AND | WILLIE GLADDEN, CORRIE H. PLATO, KEN ALLEN, * ANTHONY WOODS |
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* ABSENT

INVOCATION – Reverend Smith, Saint James Baptist Church

APPROVAL OF AGENDA ITEMS

Mr. Cecil Kimrey, County Administrator advised he would like to add two items to the agenda: Purchase of Sheriff Department Vehicles and Industrial Park Prospect Discussion. He advised he would like to handle both items before going into executive session.

Motion made by Mr. Ron Munneryn, seconded by Mr. Steve Blackmon to add two items to the agenda before executive session: purchase of sheriff department vehicles and Industrial Park prospect discussion. Vote in favor. Unanimous. Motion carried.

SHERIFF DEPARTMENT VEHICLES

Mr. Cecil Kimrey, County Administrator advised the Sheriff Department has requested permission to go ahead and purchase the three vehicles under a grant. He advised the vehicles (Durango) are priced of \$21,391.00 under state contract. He advised the Durango has been found to be the best as far as mileage and serviceability.

Motion made by Mr. Ron Munnerlyn, seconded by Mr. Anthony Woods to approve the request to purchase the three vehicles under a grant for the Sheriff's Department. Vote in favor. Unanimous. Motion carried.

INDUSTRIAL PARK PROSPECT

Mr. Cecil Kimrey advised Mr. Rob Kaufman, the prospect for the Industrial Park property has requested a change in the Exercise of Option date from August 1, 2009 until December 15, 2009. Mr. Kimrey requested Council give authorization for Dr. Carolyn Prince, Chair to send the letter approving the request. Mr. Kaufman has agreed to send a check in the amount of \$25,000 just as soon as the county sends the letter.

Motion made by Mr. Steve Blackmon, seconded by Ms. Jean Wallace McLean authorizing Dr. Carolyn Prince, Chair to send a letter to the Industrial Park prospect changing the exercise of option date from August 1, 2009 until December 15, 2009. Vote in favor. Unanimous. Motion carried.

EXECUTIVE SESSION

Motion made by Mr. Willie Gladden, seconded by Mr. Ron Munnerlyn to enter executive session for receipt of legal advice relating to litigation. Vote in favor. Unanimous.

Motion made by Ms. Jean Wallace McLean, seconded by Mr. Steve Blackmon to leave executive session and re-enter open session. Vote in favor. Unanimous. Motion carried.

Dr. Carolyn Prince advised no decisions had been made, no votes had been taken.

PUBLIC FORUM

Mr. Steve Weber, legal counsel for Marlboro County was present along with his colleague, Ms. Mary Katherine Stukes to address the litigation procedures regarding the landfill issue. Mr. Weber made power point presentation showing the process the county has been going through since June 17, 2007 when he was hired.

Mr. Weber advised he wished to discuss: 1) the proposal, 2) the permitting process, 3) the lawsuits filed against MRR and DHEC, and 4) the Judge's Order.

Mr. Weber advised in 2007 MRR made a Demonstration of Need request to DHEC – they wanted to put a landfill in Marlboro County. They came to the county council and made a proposal: according to MRR the proposed landfill would generate over \$87 million in capital investment in the county, would create between 25/50 jobs, could generate over \$50 million in new income in the county, would save the county over \$15 million in waste disposal costs, would provide free disposal for residential, school and government wastes in the county saving taxpayers \$500,000 annually, and they would contribute \$2 million per

year to the county in host fees. Mr. Weber advised the council never considered the proposal.

Mr. Weber discussed the Landfill permitting process. He showed a chart comparing the old (2007) regulations compared to the new (2008) regulations. He advised after the Consistency determination by DHEC the permitting process comes back to the county for the local Zoning/land Use requirements at which time there must be a public notice and a public hearing. He advised the permitting process takes approximately four to five years.

