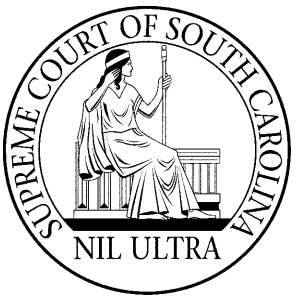

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 34
August 28, 2019
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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The Supreme Court of South Carolina

In the Matter of Cooper C. Lynn, Respondent

Appellate Case Nos. 2019-001398 and 2019-001399

ORDER

The Office of Disciplinary Counsel asks this Court to place Respondent on interim suspension pursuant to Rule 17(b), RLDE, Rule 413, SCACR. The petition also seeks appointment of an attorney to protect the interests of Respondent's clients pursuant to Rule 31, RLDE, Rule 413, SCACR.

IT IS ORDERED that Respondent's license to practice law in this state is suspended until further order of this Court.

IT IS FURTHER ORDERED that Peyre Thomas Lumpkin, Esquire, is hereby appointed to assume responsibility for Respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts Respondent may maintain. Mr. Lumpkin shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of Respondent's clients. Mr. Lumpkin may make disbursements from Respondent's trust account(s), escrow account(s), operating account(s), and any other law office accounts Respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of Respondent, shall serve as an injunction to prevent Respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that Peyre Thomas Lumpkin, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Peyre Thomas Lumpkin, Esquire, has been duly

appointed by this Court and has the authority to receive Respondent's mail and the authority to direct that Respondent's mail be delivered to Mr. Lumpkin's office.

Mr. Lumpkin's appointment shall be for a period of no longer than nine months, unless an extension of the period of appointment is requested.

s/Donald W. Beatty C.J.
FOR THE COURT

Columbia, South Carolina
August 23, 2019

The Supreme Court of South Carolina

Re: Expansion of Electronic Filing Pilot Program - Court of Common Pleas

Appellate Case No. 2015-002439

ORDER

Pursuant to the provisions of Article V, Section 4 of the South Carolina Constitution,

IT IS ORDERED that the Pilot Program for the Electronic Filing (E-Filing) of documents in the Court of Common Pleas, which was established by Order dated December 1, 2015, is expanded to include Charleston County. Effective September 18, 2019, all filings in all common pleas cases commenced or pending in Charleston County must be E-Filed if the party is represented by an attorney, unless the type of case or the type of filing is excluded from the Pilot Program. The counties currently designated for mandatory E-Filing are as follows:

Abbeville	Aiken	Allendale	Anderson
Bamberg	Barnwell	Beaufort	Berkeley
Calhoun	Cherokee	Chester	Chesterfield
Clarendon	Colleton	Darlington	Dillon
Dorchester	Edgefield	Fairfield	Florence
Georgetown	Greenville	Greenwood	Hampton
Horry	Jasper	Kershaw	Lancaster
Laurens	Lee	Lexington	Marion
Marlboro	McCormick	Newberry	Oconee
Orangeburg	Pickens	Richland	Saluda
Spartanburg	Sumter	Union	Williamsburg
York	**Charleston-Effective September 18, 2019**		

Attorneys should refer to the South Carolina Electronic Filing Policies and Guidelines, which were adopted by the Supreme Court on October 28, 2015, and the training materials available on the E-Filing Portal page at http://www.sccourts.org/efiling/ to determine whether any specific filings are exempted from the requirement that they be E-Filed. Attorneys who have cases pending in Pilot Counties are strongly encouraged to review, and to instruct their staff to review, the training materials available on the E-Filing Portal page.

s/Donald W. Beatty
Donald W. Beatty
Chief Justice of South Carolina

Columbia, South Carolina
August 28, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

A.O. Smith Corporation, Appellant,

v.

South Carolina Department of Health and Environmental Control and Town of McBee, Respondents.

