


STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Case No. 10-ALJ-07-0217-CC

 DTG Holdings, LLC and Jasper Station Associates, LLC

Respondents

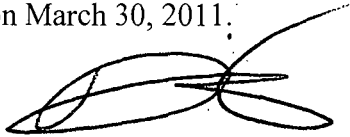
v.

South Carolina Department of Health and Environmental Control Appellant.

NOTICE OF APPEAL

South Carolina Department of Health and Environmental Control (DHEC) appeals the decision of the Honorable Carolyn C. Matthews dated February 11, 2011. DHEC received a copy of this order via email on February 11, 2011. DHEC filed a Motion for Extension to File Post Trial Motions on February 22, 2011. The ALC granted DHEC until February 28, 2011 to file post-trial motions. DHEC filed a Motion to Reconsider, Alter or Amend and Motion to Stay Effect of Order on February 28, 2011. No action was taken by the Administrative Law Judge by March 30, 2011, the thirtieth day after the filing of the motion, and the motions were therefore deemed denied by Rule 29(d)(2), RPALC, on March 30, 2011.

April 29, 2011



Davis Whitfield-Cargile
South Carolina Department of Health and
Environmental Control
1362 McMillan Avenue, Suite 400
North Charleston, SC 29405
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SC Court of Appeals

MAY 02 2011

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Other Counsel of Record:

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Certificate of Service

I certify that I have served the Notice of Appeal on DTG Holdings, LLC and Jasper Station Associates, LLC, and on the Clerk of the Administrative Law Court, by depositing a copy of it in the United States Mail, postage prepaid, on April 29, 2011, addressed to their attorneys of record, Mary D. Shahid, and Leslie S. Riley, McNair Law Firm, P.A., Post Office Box 1431, Charleston, SC 29402, and to Jana Shealy, Clerk of the Administrative Law Court, South Carolina Administrative Law Court, Edgar A. Brown Building, 1205 Pendleton St., Suite 224 Columbia, SC 29201.



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C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

April 29, 2011

VIA U.S. MAIL

Honorable Tanya Gee
Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: DTG Holdings, LLC and Jasper Station Associates, LLC v. SCDHEC
Docket. No. 10-ALJ-07-0217-CC

Dear Ms. Gee:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

(1) Proof of service of the notice of appeal on the respondents and the clerk of the Administrative Law Clerk.

(2) A copy of the Order which is to be challenged on appeal.

The filing fee is not required because no filing fee is required if the appeal is taken by the State of South Carolina, its Departments or Agencies.

I would appreciate your returning a clocked copy of the Notice of Appeal and Certificate of Service in the enclosed envelope.

Very truly yours,

Davis A. Whitfield-Cargile

Enclosures as noted

cc: Mary D. Shahid, Esq.
Honorable Jana Shealy

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SC Court of Appeals

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Office of General Counsel

Charleston Office • 1362 McMillan Avenue • Suite 400 • Charleston, SC 29405 • Phone: (843) 953-0200 • Fax: (843) 953-0201 • www.scdhec.gov

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

DTG Holdings, LLC, and)
Jasper Station Associates, LLC,)
)
Petitioners,)
)
v.)
)
South Carolina Department of)
Health & Environmental Control,)
)
Respondent.)
_____)

Docket No. 10-ALJ-07-0217-CC

FINAL ORDER AND DECISION

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SC Court of Appeals

Appearances: *Mary D. Shahid for the Petitioners*
Leslie S. Riley for the Petitioners
Davis Whitfield-Cargile for the Respondent

Date of Hearing: *September 1, 2010 & October 20, 2010*

STATEMENT OF THE CASE

This contested case arises out of the South Carolina Department of Health and Environmental Control's ("DHEC" or "the Department"), termination of permit coverage under the National Pollutant Discharge Elimination System ("NPDES") General Permit for Stormwater Discharges from Large and Small Construction Activities, Permit No. SCR100000 ("General Permit"). Permit coverage was granted to Petitioner DTG Holdings, LLC ("DTG") on March 27, 2009, authorizing land disturbance on an 18.4 acre tract located in Jasper County, South Carolina, for purposes of construction of the commercial development activity described as Red Oaks Plaza Phase 3.