Mr. Weber discussed the lawsuits filed. He advised after the county received the letter from DHEC approving the landfill in the county (demonstration of need), there were only fifteen days to respond. The County contacted Mr. Weber at which time a lawsuit was filed in the South Carolina Administrative Law Court, Columbia on September 14, 2007 challenging DHEC's Demonstration of Need approval to MRR. This lawsuit consolidated with lawsuit # 3 was dismissed without prejudice by the Administrative Law Court on July 20, 2009. Mr. Weber advised there was a second lawsuit filed in the State Court of Common Pleas, Bennettsville on September 14, 2007 against SCDHEC challenging the Demonstration of Need Approval to MRR. This lawsuit is on hold pending final resolution of lawsuits one and three. The Third lawsuit was filed in the South Carolina Administrative Law Court, Columbia on May 16, 2008 against SCDHEC and MRR Southern challenging DHEC's "preliminary" consistency determination that the proposed landfill is consistent with the State and County Solid Waste Plans. This lawsuit was dismissed without prejudice along with the first lawsuit on July 20, 2009. Mr. Weber advised another lawsuit was filed two weeks previously by the Citizens of Marlboro County. Mr. Weber stated that the citizens along with Council Members including Dr. Carolyn Prince, Ms. Corrie Plato, Mr. Willie Gladden and Ms. Jean Wallace McLean went to Columbia to argue the two lawsuits should remain alive. He also wanted the citizens to know that Ms. McLean had been active and attended every meeting held concerning the landfill.

Mr. Weber discussed the Judge's Order referring to page four of the order which stated "this Court also finds that the County will not lose its right to appeal any of the issues the County has raised heretofore, and will have another opportunity to appeal all of these issues at the end of the public notice and application process, thus the County will not be prejudiced by the dismissal of these consolidated appeals. Accordingly, dismissal pursuant to Respondent DHEC's Motions and on the foregoing grounds is appropriate.

It is therefore ordered that Respondent DHEC's Motions for Dismissal of both appeals that are included in the above-captioned matter are hereby granted and this consolidated action is dismissed without prejudice allowing Petitioner Marlboro County to raise all issues and theories of the case that it wishes to raise once a final agency determination is issued for Demonstration of Need and Consistency, pursuant to R.61-107.19, Part 1, D.1.a.(1) & (2).

Mr. Weber went on to say with the dismissal the county may have lost the battle, but, they have not lost the war. He advised the total cost of his services since June 17, 2007 are approximately \$150,000 for attorney fees. He could not tell what future costs are. He stated the county could file an appeal on this order with the S.C. Court of Appeals, however, in his

opinion the county is not going to spend any money on this appeal. They are going to move on to other suits – he is still fighting a good fight. He did emphasize to the citizens present that the S.C. Supreme Court has said that the county council has no decision in whether a landfill comes to Marlboro County, it is DHEC's decision.

The Public Forum on Landfills Issues presentation dated July 23, 2009 along with a copy of the Judge's Order is attached as part of the minutes.

RECOGNITION OF CITIZENS

Mr. Steve Weber advised he would try to answer any questions the citizens who signed in wished to ask.

Ms. Lucy Parsons – questioned why the amended Solid Waste Plan was never completed or adopted and why the May 22nd deadline was missed.

Mr. Weber advised there were issues with the Solid Waste Plan and council acted on his advice. He stated the county has a good case. Mr. Weber advised the new regulations went into affect on May 23, 2009 and Marlboro County did pass a Resolution two days prior amending the Solid Waste Plan before the deadline.

Mr. Belvin Sweatt – thanked Mr. Weber for the June 19th presentation in the Administrative Law Court and said the other lawyer did not believe Mr. Weber. Mr. Sweatt stated he did not believe what was on the presentation board tonight. Finally Mr. Sweatt also questioned why the Solid Waste Plan was not updated.

Mr. Weber advised again the Solid Waste Plan was amended prior to the new regulations and when presented to DHEC was advised they would not consider it, they had gone home for the day. He emphasized again that Marlboro County Council has done what he has advised.

Ms. Faye Quick – advised she was from the Wallace Area and spoke in opposition to the landfill. She advised she had never heard council say they were against the landfill – why did they not speak out?

Mr. Weber advised upon his direction, he asked council not to speak out. However, he advised he did not know how council could be any more clear than filing the lawsuits.

Mr. John Nickoless – said he was trying to figure out who to blame – “DHEC” – they let the chicken houses come in, let the hog houses come in and now the trash. Mr. Nickoless said council had a lot on them, he understood Mr. Weber telling them not to say anything because of the lawsuits. He stated the people would not give up.

Mr. Jimmy Chandler – advised he was an attorney from Pawley's Island who has been working on Environmental Issues since 1985 – he represents the “Citizens of Marlboro County”. He advised he had filed a lawsuit on their behalf two weeks earlier. Mr. Chandler

advised he had attending a trial the previous day in Columbia against MRR for a C&D landfill. He advised the same attorney Etta Williams who had argued Marlboro County had filed their petition too early, had argued the previous day, they had filed their petition too late. Mr. Chandler stated he had looked at Steve Weber's papers – Steve Weber had done an excellent job – said he was right on target. He concurred with Mr. Weber that appealing the court ruling would be futile and that the war was not lost.

