

**RECEIVED**

STATE OF SOUTH CAROLINA  
IN THE  
SUPREME COURT

MAR 28 2013

**S.C. SUPREME COURT**

Appeal from the Administrative Law Court  
Hon. Carolyn C. Matthews, Administrative Law Judge  
ALC Docket No.: 10-ALJ-07-0217-CC

DTG Holdings, LLC and  
Jasper Station Associates, LLC,

Respondents,

v.

South Carolina Department of Health  
and Environmental Control,

Appellant.

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**CONSENT MOTION FOR ORDER OF DISMISSAL**

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Stephen P. Groves, Sr., Esquire  
Mary D. Shahid, Esquire  
NEXSEN PRUET, LLC  
205 King Street, Suite 400  
Charleston, South Carolina 29401  
Telephone: 843.720.1725  
Telecopier: 843.414.8206  
E-Mail: [sgroves@nexsenpruet.com](mailto:sgroves@nexsenpruet.com)  
[mshahid@nexsenpruet.com](mailto:mshahid@nexsenpruet.com)

*Attorneys for the Respondents*

Carlisle Roberts, Jr., Esquire  
General Counsel  
SCDHEC  
2600 Bull Street  
Columbia, South Carolina 29201  
Telephone: 803.898.3350

Bradley R. Churdar, Esquire  
Chief Counsel  
SCDHEC  
1362 McMillian Ave., Suite 400  
N. Charleston, S. Carolina 29405  
Telephone: 843.953.0229

*Attorneys for the Appellant*

TO: THE HONORABLE JUSTICES OF THE SOUTH CAROLINA SUPREME COURT:

COMES NOW the Respondents, DTG Holdings, LLC and Jasper Station Associates, LLC, together with the Appellant, South Carolina Department of Health and Environmental Control ("SCDHEC"), pursuant to Rules 240 and 261 of the South Carolina Appellate Court Rules, and jointly respectfully requests this Supreme Court to issue an order dismissing this appeal on the grounds that the parties have been able to reach a mutually agreeable settlement of all issues involved herein and there are no longer any issues and/or disputes which presently need to be adjudicated by this Supreme Court and, therefore, the matter is, in essence, become moot.

The basis for this motion is the parties have resolved their dispute and submitted a proposed Consent Order of Settlement and Dismissal to the Circuit Court for approval and execution. (*A copy of the proposed settlement/dismissal order is attached hereto as Exhibit "A" and incorporated herein by reference.*). The parties' jointly agreed-upon and subsequently executed combination settlement agreement and dismissal request completely ends the parties' dispute, as well as, the ancillary concerns and issues expressed and raised by the intervenor below, the South Carolina Coastal Conservation League (the "SCCCL").

Finally, the parties respectfully request this Supreme Court to hold the briefing time in abeyance until such time as this motion may be considered and ruled upon.

Respectfully submitted:

NEXSEN PRUET, LLC

By: 

Stephen P. Groves, Sr., Esquire  
Mary D. Shahid, Esquire  
205 King Street, Suite 400  
Charleston, South Carolina 29401  
Telephone: 843.720.1725  
Telecopier: 843.414.8206  
E-Mail: [SGroves@nexsenpruet.com](mailto:SGroves@nexsenpruet.com)  
[MShahid@nexsenpruet.com](mailto:MShahid@nexsenpruet.com)

*Attorneys for the Respondents*

SOUTH CAROLINA DEPARTMENT OF HEALTH  
AND ENVIRONMENTAL CONTROL

By:  (with permission)

Bradley R. Churdar, Esquire  
Chief Counsel  
1362 McMillian Ave., Suite 400  
N. Charleston, S. Carolina 29405  
Telephone: 843.953.0229

Carlisle Roberts, Jr., Esquire  
General Counsel  
2600 Bull Street  
Columbia, South Carolina 29201  
Telephone: 803.898.3350