Appellate Case No. 2016-002108

Appeal From The Administrative Law Court
Shirley C. Robinson, Administrative Law Judge

Opinion No. 5682
Heard March 14, 2019 – Filed August 28, 2019

AFFIRMED

W. Thomas Lavender, Jr. and Joan Wash Hartley, both of Nexsen Pruet, LLC, of Columbia, for Appellant.

Martin S. Driggers, Jr., of Sweeny Wingate & Barrow, PA, of Hartsville; Richard Edward Mclawhorn, Jr., of Sweeny Wingate & Barrow, PA, of Columbia; Kathryn Susan Mansfield, of Womble Bond Dickinson (US) LLP, of Charleston; and Matthew Todd Carroll and Belton Townsend Zeigler, both of Womble Bond Dickinson (US) LLP, of Columbia, all for Respondent Town of McBee.

Stephen Philip Hightower, of Columbia, for Respondent South Carolina Department of Health and Environmental Control.

KONDUROS, J.: A.O. Smith Corporation appeals the dismissal of its contested case regarding the Town of McBee's (the Town) operation of the Town's wells, arguing the administrative law court (ALC) erred in finding final approvals are not staff decisions subject to appeal under section 44-1-60 of the South Carolina Code (2018 & Supp. 2018) because the South Carolina Department of Health and Environmental Control (DHEC) had a legal duty to issue the final approvals and the applicable regulation does not provide for conditional approvals. We affirm.

FACTS

A.O. Smith owns a water heater and boiler manufacturing facility in Chesterfield County outside of the Town's city limits. According to the facility's Director of Operations, Jeff Barron, the facility needs an adequate and dependable water supply to operate. In addition to the water used in the manufacturing and testing process, the facility's insurance carrier requires a minimum instant flow of water for its fire protection system. In 1979, the Town and A.O. Smith agreed the Town would provide A.O. Smith with "a reasonable supply of water."[1] A.O. Smith comprises about sixty percent of the Town's water revenue.

The Town's water system is made up of two wells (Well No. 1 and Well No. 2). From 1995 to 1999, the Town's water system received three consecutive "unsatisfactory" ratings results from DHEC sanitary surveys "due to a lack of quantity to meet the system's customers' needs, wellhead security issues[,] and distribution system shortcomings." In 1999, the Town and Alligator Rural Water & Sewer Company, Inc. (Alligator Water) entered into a forty-year agreement for Alligator Water to supply the Town's water. The Town stopped operating both of its wells at that time. According to the Town's engineer, Alligator Water took over operation of the Town's entire water system and had DHEC transfer the Town's

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[1] They also agreed the Town would not annex into the Town limits prior to October 1, 2009, A.O. Smith's real property on which its facility is located and the Town's fire prevention and rescue services would respond to the facility when needed.

operating permits to it. DHEC discontinued the Town's operational permit for its supply wells and entire water system and transferred them to Alligator Water.

The Town received a $4.5 million loan in 2005 from the United States Department of Agriculture. According to the Town's mayor, John Campolong, the Town used the loan to refurbish its water system. Campolong also indicated the Town became aware of information that led it to believe Alligator's financial situation was precarious and decided it no longer wished Alligator Water to be its sole source of water. Alligator Water placed the Town's Well No. 1 offline in 2009 due to contaminants in routine water sampling.

On December 7, 2010, the Town submitted a Preliminary Engineering Report (PER) to DHEC. Alligator Water received a copy of a draft operating permit for the Town and contacted DHEC "to offer several comments," including that its agreement with the Town is "for the operation and maintenance of the system" and if the Town terminates the agreement, "Alligator [Water] will no longer be obligated to supply potable water to the Town." On June 13, 2011, DHEC Staff approved the Town's PER. On June 14, 2011, DHEC Staff issued a public water operating permit to the Town. On January 10, 2012, the Town submitted an application to DHEC to modify Well No. 2. On November 13, 2012, DHEC issued the Town a permit for modifications to Well No. 2.

According to Campolong, in the summer of 2013, the Town received a letter from Alligator Water that it was increasing the water wholesale rate by 56%.

In a letter dated October 10, 2013, the Town informed A.O. Smith "the Town . . . has over the period of [three] years embarked on an evaluation of the existing water supply system currently owned by the Town . . . , as well as other sources of water for the Town's customers. These facilities were in operation until just a couple of years ago." The letter further provided:

> Throughout the review process and the permitting required to place the existing water supply system back into operation, the Town . . . has worked closely with . . . DHEC. [DHEC has] been aware of the study that was performed on the water system and our efforts to provide a safe, reliable water source for our customers. We have received all of the necessary permits for the new

> construction and modifications to the existing wells and are working together on a daily basis with . . . DHEC in moving forward to place the system back into operation. The water supply system will meet all of the requirements of . . . DHEC from a water quality and redundancy standpoint.