Mr. Dean Moore – questioned how two landfills could be located within a seventy-five (75) mile radius.

Mr. Weber advised there are only three places in South Carolina that are available for a landfill: Southern Shore (marshland), Southwest, and Marlboro County. He said that if a company currently has a permit – if the landfill closes, the company can take that same permit move anywhere else in the state regardless of the 75 mile rule.

Mr. Fred Nickoless – questioned where the county's leadership was. He questioned where Mr. Doug Jennings was, said Mr. Jennings was a friend of his who had told him to his face he was opposed to the landfill, but where was he. He thought the county's leaders should be present for matters of importance.

Mr. Weber responded by stating that his disagreement was with DHEC, not the people, but the system. He told the people they should not hold anything against the people, but the system.

In summary Mr. Weber advised the citizens that if all the lawsuits are lost and he is unsuccessful at the end of the day, the county will get a landfill with no benefits. He advised that is the risks of moving forward with the lawsuits and council is struggling to make a decision. The bottom line is if the county loses – the county will get nothing.

NON AGENDA ITEMS

No items were discussed.

ADJOURN

No further discussion was heard.

Motion made by Ms. Corrie Plato, seconded by Mr. Willie Gladden to adjourn the meeting. Vote in favor. Unanimous. Motion carried.

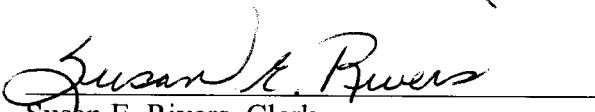
The meeting was adjourned.

(SEAL)



Dr. Carolyn A. Prince, Chair
Marlboro County Council

ATTEST:



Susan E. Rivers, Clerk
Marlboro County Council

Date Adopted: August 11, 2009


**Public Forum
on Landfill Issues**

July 23, 2009



Why are we here tonight?

- MRR Sandhills, LLC wants to build a municipal solid waste landfill in Marlboro County
- Marlboro County opposes the landfill



What I plan to talk about

Background

- a. Proposed Sandhills Solid Waste Landfill
- b. Landfill Permitting Process
- c. Lawsuits Filed by Marlboro County
- d. Other Litigation
- e. Order Dismissing Marlboro County's Lawsuits

Next Steps

- a. Appeal
- b. Future Litigation

Proposed Sandhills Landfill

- MRRR has proposed to build the Sandhills Solid Waste Landfill
- According to MRRR, the proposed landfill:
 - will generate over \$87 million in capital investment in the County
 - will create between 25 and 50 jobs
 - could generate over \$50 million in new income to the County
 - will save the County over \$15 million in waste disposal costs
 - will provide free disposal for residential, school and government wastes in the County (saving taxpayers \$500,000 annually)

MRRR will also contribute \$2 million/year to the County in host fees (represents 20% of the County's current operating budget)

