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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

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Docket No. 12-ALJ-07-0434-CC

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Ken Bruning, Janet Bruning, David Feron, individually and as Trustee,  
Mary Feron, individually and as Trustee, Sally Saegmuller Haley and  
Terrell Page Haley, individually and as Co-Trustees, Martha James  
and Don Haarmeyer, individually and as Co-Trustees, and  
Pamela S. North ..... Appellants,

vs.

South Carolina Department of Health and Environmental Control  
and Cat Island POA, c/o Gary Meyer ..... Respondents,

In Re: Garfield Park Phase 3.

Cat Island POA, c/o Gary Meyer ..... Petitioner,

vs.

SCDHEC ..... Respondent.

In Re: Garfield Park Phase 3.

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REPLY TO APELLANTS' RETURN  
TO PETITION FOR REHEARING

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Nathan M. Haber  
Counsel  
South Carolina Department of  
Health and Environmental Control  
1362 McMillan Avenue  
Suite 400  
Charleston, SC 29405  
(843) 953-0229  
Attorney for Respondent SCDHEC

TO: THE COURT OF APPEALS AND ALL PARTIES:

Pursuant to Rule 240, SCACR, the South Carolina Department of Health and Environmental Control, (hereinafter, the "Department), respectfully submits this Reply to Appellants' Return to the Department's Petition for Rehearing and Rehearing En Banc.

The Department mailed the Petition for Rehearing within the time it typically takes mail to reach the Court within the required timeframe. Upon information and belief the Department's Petition for Rehearing was properly received and filed.

The central issue of this matter has been the interpretation of Chapter III, Section C(3)(XIII)(A) of the Coastal Management Program Document (hereinafter, "CMP"). The Department's Petition addresses the interpretation and application of this provision by Opinion Number 5549, (hereinafter, the "Opinion").

The issue of interpretation as it pertains to Chapter III, Section C(3)(XIII)(A) of the CMP both before the Administrative Law Court and before this Court centered on a particular portion of this requirement. Specifically, whether the inline filters for this specific project met the storage requirements of the CMP. Perhaps this focus was due to the project at issue being previously permitted to rely on the treatment of stormwater through the impoundment, a permanent water quality pond.

The Department's argument on page 8 of its Brief pertains to the whether the types of treatment for projects were limited to solely detention, retention, or infiltration. This argument was not to assert that every project located within one-half mile of a receiving water body in the Coastal Zone would have to meet such a requirement.

However, the Opinion's new interpretation could have broad impacts and may require every land disturbing project located within one-half mile from a receiving water body in the Coastal Zone to provide for storage with a permanent water quality pond, even when there is minimal or temporary impact.

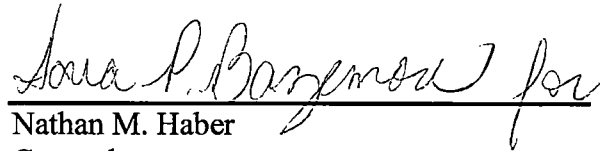
As set forth in the Department's Petition, the Opinion misapprehends its interpretation and application of the provision by interpreting a segment of the language in isolation. Chapter III, Section C(3)(XIII)(A) of the CMP when read as a whole applies to projects located within one-half mile of a receiving water body in the Coastal Zone which will incorporate a permanent water quality pond as a means of stormwater treatment. Such projects are required to have storage of the first ½ inch of runoff from the entire site or storage of the first one inch of runoff from the built-upon portion of the property, whichever is greater. Such storage may be accomplished through detention, retention, or infiltration.

### **CONCLUSION**

WHEREFORE, based on the foregoing and arguments raised in the Department's Petition for Rehearing, the Department respectfully requests the Court grant this Petition for Rehearing and this Court issue an Opinion consistent with the arguments set forth herein and in the Department's Petition for Rehearing.

[signature page to follow]

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Anna P. Bazemore for". The signature is written in black ink and is positioned above a horizontal line.

Nathan M. Haber

Counsel

South Carolina Department of  
Health and Environmental Control

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Attorney for Respondent SCDHEC

November 23, 2016  
Charleston, South Carolina

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**CERTIFICATE OF SERVICE**


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The undersigned hereby certifies that she has this day served the *Respondent South Carolina Department of Health and Environmental Control's Reply to Appellants' Return to Petition for Rehearing* via U.S. First Class Mail, postage pre-paid to the following:

Mary D. Shahid, Esquire  
Angelica M. Colwell, Esquire  
Nexsen Pruet  
Post Office Box 486  
Charleston, SC 29402

John E. North, Jr., Esquire  
North & Black  
916 Bay Street, Suite 100  
Beaufort, SC 29902

Cat Island POA  
Attention: Gary Meyer  
5 Sheffield Court  
Lady's Island, SC 29907

  
Sandra R. Wessinger

November 23, 2016



November 23, 2016

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

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SC Court of Appeals

Re: Bruning, et al. v. SCDHEC, et al.  
Case Tracking No.: 2014-002010

Dear Ms. Kitchings:

Please find enclosed the original and seven (7) copies of the Respondent South Carolina Department of Health and Environmental Control's Reply to the Appellants' Return to the Petition for Rehearing in the above referenced case.

By copy of this letter, I am serving all parties of record.

I would appreciate your returning a clocked copy in the enclosed envelope.

Sincerely,

Nathan M. Haber  
Counsel  
1362 McMillan Avenue  
Suite 400  
Charleston, SC 29405

NMH/mdc

cc: John E. North, Jr., Esquire  
Mary D. Shahid, Esquire  
Angelica M. Colwell, Esquire  
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