On October 16, 2013, the Town increased the rate it charged customers by 25%. The Town informed Alligator Water it would not pay the increased wholesale rate to Alligator Water until Alligator Water supplied it with certain financial data.

On December 20, 2013, the Town submitted an application to DHEC for the construction of two granulated activated carbon contactors and associated appurtenances to be connected to Well No. 1 and Well No. 2. On June 30, 2014, DHEC issued the Town a permit for the construction of the contactors for Well No. 1 and Well No. 2.

In 2014, according to Barron, A.O. Smith upgraded its fire protection system and began discussing water service with Alligator Water because A.O. Smith's engineer determined "the Town's water storage capacity was not sufficient to support the upgraded system." In May 2015, Alligator Water began construction of a water line to connect to the A.O. Smith facility.

In a meeting on September 3, 2015, A.O. Smith raised concerns to the Town about fire protection and future water supply. According to the Town's engineer, this was the first time A.O. Smith raised those concerns to the Town. A.O. Smith also raised concerns about the Town's ability to meet the facility's fire flow requirements with its two wells as well as other concerns about contaminants in the water.

On January 12, 2016, after receiving a letter of certification from Joseph McGougan, P.E, DHEC issued the Town two Final Approvals to Place into Operation (Final Approvals)—one in accordance with the 2012 permit and the other in accordance with the 2014 permit. Both Final Approvals stated under the heading "SPECIAL CONDITIONS," "This Final Approval to Operate is being conditionally approved. The Department has concerns about the water system's capacity if only Well No. 1 and Well No. 2 are the sole sources for water supply." The Final Approvals also stated, "The Department recommends that the Town . . .

investigate this capacity issue to demonstrate that sufficient capacity exists before utilizing Well No.[ ]1 and Well No. 2 as the primary supply for water."

On January 27, 2016, A.O. Smith requested a final review by the DHEC Board of the Final Approvals. On February 17, 2016, DHEC sent a letter to A.O. Smith's counsel regarding the Final Approvals, stating "[t]he [DHEC Board] will not conduct a Final Review Conference on the above-referenced matter." The letter further provided the following contested case guidance:

> Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the [ALC] within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

On March 15, 2016, A.O. Smith filed with the ALC a request for a contested case hearing for review of the Final Approvals. The Town filed a motion to dismiss, arguing the ALC lacked jurisdiction because the request was untimely as DHEC issued the permits in question in 2011, 2012, and 2014 and A.O. Smith made no request for final review of those permits.[2]

The ALC conducted a hearing on the motion to dismiss[3] on April 28, 2016. The ALC asked A.O. Smith if it "knew the construction was ongoing, why did [it] wait until it was completed?" A.O. Smith responded it did not "believe [it] had sufficient information on whether or not these two wells [could] supply th[e] adequate capacity until they were completed and [it had] seen the records." According to an affidavit sworn by Barron on April 5, 2016, the Town's water service to A.O. Smith had in recent months become "interrupted and inadequate."

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[2] The Town also filed a motion for relief from stay, asserting A.O. Smith's filing of the request for a contested case hearing arguably automatically stayed operation of the Final Approvals. A.O. Smith filed a response in opposition to the motion.

[3] The hearing also concerned the motion for relief from the stay.

On May 5, 2016, the ALC granted the motion to dismiss. Following a motion for reconsideration filed by the A.O. Smith, the ALC vacated the order. Thereafter, the ALC issued a new order granting the motion to dismiss.[4] The ALC found A.O. Smith did not

> submit comments voicing concerns about the [2012 and 2014] permits nor did [A.O. Smith] file requests for final review, therefore the staff decisions were final fifteen days after they were mailed. [A.O. Smith] notes [DHEC] was not obligated by the regulations to issue any public notice for the construction permits at issue, implying that because of this, [A.O. Smith]'s failure to comment on the construction permits should not preclude its challenge of the final approvals. While the court recognizes that public notice was not required for the permits, [A.O. Smith] had notice and the opportunity to make comments or request notification as an affected person pursuant to section 44-l-60(E) [of the South Carolina Code] and to challenge those decisions to the Board. To allow [A.O. Smith]'s untimely challenge would not only conflict with the plain language of the statute, but would also defeat the public policy purpose of finality through resolution of conflicts regarding construction projects while in the initial stages, and not after substantial investments and construction has already taken place.

