

BEFORE THE SOUTH CAROLINA
DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL

RECEIVED

The Town Of Lexington, South Carolina,)
Petitioner,)
v.)
South Carolina Department)
of Health and Environmental)
Control,)
Respondent.)

AUG 14 2001

Clerk of DHEC Board

PETITION FOR
ADMINISTRATIVE REVIEW

NATURE OF PROCEEDING

1. Pursuant to S. C. Code Regs. R.61-72 and § 1-23-310, *et seq.*, S. C. Code Ann. (1976) as amended, The Town Of Lexington, South Carolina ("The Town"), a municipal corporation duly chartered under the laws and Constitution of The State of South Carolina, contests the actions of the staff of the South Carolina Department Of Health and Environmental Control ("DHEC") in refusing to certify an amendment to the Areawide 208 Water Quality Management Plan by The Central Midlands Council Of Governments ("COG") dated March 26,2001, ("208 Plan Amendment"), and requests the Board of Health and Environmental Control to direct that a contested case hearing be held to review the actions of DHEC.

IDENTIFICATION OF PARTIES

2. This petition is made on behalf of:

The Town Of Lexington, South Carolina
PO Box 397
Lexington, South Carolina 29071

3. The Town is a voting member of COG. The Town sits on COG's Board and its Environmental Planning Advisory Committee("EPAC"). The Town is also the Designated Management Agency for the treatment of wastewater in the Twelve and Fourteen Mile Creek Basins of Eastern Lexington County. As such, it proposed a regional wastewater treatment plan pursuant to Section 208 of the Clean Water Act ("Section 208") to COG. The Town's plan was approved by COG pursuant to its designation as the planning agency for Water Quality Management Planning for the four-county

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region consisting of Fairfield, Lexington, Newberry, and Richland Counties pursuant to Section 208. The Town's plan was selected from a number of plans proposed to carry out a comprehensive system of wastewater collection, transportation, and treatment in and for said basins. Upon approval, COG made The Town's plan a part of COG's 208 Plan. Pursuant to the 208 Plan, The Town funded, constructed, and now operates a regional wastewater collection and transportation system which is directly affected by the actions of DHEC. After lengthy negotiations over much of the year 2000, The Town, in conjunction with Carolina Water Service, Inc., proposed an amendment to the 208 Plan which was considered and approved by EPAC on February 7, 2001 by a vote of sixteen to nine. Upon EPAC's favorable recommendation, after proper debate and a public hearing, COG's Board approved the amendment by a vote of thirty-five to five on March 22, 2001. The amendment will, among other things, allow The Town to keep its Coventry Woods Wastewater Treatment Plant open for up to five years while The City Of Cayce expands its wastewater treatment plant to treat the expected additional flows. The Town, therefore, is a related party aggrieved by the actions of DHEC and has a direct and immediate interest in the actions of DHEC.

4. The actions complained of were taken by the Bureau of Water of DHEC.

TIMELINESS

5. The action taken by DHEC was evidenced in a letter dated July 30, 2001 and received by The Town on that date. The Town is filing this Petition for Administrative Review within the fifteen (15) days allowed by the applicable Department regulation. S.C. Code Regs. R.61-72, § 201(A).

REASONS SUPPORTING REVIEW

6. The Town seeks review of the action of DHEC in refusing to certify the 208 Plan Amendment. While DHEC's letter of July 30, 2001 alleges that it does not concur in the 208 Plan Amendment, it does not contain any relevant justification for same. Further, DHEC has advised the United States Environmental Protection Agency ("EPA") that the 208 Plan Amendment was not consistent with the State Water Quality Management Plan; however, even that letter (dated August 3, 2001) fails to contain any justification for the DHEC conclusion. The Town would assert that COG

has been designated by the Governor as the areawide management agency for the four-county region consisting of Fairfield, Lexington, Newberry, Richland Counties pursuant to 33 U.S.C. § 1228, and that DHEC lacks the authority to substitute its judgment for that of the COG. The Town acknowledges only that the Governor or his designee may determine whether the 208 Plan Amendment is consistent with the State Water Quality Management Plan and any other Areawide Water Quality Management Plans as provided in 40 C.F.R. § 130.6(e). The Town lacks sufficient information to determine if DHEC is authorized to act as the Governor's designee in this matter.

PRIOR PROCEEDINGS

7. There have been no prior proceedings in this matter.

RELIEF REQUESTED

8. The Town respectfully requests that if DHEC is authorized to act as the Governor's designee in this matter it be directed to certify the 208 Plan Amendment to EPA.

CROSS EXAMINATION

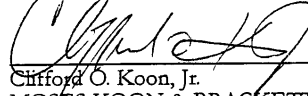
9. As required by S. C. Regs. R.61-72.201(9), the petitioner agrees to be subject to cross examination and to make any employee or consultant of the petitioner or such other person represented by the petitioner available for cross examination at the expense of the petitioner or such other person upon the request of the hearing officer, his own motion or on the motion of any party.

CONCLUSIONS

10. For the reasons described above, The Town respectfully requests that its Petition for

Administrative Review be granted and grant the relief requested herein.

Respectfully submitted,



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August 14, 2001
Columbia, South Carolina.

BEFORE THE SOUTH CAROLINA
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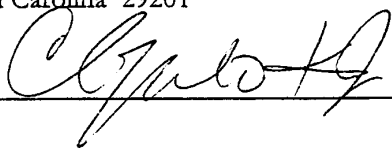
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Request was filed with the Board by personally delivering a copy of same to the following:

ATTN: Clerk
South Carolina Board of
Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

with a copy delivered to:

Office of General Counsel
South Carolina Board of
Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201



August 14, 2001
Columbia, South Carolina