OLD REGULATIONS

Landfill Permitting Process

Demonstration of Need

"Preliminary" Consistency Determination

PERMITTING

Consistency Determination

Public Notice and Hearing ←
on draft permit

NEW REGULATIONS

Demonstration of Need

Consistency Determination

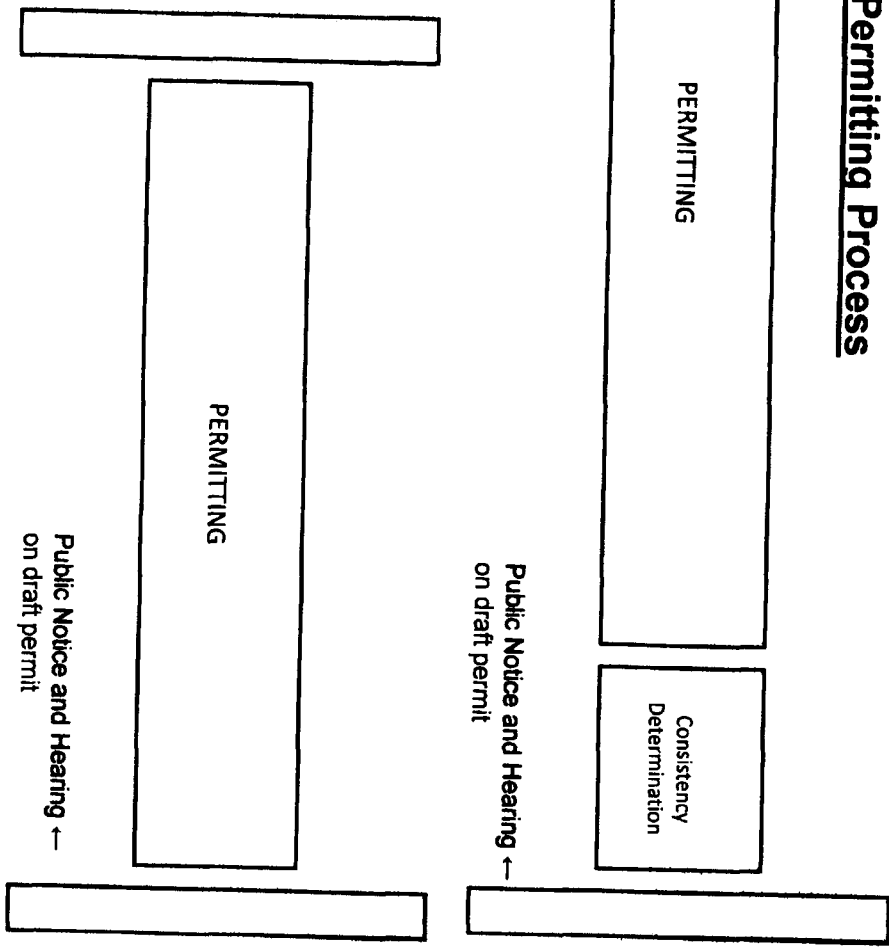
Local Zoning/Land Use Requirements

Buffer Requirements

Public Notice and Hearing ←
on draft determinations

PERMITTING

Public Notice and Hearing ←
on draft permit





1. Marlboro County v. SCDHEC & MRR Southern

- **Where:** Filed in the South Carolina Administrative Law Court, Columbia
- **When:** Filed on September 14, 2007
- **Why:** Challenges DHEC's Demonstration of Need Approval to MRR
- **Status:** Consolidated with lawsuit #3 (see later slide) and dismissed without prejudice by the Administrative Law Court on July 20, 2009



2. Marlboro County v. SCDHEC

- **Where:** Filed in the State Court of Common Pleas, Bennettville
- **When:** Filed on September 14, 2007
- **Why:** Challenges DHEC's Demonstration of Need Approval to MRR
- **Status:** On hold pending final resolution of lawsuits #1 and #3

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Marlboro County

Docket No.: 07-ALJ-07-0459-CC

Petitioner:

vs.

ORDER FOR DISMISSAL

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

Respondents

FILED

JUL 21 2009

APPEARANCES:

SCADWIN LAW COURT

For the Petitioner, Steven Weber, Esquire
For the Respondent, SC DHEC: Erin R. Williams, Esquire
For the Respondent, MRR Sandhills, LLC: Richard Harpoulis, Esquire

This matter comes before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to S.C. CODE ANN. § 1-23-600(A) (as amended by 2008 S.C. Act No. 334) and S.C. CODE ANN. §§ 44-1-61(A)(E) (Supp. 2007) upon the request of Petitioner Marlboro County ("County") on September 14, 2007, for a contested case hearing regarding a Demonstration of Need ("DON Approval") issued on July 16, 2007, and upon the request of the County on May 16, 2008 for a contested case hearing regarding a "preliminary" consistency determination issued on February 27, 2008, to MRR Sandhills, LLC ("MRR"), for the Proposed Sandhills Regional MSW Landfill ("Landfill"). The two contested cases filed by the County were consolidated into this action.

The South Carolina Department of Health and Environmental Control ("DHEC" or "the Department") filed two (2) Motions to Dismiss in the above-captioned matter on September 2, 2008, and on March 13, 2009 respectively. The Motion filed in September 2008 called for a complete dismissal of the appeal relating to the preliminary consistency determination and the Motion filed in March 2009 called for a complete dismissal of the DON Approval. A hearing on both motions occurred on June 19, 2009, with all parties given an opportunity to make a presentation to the Court, upon which all parties did make a presentation.