On December 22, 2009, Respondent terminated permit coverage, which ended DTG's ability to develop the 18.4 acre parcel, and resulted in cancellation of a contract for sale for a

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purchase amount of Two Million, Two Hundred Nine Thousand Two Hundred Dollars (\$2,209,200.00) between Petitioner Jasper Station Associates, LLC (“Jasper Station”), seller and record owner of the 18.4 acre parcel, and DTG. On December 29, 2009, Jasper Station and DTG requested that the Board of Health and Environmental Control (“the Board”) conduct a Final Review Conference. On January 14, 2010, the Board determined not to review Petitioner’s request. This contested case followed.

BACKGROUND

Discussion of the background leading to termination of the permit coverage DHEC issued to DTG involves information related to an underlying dispute between DHEC and Jasper Station. This Court lacks subject matter jurisdiction over the underlying dispute between DHEC and Jasper Station, which is before the Court of Common Pleas in Colleton County in an action for Declaratory Judgment filed by Jasper Station.¹ However, the existence of that underlying dispute is the primary motivation for termination of the DTG permit coverage; thus, the facts surrounding that dispute must be considered when determining the propriety of the termination action.

Petitioner Jasper Station is the owner of an 88.9 acre tract of land located at the intersection of SC Highway 170 and Jasper Station Road, Beaufort County, South Carolina, referred to herein as “the Jasper Station tract.” The Jasper Station tract, the parent tract for the DTG 18.4 acre parcel, includes a contiguous 30 acre isolated (federally non jurisdictional)² wetland located in the center of the tract. On July 25, 2006, Jasper Station applied for a land disturbance permit from DHEC to prepare the site for development and sale, which involved

¹ Jasper Station Associates v. SCDHEC, Civil Action # 2010-CP-15-00931

² Referred to as a non-jurisdictional wetland (“NJW”), the wetland located on the Jasper Station tract was delineated by the U. S. Army Corps of Engineers on February 9, 2006 and determined to be a NJW and, therefore, not subject to regulation by the Corps of Engineers.

clearing, mucking and filling, inclusive of the 30 acre wetland. DHEC's Office of Ocean and Coastal Resource Management ("OCRM") staff began to process the application.

This Court takes judicial notice of the allegations in the pleadings that have been filed by Jasper Station and DHEC in the civil action pending in Colleton County. In addition, this Court takes judicial notice of an Amended Order Denying Defendant's Motion to Dismiss and Motion for Summary Judgment, issued by the Honorable Carmen Mullen, presiding Judge, Fourteenth Judicial Circuit. This Court recognizes that there has been no judicial resolution of the matters raised in the Complaint filed in Colleton County and any recitation of the allegations of the matters raised in Colleton County herein is only for purposes of providing relevant background of this contested case.

Based on matters raised in the Court of Common Pleas, it appears that Jasper Station believed its permit application was administratively and technically complete on or about December 4, 2006. Following the submittal by Jasper Station of the last piece of requested information, on December 4, 2006, a meeting was conducted between representatives of Jasper Station and DHEC staff members to discuss the application. At that meeting, Jasper Station requested confirmation that DHEC did not need any additional information regarding the permit application. DHEC did not identify any additional information needed; further, DHEC did not indicate that the Jasper Station application was incomplete.

However, following the meeting in December of 2006 with DHEC staff, Jasper Station's representatives heard nothing from DHEC regarding the permit application. Beginning in January of 2007, Jasper Station contacted DHEC staff to determine the status of the application. Jasper Station was unable to obtain any information regarding its pending permit application. Finally, on May 22, 2007, counsel for Jasper Station informed the staff that pursuant to S.C.

Code Ann. Reg. 72-305(M)³, Jasper Station had obtained a permit by operation of law, and that they were intending “to move forward expeditiously with the land clearing, mucking and filling activities that are proposed in the permit submittal.”