*Attorneys for the Appellant*

Charleston, South Carolina

27 March 2013

NPCHAR1:1091636.1-NC-(SPG) 048646-00001

*Exhibit "A"*

**NEXSEN|PRUET**

**Mary D. Shahid**  
Member  
Admitted in SC

March 25, 2013

The Honorable Perry M. Buckner, III  
101 Hampton Street  
P.O. Box 470  
Walterboro, SC 29488

Re: Jasper Station, LLC v. South Carolina Department of Health and  
Environmental Control and The South Carolina Coastal Conservation  
League  
Case No.: 2010-CP-15-931


Dear Judge Buckner:

Enclosed herewith, please find a Consent Order of Settlement and Dismissal in the  
above captioned matter. If this Order meets with your approval, please sign and  
return to me in the envelope provided. I will make sure the Order is filed with the  
Colleton County Clerk of Court and will provide all counsel of record with copies of  
the executed and filed Order. If you have any questions, please do not hesitate to  
contact me.

**Charleston**  
Charlotte  
Columbia  
Greensboro  
Greenville  
Hilton Head  
Myrtle Beach  
Raleigh

With kindest regards,

Very truly yours,

  
Mary D. Shahid

MDS/rp

Enclosure(s)

cc: Bradley Churdar, Esquire  
Amy Armstrong, Esquire

205 King Street  
Suite 400 (29401)  
PO Box 486  
Charleston, SC 29402  
www.nexsenpruet.com

**T** 843.720.1788  
**F** 843.414.8242  
**E** MShahid@nexsenpruet.com  
Nexsen Pruet, LLC  
**Attorneys and Counselors at Law**

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

JASPER STATION, LLC,  
Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL  
CONTROL,  
Defendant

and

THE SOUTH CAROLINA COASTAL  
CONSERVATION LEAGUE,

Intevenor.

IN THE COURT OF COMMON PLEAS

FOR THE FOURTEENTH JUDICIAL  
CIRCUIT

Case No. 2010-CP-15-931

**CONSENT ORDER OF  
SETTLEMENT AND DISMISSAL**

This is an action for Declaratory Judgment filed in accordance with S. C. Code Ann. Sec. 15-77-50, seeking a declaration by this Court that Plaintiff, Jasper Station, LLC, (“Jasper Station”) has obtained a permit by operation of law authorizing predevelopment site work within 88.93 acres of real property, located in Jasper County, S. C., and referred to herein as the “Jasper Station tract.” On July 25, 2006, Plaintiff submitted a permit application to the South Carolina Department of Health and Environmental Control (“DHEC”) seeking authorization to clear wooded areas within the Jasper Station tract and to muck and fill isolated non-jurisdictional wetlands on the tract. Plaintiff’s Complaint is based on S. C. Code Reg. 72-305(M) which provides that “upon receipt of a completed permit application for sediment and stormwater management, the appropriate plan approval agency shall accomplish its review and have either the approval or review comments transmitted to the applicant within 20 working days. If notice is not given to the applicant or if action is not taken by the end of the 20 working day period, the applicant’s plan will be considered

approved.” Plaintiff alleges that Defendant failed to timely respond to Plaintiff’s permit application and as a result Plaintiff obtained permit coverage under DHEC’s National Pollutant Discharge Elimination System (“NPDES”) General Permit authorizing “Stormwater Discharges From Large and Small Construction Activities,” Permit No. SCR100000, by operation of S. C. Code Reg. 72-305(M).

At the time of commencement of this action the Jasper Station tract included 31.17 acres of federally defined non-jurisdictional freshwater wetlands which Plaintiff proposed to muck and fill. At the time of execution of this Consent Order of Settlement and Dismissal, the Jasper Station tract included 15.75 acres of federally-defined non-jurisdictional freshwater wetlands or other waters. It is undisputed that the difference in wetland acreage between the time of commencement of this action and the execution and entry of this Consent Order of Settlement and Dismissal is because the Department of the Army, Charleston District Corps of Engineers (“the Corps”) issued: 1) a Jurisdictional Determination dated May 13, 2009, in which the Corps concluded that no wetlands or waters of the United States were found on 19.39 acres of the 88.93 acre tract; and 2) a Jurisdictional Determination dated March 27, 2012 which addressed 70.50 acres of the original 88.93 acres, and found 15.75 acres of non-jurisdictional wetlands within the 70.50 acres. These letters from the Corps are attached as Exhibits A and B respectively to this Consent Order.<sup>1</sup>

DHEC answered and denied the material allegations that Plaintiff had obtained permit coverage by operation of law under the NPDES General Permit authorizing stormwater discharges from construction activities. In addition, DHEC asserted that it had denied Plaintiff’s pending permit application and such denial constituted final agency action in accordance with S.