(footnote omitted). The ALC noted A.O. Smith "had actual knowledge of [the Town]'s plans to operate its own water supply system, at the latest, on October 10, 2013[,] when [the Town] sent a letter to [A.O. Smith], detailing its plans and encouraging comments or questions." The ALC also disagreed with A.O. Smith's contention that because DHEC included "special conditions" in the Final Approvals, they were initial decisions. The ALC found, "The special conditions simply reiterate the requirements of the State Primary Drinking Water regulations, and the vast majority of the special conditions in the [F]inal [A]pprovals are the

[4] The ALC noted because its decision to dismiss the contested case rendered the Town's motion for relief from stay moot, it would not address that motion.

same special conditions included in the Public Water System Operating Permit issued in June of 2011." This appeal followed.

STANDARD OF REVIEW

"The ALC presides over all hearings of contested DHEC permitting cases and, in such cases, serves as the fact-finder and is not restricted by the findings of the administrative agency." *Bailey v. S.C. Dep't of Health & Envtl. Control*, 388 S.C. 1, 4, 693 S.E.2d 426, 428 (Ct. App. 2010). "[T]he ALC is authorized to make a final determination—after a final agency decision and subject to judicial review—as to whether an administrative agency should have granted or denied a particular permit." *Engaging & Guarding Laurens Cty.'s Env't (EAGLE) v. S.C. Dep't of Health & Envtl. Control*, 407 S.C. 334, 344, 755 S.E.2d 444, 449 (2014). When reviewing a decision of the ALC in such cases, this court's standard of review is governed by section 1-23-610 of the South Carolina Code. *Bailey*, 388 S.C. at 4-5, 693 S.E.2d at 428. The relevant portion of section 1-23-610 provides:

> The review of the [ALC]'s order must be confined to the record. The court may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;
>
> (c) made upon unlawful procedure;
>
> (d) affected by other error of law;
>
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-610(B) (Supp. 2018).

"A reviewing court may reverse or modify an administrative decision if the findings of fact are not supported by substantial evidence." *Risher v. S.C. Dep't of Health & Envtl. Control*, 393 S.C. 198, 210, 712 S.E.2d 428, 434 (2011). "When the evidence conflicts on an issue, the court's substantial evidence standard of review defers to the findings of the fact-finder." *Be Mi, Inc. v. S.C. Dep't of Revenue*, 408 S.C. 290, 297, 758 S.E.2d 737, 740 (Ct. App. 2014). "In determining whether the ALC's decision was supported by substantial evidence, this court need only find that, upon looking at the entire record on appeal, there is evidence from which reasonable minds could reach the same conclusion that the ALC reached." *Engaging & Guarding Laurens Cty.'s Env't (EAGLE)*, 407 S.C. at 342, 755 S.E.2d at 448. "[W]e may not substitute our judgment for that of the [ALC] as to the weight of the evidence on questions of fact unless the [ALC's] findings are clearly erroneous in view of the reliable, probative and substantial evidence in the whole record." *Bailey*, 388 S.C. at 5, 693 S.E.2d at 429 (alterations by court) (quoting *Comm'rs of Pub. Works v. S.C. Dep't of Health & Envtl. Control*, 372 S.C. 351, 358, 641 S.E.2d 763, 766-67 (Ct. App. 2007)).

"Substantial evidence is 'evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached.'" *Se. Res. Recovery, Inc. v. S.C. Dep't of Health & Envtl. Control*, 358 S.C. 402, 407, 595 S.E.2d 468, 470 (2004) (quoting *Lark v. Bi-Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981)). "Substantial evidence . . . is more than a mere scintilla of evidence." *Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 605, 670 S.E.2d 674, 676 (Ct. App. 2008). "Substantial evidence is not . . . the evidence viewed blindly from one side of the case, but is evidence that, considering the record as a whole, would allow reasonable minds to reach the conclusion the [ALC] reached in order to justify its action." *Fragosa v. Kade Constr., LLC*, 407 S.C. 424, 428, 755 S.E.2d 462, 465 (Ct. App. 2013) (quoting *Taylor v. S.C. Dep't of Motor Vehicles*, 368 S.C. 33, 36, 627 S.E.2d 751, 752 (Ct. App. 2006)).

