

SUPREME COURT OF SOUTH CAROLINA

Chem-Nuclear Systems, LLC v. South Carolina Board of Health and Environmental Control, 374 S.C. 201

648 S.E.2d 601 (2007) · No. No. 26364 · Decided July 23, 2007

SUMMARY

The South Carolina Supreme Court held that Act 387's savings clause preserved Sierra Club's pending appeal from an administrative law judge's decision concerning Chem-Nuclear's radioactive waste facility license. However, because the appeal was pending before the South Carolina Board of Health and Environmental Control rather than before the Administrative Law Court or circuit court, the Board lacked jurisdiction under Act 387. The court ordered the appeal transferred to the South Carolina Court of Appeals.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Justice Burnett; Chief Justice Toal; Justice Moore; Justice Waller; Justice Pleicones
JURISDICTION	South Carolina
DECIDED	July 23, 2007
DOCKET	No. 26364
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of South Carolina accepted the matter in its original jurisdiction to decide whether Act 387 deprived the South Carolina Board of Health and Environmental Control of jurisdiction over an administrative appeal pending when the Act took effect.
STANDARD OF REVIEW	Statutory interpretation de novo; the court applied the plain meaning of clear and unambiguous statutory language.
PRECEDENTIAL VALUE	Published opinion; binding precedent of the Supreme Court of South Carolina.
PARTIES	Chem-Nuclear Systems, LLC v. South Carolina Board of Health and Environmental Control

TOPICS

administrative procedure act

appellate jurisdiction

judicial review of agency action

statutory interpretation

legislative intent

PRACTICE AREAS

administrative law

appellate procedure

environmental law

statutory interpretation

QUESTIONS PRESENTED

1. Whether Act 387's savings clause preserved Sierra Club's pending appeal from the Administrative Law Court.
2. Whether Act 387 placed jurisdiction over Sierra Club's pending appeal in the Board or transferred jurisdiction to the South Carolina Court of Appeals.

HOLDINGS

1. Section 55 of Act 387 preserved Sierra Club's perfected appeal because it was a pending appeal existing on the Act's effective date.
2. The Board did not have jurisdiction under Act 387 to hear Sierra Club's pending appeal; jurisdiction was transferred to the South Carolina Court of Appeals.

KEY QUOTATIONS

“Pursuant to the plain language of Section 57, the Board does not currently have jurisdiction over the appeal in Sierra Club.” (207)

“Because Section 55 preserves Sierra Club's pending appeal, Sierra Club is not required to re-perfect its appeal in the Court of Appeals; instead, Section 57 effectively transfers jurisdiction to the Court of Appeals of Sierra Club's appeal.” (208)

FACTUAL BACKGROUND

Chem-Nuclear operated a state-licensed low-level radioactive waste disposal facility in Barnwell County. DHEC renewed the facility's license, and Sierra Club challenged the renewal before the Administrative Law Court, which upheld it. Sierra Club appealed to the Board, but Act 387 substantially changed the administrative appellate structure while that appeal remained pending.

PROCEDURAL HISTORY

DHEC renewed Chem-Nuclear's low-level radioactive waste facility license. Sierra Club challenged the renewal in the South Carolina Administrative Law Court, which upheld the renewal, and then appealed to the Board. While that appeal was pending, Act 387 took effect; Chem-Nuclear sought a declaration that the Board no longer had jurisdiction. The Supreme Court declared that the Board lacked jurisdiction and ordered the appeal transferred to the South Carolina Court of Appeals.

DISPOSITION

other

REMAND INSTRUCTIONS

The appeal in Sierra Club was ordered transferred to the South Carolina Court of Appeals pursuant to Section 57 of Act 387. The opinion did not order a remand to the Board or Administrative Law Court.

CASES CITED

- Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000)
- Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 476 S.E.2d 690 (1996)
- Hitachi Data Systems Corp. v. Leatherman, 309 S.C. 174, 420 S.E.2d 843 (1992)
- Hagood v. Sommerville, 362 S.C. 191, 607 S.E.2d 707 (2005)
- S.C. Dep't of Natural Res. v. McDonald, 367 S.C. 531, 626 S.E.2d 816 (Ct. App. 2006)
- Deltoro v. McMullen, 322 S.C. 328, 471 S.E.2d 742 (Ct. App. 1996)
- Badeaux v. Davis, 337 S.C. 195, 522 S.E.2d 835 (Ct. App. 1999)
- Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997)
- Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, 442 S.E.2d 177 (1994)