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<sup>1</sup>The Corps’ initial conclusion that the Jasper Station tract contained 31.17 acres of non- jurisdictional wetlands was set forth in a Jurisdictional Determination (“JD.”) issued February 9, 2006. This JD was valid for five years and expired during the pendency of this action on February 9, 2011.

C. Code Sec. 44-1-60 and the procedures set forth therein. Specifically, DHEC asserted that Plaintiff has failed to exhaust administrative remedies and that Plaintiff's claims were abandoned as a matter of law when Plaintiff failed to appeal the permit denial as required by S. C. Code Ann. Sec. 44-1-60. DHEC had issued a permit denial letter to Plaintiff on September 30, 2008, more than two years after Jasper Station submitted the permit application on July 25, 2006.

Intervenor the South Carolina Coastal Conservation League ("SCCCL") has supported the position of DHEC in this action, and has filed an additional claim against Jasper Station asserting that Jasper Station is required to obtain a permit in accordance with the S. C. Pollution Control Act, S. C. Code Sec. 48-1-10 et seq., as provided in Georgetown County League of Women Voters v. Smith Land Company, \_\_\_ S. C. \_\_\_, 713 S. E. 2d 287 (S. C. 2011).

The parties have put aside their respective positions and have agreed to a compromise and settlement of the matters asserted in the pleadings, including the Intervenor's counter-claim. This compromise and settlement is based upon project modifications to the development plans proposed by Jasper Station. The modifications relate to the wetland impacts. Jasper Station's engineering consultant, Woolpert, Inc., has provided a revised plan to DHEC staff, attached hereto as Exhibit C and entitled "Prop. Wetland Impacts," indicating that Plaintiff intends to clear, muck and fill 9.57 acres within a 14.9 acre contiguous wetland located on the tract. Plaintiff will preserve the remaining 5.3 acres of the 14.9 acre wetland and will buffer the remaining 5.3 acres by dedication of 1.8 acres of upland. In addition, Plaintiff intends to clear, muck and fill 1.74 acres of upland dug borrow pits identified by the Corps, and an additional 1.0 acres of two non-contiguous wetland areas measuring .6 acre and .4 acres. The total amount of impact is **10.57** acres of wetland fill and **1.74** acres of alteration of upland dug borrow pits. The

modifications to the project are reflected in the drawing entitled "Prop. Wetland Impacts," Exhibit C.<sup>2</sup>

Plaintiff, Defendant and Intervenor agree that as a part of this settlement, the Plaintiff will purchase 7 preservation mitigation credits.

In addition, Plaintiff has provided a "Conceptual Layout Plan," attached hereto as Exhibit D.

Based on the matters set forth above, and the modifications to the project as reflected in Exhibit C to this Consent Order, the parties enter into the following Settlement Agreement:

1. Plaintiff agrees to modification of its project for development of the Jasper Station tract in accordance with Exhibit C. Whereas Plaintiff had originally intended to clear, muck, and fill 31.17 acres of federally defined non-jurisdictional wetlands located on the Jasper Station tract, Plaintiff now intends to clear, muck, and fill 10.57 acres of federally defined non-jurisdictional wetlands located on the Jasper Station tract, and 1.74 acres of upland dug borrow pits. Plaintiff agrees to preserve, in perpetuity, the remaining 5.3 acres of federally defined non-jurisdictional wetlands located on the Jasper Station tract and to buffer these preserved wetlands through dedication of 1.8 acres of upland as depicted on Exhibit C. Plaintiff further agrees to mitigate for the wetland impacts depicted on Exhibit C with the purchase of 7 preservation mitigation credits prior to the commencement of any work within wetland areas identified on Exhibit C.