LAW/ANALYSIS

I. Timeliness

A.O. Smith argues the ALC erred in finding the Final Approvals are not staff decisions subject to appeal under section 44-1-60 of the South Carolina Code (2018 & Supp. 2018) because DHEC had a legal duty to issue the Final Approvals. It asserts the ALC was incorrect to narrowly interpret "initial decisions" to not include the Final Approvals because it is contrary to section 44-1-60 and the Administrative Procedures Act (APA) definitions of DHEC decisions subject to a contested case. It maintains section 44-1-60(A) includes licenses and sections 1-23-310(4) and -505(4) of the South Carolina Code (2005 & Supp. 2018) define license as a "similar form of permission required by law," which it asserts the Final Approvals unquestionably are. We disagree.

"The General Assembly has the authority to limit the subject matter jurisdiction of a court it has created; therefore, it can prescribe the parameters of the ALC's powers." *Amisub of S.C., Inc. v. S.C. Dep't of Health & Envtl. Control*, 403 S.C. 576, 585, 743 S.E.2d 786, 791 (2013). "By statute, the General Assembly has authorized the ALC to preside over 'contested case' proceedings." *Id.* (noting section 44-1-60(F)(2) "allows applicants, permittees, licensees, or affected persons to file a request for a contested case hearing with the ALC in accordance with the APA after receiving a written decision from DHEC"). "[I]n environmental permitting cases, the AL[C] presides as the finder of fact." *Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 520, 560 S.E.2d 410, 417 (2002).

"Questions of statutory interpretation are questions of law, which this [c]ourt is free to decide without any deference to the tribunal below." *Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016). "The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Centex Int'l, Inc. v. S.C. Dep't of Revenue*, 406 S.C. 132, 139, 750 S.E.2d 65, 69 (2013) (quoting *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007)). "A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute." *Lockwood Greene Eng'rs, Inc. v. S.C. Tax Comm'n*, 293 S.C. 447, 449, 361 S.E.2d 346, 347 (Ct. App. 1987). "[W]e must follow the plain and unambiguous language in a statute and have 'no right to impose another meaning.'"

Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 535-36, 725 S.E.2d 693, 695 (2012) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)).

> Whe[n] the terms of the statute are clear, the court must apply those terms according to their literal meaning. An appellate court cannot construe a statute without regard to its plain meaning and may not resort to a forced interpretation in an attempt to expand or limit the scope of a statute.

Brown, 348 S.C. at 515, 560 S.E.2d at 414 (citation omitted).

"'[W]ords in a statute must be construed in context,' and 'the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute.'" *Eagle Container Co. v. Cty. of Newberry*, 379 S.C. 564, 570, 666 S.E.2d 892, 895-96 (2008) (alteration by court) (quoting *S. Mut. Church Ins. Co. v. S.C. Windstorm & Hail Underwriting Ass'n*, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991)). "The language must also be read in a sense [that] harmonizes with its subject matter and accords with its general purpose." *Id.* at 570, 666 S.E.2d at 896 (quoting *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992)). "[T]he statute must be read as a whole and sections [that] are part of the same general statutory law must be construed together and each one given effect." *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting *S.C. State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006)).

"The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." *Brown*, 348 S.C. at 515, 560 S.E.2d at 414 (brackets omitted) (quoting *Dunton v. S.C. Bd. of Exam'rs in Optometry*, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987)). "While the [c]ourt typically defers to the Board's construction of its own regulation, whe[n] . . . the plain language of the regulation is contrary to the Board's interpretation, the [c]ourt will reject its interpretation." *Id.* at 515, 560 S.E.2d at 415. Section 44-1-60 provides:

> (A) All department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions of the department which may

> give rise to a contested case . . . must be made using the procedures set forth in this section. . . .
>
> . . . .
>
> (C) The initial decision involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other action of the department shall be a staff decision.