Upon review of the issues raised, I find that dismissal without prejudice is appropriate and that the County will have another opportunity to appeal these matters if it so chooses, pursuant to S.C. Code Ann. Revis. 61-107.19 et seq. (Supp. 2008). Solid Waste Management: Solid Waste Landfills and Structural Fill, specifically: R. 61-107.19, Part 1.D.1.b. (Supp. 2008), which states that "where, prior to the effective date of this regulation, the Department has made determinations required under Part 1.D.1.a. of this regulation, such determinations shall remain applicable and become the agency's final determination under Part 1.D.1. subject to the appeal provision in Part 1.D.1.c. and the subsequent public notice and application process."

STANDARD OF REVIEW AND JURISDICTION

Jurisdiction is pursuant to the Administrative Procedures Act, S.C. CODE ANN. § 1-23-310 et seq. (2005 & Supp. 2006), and S.C. CODE ANN. § 44-1-60 (2002 & Supp. 2006). A party who is aggrieved by a final decision in a contested case is entitled to judicial review under the Administrative Procedures Act only after the party has exhausted all administrative remedies available within the agency. See S.C. CODE ANN. §§ 1-23-380 (A) and 1-23-600 (2005 & Supp. 2006).

UNDISPUTED FACTS

On May 23, 2008, Regulation 61-107.19, Solid Waste Management: Solid Waste Landfills and Structural Fill, went into effect. This regulation replaced and simultaneously repealed Regulation 61-107.258, Solid Waste Management: Municipal Solid Waste Landfills

DISCUSSION

DHEC contends that although the DON Approval was issued prior to R. 61-107.19, et al becoming effective, the promulgation of the regulation on May 23, 2008, makes the appeal of the DON Approval unripe at this time, pursuant to R. 61-107.19, Part 1.D.1.b. (Supp. 2008). DHEC also contends that because the determination that it rendered on consistency was merely a "preliminary" determination, this determination is not final and therefore not a final agency decision rising to the level of a contested case, and as such, an appeal of the Department's determination is not within the jurisdiction of the ALC. DHEC further argues that because pursuant to R. 61-107.19 Part 1.D.1.b, the DON Approval "shall remain applicable and become the agency's final determination under Part 1.D.1. subject to the appeal provision in Part 1.D.1.c and the subsequent public notice and application process", the County will not lose its right to

appeal and will have another opportunity at the end of the public notice and application process. *WFR Sunballs, LLC*, concurs with DHEC's position on these matters.

However, the County argues that both appeals are indeed ripe to be heard and that they both rise to the level of a contested case. The County's position on the DON Approval is that the plain language of the new regulation grandfathered both the DON Approval and the County's appeal of the DON Approval. The County's position on the Department's "preliminary" consistency determination is: (1) if the determination is final, it is grandfathered under the new regulation as is the County's appeal of the determination; and (2) if the determination is preliminary, then no determination was made under the new regulation and DHEC must conduct a new consistency determination.

The Court finds that the enactment of S.C. CODE ANN. RECA. 61-107.19 et seq. (Supp. 2008), Solid Waste Management: Solid Waste Landfills and Structural Fill, specifically, R. 61-107.19, Part 1D.1.b. (Supp. 2008), changes the appeal venue of the DON Approval so unripe for appeal at this time. Under the previously promulgated regulation pertaining to a DON Approval, S.C. CODE ANA. 61-107.17, Solid Waste Management: Demonstration-of-Need, there was no requirement for public notice. However, under the newly enacted regulation, R. 61-107.19, et al., the LXM Approval is required to be placed on public notice. Further, the public notice comment period will last at least 30 days and a hearing will be held on the matter if the Department receives requests for a hearing from ten (10) persons in writing. (See 61-107.19, D.2.b.(1)(A)(2)(a)) Therefore, the DON Approval will not become a final agency decision until the determination has gone through the required public notice. Additionally, this interpretation is consistent with the other appeal provision applicable to this matter, S.C. CODE ANN. § 44-1-64(B), which states that "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*.)


Regarding the "preliminary" consistency determination issued by DHEC on February 27, 2008, this Court finds that this determination is not a final agency determination, thus it is not a final agency decision subject to litigation as a contested case. A "preliminary" determination is not a determination that is required by regulation - not the old one, R. 61-107.11, or the new one, R. 61-107.19 - and as such, it is not a regulation that is subject to appeal as a contested case. However, once DHEC makes a final consistency determination as required by R. 61-107.19, Part

1. D.1 a.(2) and once the public notice requirements are fulfilled pursuant to this regulation and the final consistency determination is issued, then the determination will be subject to appeal as a contested case.