2. Defendant DHEC withdraws its letter of September 30, 2008, in which Defendant determined that the original development plans for the Jasper Station tract were inconsistent with the Coastal Zone Management Program Document and with the applicable regulations, and with

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<sup>2</sup> The original submittal for permit coverage included authorization to impact 87.6 acres of the 88.93 acre site. Exhibit C includes 70.41 acres. It is undisputed that in the interim between 2006 and the date of execution and finalization of this settlement that the 88.93 acre parcel was subdivided into two parcels – the parcel reflected in Exhibit C and a separate but contiguous ±18 acre parcel.

the NPDES General Permit Authorizing Stormwater Discharges from Large and Small Construction Activities. Defendant agrees that the project modifications as reflected in Exhibit C, along with the changes in the wetland boundaries arising from the Corps' Jurisdictional Determinations reflected in Exhibits A and B, as well as the additional information related to the Stormwater Pollution Prevention Plan identified in paragraph 3 below, address the inconsistencies identified in DHEC's letter of September 30, 2008. Defendant agrees that the application file is complete with receipt of the project modifications shown in Exhibit C, the Conceptual Layout Plan shown in Exhibit D, and Plaintiff's agreement to purchase seven mitigation credits. Defendant acknowledges that the Conceptual Layout Plan, Exhibit D, is indicative of potential future uses of the acreage reflected in Exhibit D.<sup>3</sup>

3. In addition to the information previously provided to Defendant, Plaintiff has agreed to provide a Stormwater Pollution Prevention Plan ("SWPPP") with information including sedimentology calculations for disturbance of "±" 11 acres<sup>4</sup>, and a narrative description of pre-construction and post-construction run-off, and water quality controls, if needed, during construction and after construction is completed. Defendant agrees to issuance of permit coverage to Jasper Station, under Permit No. SCR100000, effective January 1, 2013, no later than thirty days from the date of receipt of the SWPPP and supporting information described herein.<sup>5</sup>

4. Plaintiff agrees to dismissal with prejudice of this civil action. Defendant and Intervenor agree to dismissal with prejudice of any claims raised by way of Answer and Counter-Claim.

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<sup>3</sup> All parties agree that Exhibit D, which was requested by Defendant, is a conceptual plan which illustrates the type and density of development that may be undertaken on the acreage but is not a final, engineered design.

<sup>4</sup> This area is depicted on Exhibit C as "Wetland Fill" and "Borrow Pit Fill."

<sup>5</sup> Plaintiff originally sought coverage under the General Permit that was effective August 1, 2006, but that permit has expired and coverage is now sought under the General Permit effective January 1, 2013.

5. Defendant agrees to withdraw its appeal, currently pending before the S. C. Supreme Court, of the Final Order and Decision in the contested case entitled DTG Holding, LLC, and Jasper Station Associates, LLC. v. SCDHEC, Docket No.10-ALJ-07-0217-CC. Defendant expressly acknowledges that withdrawal of its appeal of this related action gives effect to the Final Order and Decision of the S. C. Administrative Law Court reinstating permit coverage under SCR100000, identified as 27-02-03-02E, to DTG Holdings, LLC, and to Plaintiff.

6. Defendant and Intervenor agree to refrain from interfering with Plaintiff's implementation of authorization to commence land-disturbing activities based on the modification to Plaintiff's development plan. Defendant further agrees to provide information if requested by Jasper County or by the City of Hardeeville, S. C. or by any other local or state entity with jurisdiction over the Jasper Station tract consistent with the terms and conditions of this Consent Order, including but not limited to information demonstrating that the Plaintiff is in possession of permit coverage under SCR 1000000 authorizing clearing, mucking, and filling within the Jasper Station tract.

7. Nothing herein is intended to restrict or limit Defendant's authority to conduct inspections, determine compliance, and otherwise enforce the rules and regulations governing the activities that are approved herein.