"In relevant part, [section] 44-1-60(E) provides that '[n]otice of the department decision must be sent to the applicant, permittee, licensee, and affected persons who have asked to be notified by certified mail, return receipt requested.'" *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, 390 S.C. 418, 427, 702 S.E.2d 246, 251 (2010) (last alteration by court).

> Section 44-1-60(E) sets forth the procedure for appealing from a staff decision and provides which parties DHEC is required to notify by certified mail of the decision. . . . [Section] 44-1-60(E) places an affirmative duty on DHEC to send simultaneous notification of appealable staff decisions to the applicant, permittee, licensee, and affected persons who have asked to be notified by certified mail . . . .

Id. at 430, 702 S.E.2d at 253.

"'Contested case' means a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing . . . ." § 1-23-310(3). "'License' includes the whole or part of any agency permit, franchise, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes . . . ." § 1-23-310(4).

DHEC has promulgated the State Primary Drinking Water Regulations[5] pursuant to sections 44-55-10 to -120 of the South Carolina Code (2018) "to maintain

[5] S.C. Code Ann. Regs. 61-58 to 61-58.17 (2011 & Supp. 2018).

reasonable standards of purity of the drinking water of the State consistent with the public health, safety, and welfare of its citizens." S.C. Code Ann. Regs. 61-58(A). The portion of those regulations regarding "Construction and Operation Permits" specifies the procedure for the "Request for Review of Permit Decisions":

> 1. An *applicant* may request that the director of [DHEC]'s water supply permitting division review any construction or operating permit decision within 15 (fifteen) days of receipt of the decision. The request shall be in writing and include a detailed justification of the reasons for the review.
> 2. The director shall respond in writing to the request within 15 (fifteen) days of receipt of the written request. This response may include, but not be limited to, a request for additional information, scheduling of a meeting to discuss the permit decision, or the issuance of a final permit decision.
> 3. The *applicant* may appeal the director's final decision on the permit in accordance with [Regulation 61-58(C) of the South Carolina Code].

S.C. Code Ann. Regs. 61-58.1(N) (emphases added).

A.O. Smith has consistently noted "[t]he Primary Drinking Water Regulations do not require public notice for a water supply construction permit." The ALC found A.O. Smith implied because no notice was required for the permits, it should be able to challenge the Final Approvals. The ALC determined, "While the court recognizes that public notice was not required for the permits, [A.O. Smith] had notice and the opportunity to make comments or request notification as an affected person pursuant to section 44-l-60(E) and to challenge those decisions to the Board." We disagree with A.O. Smith's argument that because it is actually challenging the final approval and not the permits, its challenge is timely. The statute specifically provides contested cases are for initial decisions. For a Final Approval to be an initial decision would be contrary to the ordinary meaning of the words. Because A.O. Smith did not file a request for a contested case hearing after the issuance of the permits in the time required, the ALC did not err in finding A.O. Smith's motion for a contested hearing untimely.

II. Conditional Approvals

A.O. Smith asserts the ALC erred because even if Final Approvals are generally not staff decisions subject to appeal under section 44-1-60, the applicable regulation—Regulation 61-58.1(K) of the South Carolina Code—does not provide for conditional approvals, in contrast to other DHEC regulations that do, and that makes the Final Approvals here subject to appeal. We disagree.

"Interpreting and applying statutes and regulations administered by an agency is a two-step process. First, a court must determine whether the language of a statute or regulation directly speaks to the issue. If so, the court must utilize the clear meaning of the statute or regulation." *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 32, 766 S.E.2d 707, 717 (2014). "If the statute or regulation 'is silent or ambiguous with respect to the specific issue,' the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference." *Id.* at 33, 766 S.E.2d at 717 (quoting *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984)).

In the State Primary Drinking Water Regulations, one subsection in the "Construction and Operation Permits" section, entitled "Requirements for Construction Permits," provides, "Before *the construction, expansion[,] or modification* of any public water system, application for a permit to construct shall be made to, and a permit to construct obtained from, [DHEC]." S.C. Code Ann. Regs. 61-58.1(B)(1) (emphasis added). However, another part of that subsection specifies, "Before a permit to construct can be issued for a *new public water system*, the applicant shall demonstrate to the satisfaction of [DHEC] that the *new system* will be a 'viable water system' as defined in [Regulation 61-58(B) of the South Carolina Code]." S.C. Code Ann. Regs. 61-58.1(B)(4) (emphases added).