This Court also finds that the County will not lose its right to appeal any of the issues the County has raised previously, and will have greater opportunity to appeal all of these issues at the end of the public notice and application process. Thus the County will not be prejudiced by the dismissal of these consolidated appeals. Accordingly, dismissal pursuant to Respondent DHEC's Motion and on the foregoing grounds is appropriate.

IT IS HEREBY ORDERED that Respondent DHEC's Motions for Dismissal of both appeals that are included in the above-captioned matter are hereby **GRANTED** and this consolidated action is **DISMISSED WITHOUT PREJUDICE** allowing Petitioner thereafter to refile in case all issues and theories of the case that it wishes to raise once a final agency determination is issued for Determination of Need and Consistency pursuant to 26 CFR 102.19. Part 1, D.1 a.(2).

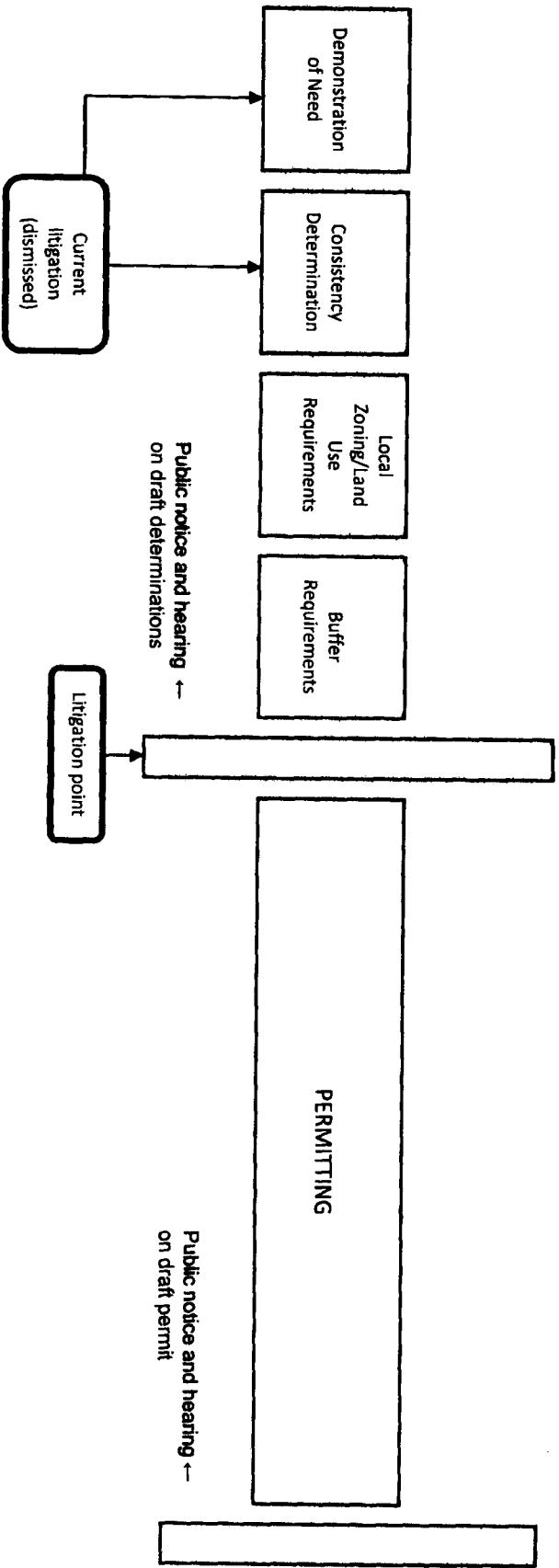
AND IT IS SO ORDERED


John D. McLeod
Administrative Law Court Judge

July 20, 2009
Columbia, South Carolina

DEPARTMENT OF SPENCE
14-11107-0 by P2
I, the undersigned, do hereby certify that the above is a true and correct copy of the original as filed with the Clerk of the Administrative Law Court. I am a duly sworn and qualified member of the Administrative Law Court and I am not providing any legal advice or representation to the parties. My fee is \$100.00 per hour, or five dollars per page, whichever is more appropriate.
The 20th day of July 2009
by 
Anthony R. McLeod
2009-10-09

Next Steps



Public Comment