8. The parties agree that each party hereto shall bear all attorneys fees and costs arising from its own counsel in connection with this claim, this Agreement and the matters and documents referred to herein, and any and all other related matters.

9. The parties agree that this Settlement Agreement set forth herein contains the entire agreement between and among the parties with regards to the matters set forth herein and shall

be binding upon and inure to the benefits of the executors, administrators, personal representatives, heirs, successor and assigns of each.

This Court adopts the parties' Agreement, set forth herein, as the Order of this Court. This agreement is enforceable by this Court and any party in violation of this Agreement is subject to the contempt powers of this Court.

Based upon the consent of the parties, as evidenced by their signatures below, and based on the terms of the settlement by and between the parties, set forth herein, this civil action is hereby dismissed with prejudice.

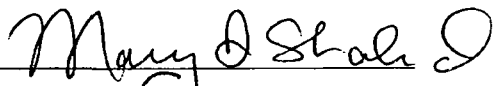
**AND IT IS SO ORDERED.**

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Presiding Judge, Fourteenth Judicial Circuit

\_\_\_\_ day of \_\_\_\_\_, 2013.

WE SO MOVE AND CONSENT:

 3/25/13  
Mary D. Shahid, Esq.,  
Attorney for the Plaintiff Jasper Station Associates, LLC

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Bradley Churdar, Esq.,  
Attorney for the Defendant the South Carolina Department  
of Health and Environmental Control

---

Amy Armstrong, Esq.,  
Attorney for Intervenor the South Carolina Coastal Conservation League

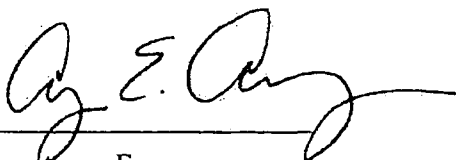
WE SO MOVE AND CONSENT:

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Mary D. Shahid, Esq.,  
Attorney for the Plaintiff Jasper Station Associates, LLC

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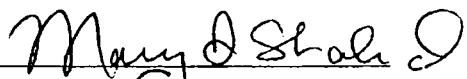
Bradley Churdar, Esq.,  
Attorney for the Defendant the South Carolina Department  
of Health and Environmental Control


 3/25/13

---

Amy Armstrong, Esq.,  
Attorney for Intervenor the South Carolina Coastal Conservation League

WE SO MOVE AND CONSENT:

 3/25/13  
Mary D. Shahid, Esq.,  
Attorney for the Plaintiff Jasper Station Associates, LLC

 3/25/13  
Bradley Churdar, Esq.,  
Attorney for the Defendant the South Carolina Department  
of Health and Environmental Control

---

Amy Armstrong, Esq.,  
Attorney for Intervenor the South Carolina Coastal Conservation League



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
CHARLESTON DISTRICT, CORPS OF ENGINEERS  
69A Hagood Avenue  
CHARLESTON, SOUTH CAROLINA 29403-5107

May 13, 2009

Regulatory Division

Mr. Asher Howell  
Newkirk Environmental, Incorporated  
Post Office Box 309  
Bluffton, South Carolina 29910

Re: SAC 2008-2188-1JQ  
Jasper County

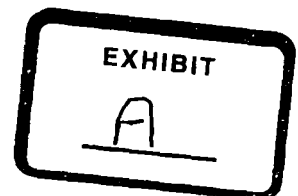
This is in response to your letter of April 15, 2009, requesting a modification of a wetland determination, on behalf of Mr. D Lynch, for 19.39-acre tract located southeast of the intersection of Jasper Station Road (S-27-162) and S-27-141, in the Okatee area of Jasper County, South Carolina. The project area is depicted on the survey plat you submitted which was prepared by TG Stanley, signed: 3-31-09 and entitled: *"This Plat Prepared At The Request Of / Jasper Station Associates, LLC / A Boundary Survey Of A 19.39 Acre Tract, / Being A Portion Of Tax Map #080-00-03-065, / Near Cherry Point, Jasper County, South Carolina"*. This site is a portion of a larger tract verified by this office in August, 2005, as reference # SAC 81-2005-1981, and again on January 16, 2009.