Another subsection of that regulation, entitled "Requirements for Obtaining Approval to Place Permitted Construction into Operation," states:

> *Newly-constructed facilities* shall not be placed into operation until written approval is issued by [DHEC], except where it is allowed by a general construction permit. Upon completion of permitted construction, the professional engineer shall make arrangements with

> [DHEC] for final inspection. Prior to this inspection, the professional engineer shall submit to [DHEC] a letter certifying that construction is complete and in accordance with the approved plans and specifications.

S.C. Code Ann. Regs. 61-58.1(K)(1) (emphasis added).

One part of the section entitled "Groundwater Sources and Treatment" provides:

> This regulation applies to *all new construction and all expansions or modifications of existing public water systems*. If [*DHEC*] can reasonably demonstrate that safe delivery of potable water to the public is jeopardized, a system may have to upgrade its existing facilities in order for an expansion or modification to meet the requirements of this regulation. This regulation prescribes minimum design standards for the construction of groundwater sources and treatment facilities.

S.C. Code Ann. Regs. 61-58.2(A) (emphases added).

That section also provides:

> The total developed groundwater source capacity shall equal or exceed the design maximum day demand without pumping more than sixteen (16) hours a day. With the largest producing well out of service, the capacity of the remaining well(s) pumping twenty-four (24) hours a day shall equal or exceed the design maximum daily demand, except those systems requiring only one well. The capacity from an additional source (Surface Water Plant or Master Meter) will be included in the quantity analysis. However, emergency and stand[]by wells will not be included in the quantity analysis.

S.C. Code Ann. Regs. 61-58.2(B)(1)(b).

Additionally, the portion of the regulations concerning operation and maintenance for all public water systems specifies:

> The capacity of a public water system which uses groundwater as its only drinking water source, shall be based on all operable wells pumping 16 hours a day or all operable wells minus the largest well pumping 24 hours a day, which[]ever is less. If the system has an additional source (surface water plant or metered connection from another public water system), the additional capacity from that source shall be used in determining the total capacity of the system. If the capacity of the system is exceeded on a consistent basis during the peak water use months, the system shall submit a preliminary engineering report to [DHEC] within ninety (90) days addressing in detail any upgrade necessary to keep up with any growth in demand on the system. Construction plans and specifications for a new well may be submitted in lieu of the preliminary engineering report. In addition, [DHEC] *may* elect not to issue any construction permits for new water line construction until the capacity of the system is increased.

S.C. Code Ann. Regs. 61-58.7(D)(12) (emphasis added).

As DHEC points out, Regulation 61-58.1(K) does not address whether a Final Approval can include conditions. DHEC asserts it interprets this as allowing conditional approvals. Because DHEC is the agency charged with this regulation, we defer to its interpretation. *See Kiawah Dev. Partners, II*, 411 S.C. at 33, 766 S.E.2d at 717 ("If the statute or regulation 'is silent or ambiguous with respect to the specific issue,' the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference." (quoting *Chevron, U.S.A., Inc.*, 467 U.S. at 843)). Further, if DHEC determines the Town is not complying with the Safe Drinking Water Act, DHEC can pursue an enforcement action. *See Amisub of S.C., Inc.*, 403 S.C. at 595, 743 S.E.2d at 796-97 (finding "[i]f DHEC had determined that [a company] was in violation of any applicable provision, it was entitled to pursue an enforcement action. DHEC,

however, never found that [the company or its parent company] was in violation of any procedures."). Because DHEC was simply restating the applicable regulation and because the regulation is silent, the conditions in the Final Approvals did not render it an initial decision.

CONCLUSION

Because A.O. Smith did not timely challenge the permits and the conditions in the Final Approvals did not make them initial decisions, the ALC's dismissal of A.O. Smith's request for a contested case is

AFFIRMED.

HUFF and WILLIAMS, JJ., concur.