In your most recent letter, you stated that an access road to the site had been unintentionally left off the plat submission. You have corrected that error and supplied an updated plat, referenced above. This letter will supersede the January 2009 letter with an updated acreage correction.

Based on the August, 2005, on-site inspection and a review of aerial photography and soil survey information, it has been determined that the referenced property does not contain any wetland areas or other waters of the United States and, as such, Department of the Army authorization will not be required for mechanized land clearing, excavation, or the placement of dredged or fill material on this site.

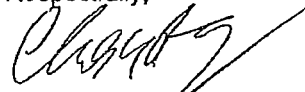
Please be advised that this determination is valid for five (5) years from the date of this letter unless new information warrants revision of the delineation before the expiration date. All actions concerning this determination must be complete within this time frame, or an additional delineation must be conducted. For the purposes of 33 CFR 331.2, this is considered to be an approved jurisdictional determination.

In future correspondence concerning this matter, please refer to SAC 2008-2188-1JQ. A copy of this letter is being forwarded to the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management for their information.



If you have any questions concerning this matter, please contact Paul Hinchcliff at 843-329-8044 or toll free at 1-866-329-8187.

Respectfully,



Charles R. Crosby  
Chief, South Branch

Enclosure:  
Basis for Jurisdiction

Copy Furnished:  
South Carolina Department of Health  
and Environmental Control  
Office of OCRM  
1362 McMillan Avenue, Suite 400  
Charleston, South Carolina 29405



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
CHARLESTON DISTRICT, CORPS OF ENGINEERS  
69A Hagood Avenue  
CHARLESTON, SOUTH CAROLINA 29403-5107

March 27, 2012

Regulatory Division

Mr. Lafayette Lyle  
Soil and Wetland Consulting, Incorporated  
153 Bachelor Hill Road  
Walterboro, South Carolina 29488

Dear Mr. Lyle:

This is in response to your letter of March 15, 2011, requesting a wetland determination, on behalf of Mr. Dan Lynch, for a 70.50-acre tract located adjacent and southeast of the intersection of John Smith Road (SC462) and Jasper Station Road (S-27-162), in the Cherry Point area of Jasper County, South Carolina. The project area is depicted on the survey plat you submitted which was prepared by TG Stanley, last-revised dated: *January 11, 2012*, and entitled "*This Plat Prepared At The Request Of / Jasper Station Associates, LLC / A Boundary Survey Of A Portion Of Tax Map #080-00-03-065, / Near Cherry Point, Jasper County, South Carolina*", which was received on February 17, 2012.

This plat depicts surveyed boundaries of wetlands or other waters as established by your office. You have requested that this office verify the accuracy of this mapping as a true representation of wetlands or other waters of the United States within the regulatory authority of this office. The property in question contains 15.78-acres of federally-defined freshwater wetlands or other waters. However, none of these aquatic resources are considered to be subject to the jurisdiction of this office due to a decision by the U.S. Supreme Court. The location and configuration of these areas, as well as their status relative to jurisdiction, are reflected on the plat referenced above.

It should be clearly noted that the decision of the U.S. Supreme Court to exclude certain waters and wetlands from federal jurisdiction under the Clean Water Act has no effect on any state or local government restrictions or requirements concerning aquatic resources, including wetlands. You are strongly cautioned to ascertain whether such restrictions or requirements exist for the area in question before undertaking any activity which might destroy or otherwise impact these wetland resources.

Based on a June 12, 2011, on-site inspection and a review of aerial photography and soil survey information, it has been determined that the surveyed boundaries shown on the referenced plat are an accurate representation of federally defined freshwater wetlands or other waters that exist on the property in question.

Please be advised that this determination is valid for five (5) years from the date of this letter unless new information warrants revision of the delineation before the expiration date. All actions concerning this determination must be complete within this time frame, or an additional delineation must be conducted.

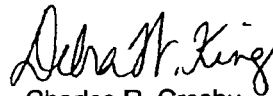
EXHIBIT

B

In future correspondence concerning this matter, please refer to SAC 2011-0296-1Q. You may still need state or local assent. Prior to performing any work, you should contact the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management. A copy of this letter is being forwarded to them for their information.

If you have any questions concerning this matter, please contact me at 843-329-8044 or toll free at 1-866-329-8187.

Respectfully,



Charles R. Crosby  
Chief, South Branch

Enclosure:  
Basis for Jurisdiction

Copy Furnished:  
South Carolina Department of Health  
and Environmental Control  
Office of OCRM  
1362 McMillan Avenue, Suite 400  
Charleston, South Carolina 29405





**STATE OF SOUTH CAROLINA  
IN THE  
SUPREME COURT**

---

Appeal from the Administrative Law Court  
Hon. Carolyn C. Matthews, Administrative Law Judge  
ALC Docket No.: 10-ALJ-07-0217-CC

---

DTG Holdings, LLC and  
Jasper Station Associates, LLC,

Respondents,

v.

South Carolina Department of Health  
and Environmental Control,

Appellant.

---

**PROOF OF SERVICE**

---

Stephen P. Groves, Sr., Esquire  
Mary D. Shahid, Esquire  
*NEXSEN PRUET, LLC*  
205 King Street, Suite 400  
Charleston, South Carolina 29401  
Telephone: 843.720.1725  
Telecopier: 843.414.8206  
E-Mail: [sgroves@nexsenpruet.com](mailto:sgroves@nexsenpruet.com)  
[mshahid@nexsenpruet.com](mailto:mshahid@nexsenpruet.com)

*Attorneys for the Respondents*

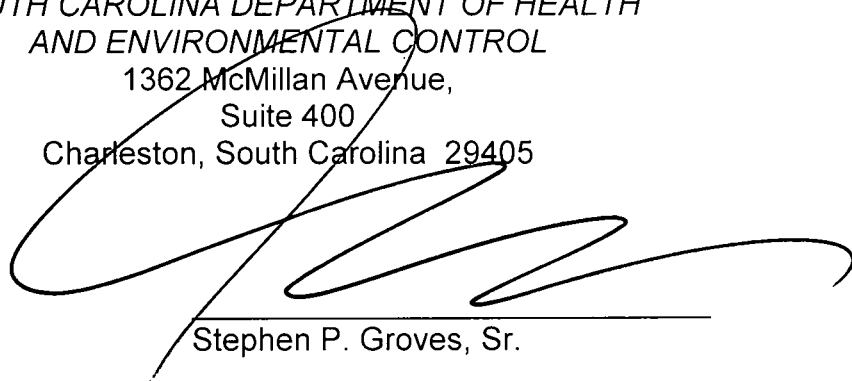
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Telephone: 803.898.3350

Bradley R. Churdar, Esquire  
Chief Counsel  
*SCDHEC*  
1362 McMillian Ave., Suite 400  
N. Charleston, S. Carolina 29405  
Telephone: 843.953.0229

*Attorneys for the Appellant*

I, Stephen P. Groves, Sr., Esquire, hereby certify that on 27 March 2013, I served a copy of the parties' joint **Consent Motion for Order of Dismissal** submitted by the Respondents, DTG Holdings, LLC and Jasper Station Associates, LLC, and the Appellant, South Carolina Department of Health and Environmental Control, on all counsel appearing in this appeal, via the United States Mail, postage pre-paid, and addressed as follows:

Bradley D. Churdar, Esquire  
SOUTH CAROLINA DEPARTMENT OF HEALTH  
AND ENVIRONMENTAL CONTROL  
1362 McMillan Avenue,  
Suite 400  
Charleston, South Carolina 29405



A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to read 'Stephen P. Groves, Sr.'.

Stephen P. Groves, Sr.

Charleston, South Carolina

27 March 2013

NPCHAR1:1091636.1-NC-(SPG) 048646-00001