Between May, 2007, and September, 2008, Jasper Station sent letters to DHEC communicating its intent to conduct land disturbing activities on the Jasper Station tract in accordance with the permit application that it maintains was approved by operation of law. On September 30, 2008, DHEC issued a denial letter to Jasper Station, denying the permit application to clear, muck and fill the Jasper Station tract, including the 30 acre NJW wetland. Jasper Station disputes the validity of the denial letter and alleges that its “permit by operation of law” constitutes administrative finality. The Declaratory Judgment action filed in Colleton County was a result of Jasper Station’s belief that it had authorization to proceed with land disturbing activities and DHEC’s refusal to recognize that Jasper Station had obtained a permit by operation of law.

During the fall of 2008, Jasper Station began site preparation work within the 18.4 acres that is the subject of this action – the parcel created for sale to DTG. The 18.4 acre parcel included six acres of NJW wetlands that were impacted by the site prep work. DHEC staff investigated this work on October 15, 2008, October 23, 2008, and January 6, 2009. Each of these inspections concluded with a finding that any enforcement was still “to be determined.” Following the January 6, 2009 inspection, Jasper Station’s engineer Gabe Smith sent DHEC staff an e-mail advising that the construction impacts were contained within an “18-acre piece”, and

³ Reg. 72-305(M) provides that “upon receipt of a completed 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.” (emphasis added).

attached a plat showing the 18-acre parcel within the Jasper Station tract. Moreover, Gabe Smith advised that the land-clearing activity within the 18-acre parcel was done by "Malphrus."

On February 10, 2009, DTG's permit application, or Notice of Intent ("NOI"), was submitted to DHEC. This NOI reflected a proposal to conduct land disturbing activities within an 18.4 acre parcel for construction of a commercial development. This NOI was signed by Greg Malphrus. The 18.4 acres in question was the acreage located within the Jasper Station tract that was the subject of the three DHEC inspections noted above. On March 29, 2009, DHEC sent a letter to Gregg Malphrus, notifying him that permit coverage was granted and that he could proceed with the development activities described in the NOI.

Apparently, at the time it approved the DTG NOI, DHEC was unaware that the 18.4 acres was part of the Jasper Station tract. Upon becoming aware of this fact, DHEC commenced termination proceedings of the DTG permit, in August of 2009. Termination is governed by S. C. Code Reg. 61-9.122.64. DHEC alleges that termination is proper based on DTG's failure to disclose relevant facts in the NOI.

DTG maintains that the information included in the NOI was appropriate; that its duty to disclose relevant facts is not limited to the NOI but extends to the entire application submittal; and that all relevant facts were disclosed in the documents that DTG was required to attach to the NOI for the Department's review, in accordance with S. C. Code Reg. 61-9.122.21(e). DTG's submittal consisted of nine separate attachments, all of which were required in accordance with the terms and conditions of the General Permit and S. C. Code Reg. 61-9.122.21(e), and included the NOI.

DISCUSSION

In authorizing NPDES permit coverage to DTG on March 27, 2009, DHEC claims that it did not know that the 18.4 acre parcel that is the subject of the DTG permit was part of the Jasper Station tract. DHEC further claims that had it known that the 18.4 acre parcel was part of the Jasper Station tract, that would have been material to its review of the DTG permit application and DHEC would not have issued permit coverage to DTG.

The regulation governing termination of NPDES permits provides for the following grounds for permit termination:

- (1) Noncompliance by the permittee with any condition of the permit;*
- (2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;*

S. C. Code Reg. 61-9.122.64(a)

DHEC's general lack of knowledge at the time of permit issuance is not a ground for termination, unless that lack of knowledge is a result of the permittee's failure to disclose all relevant facts or misrepresentation of any relevant facts. Black's Law Dictionary defines "misrepresentation" as a "[t]he act of making a false or misleading assertion about something, usually with the intent to deceive. The word denotes not just written or spoken words but also any other conduct that amounts to a false assertion."

S. C. Code Reg. 61-9.122.64(a) provides cause for permit termination when relevant facts are misrepresented or not disclosed. In order to determine what facts are relevant in the context of an NPDES permit application, this Court looks first to the terms and conditions of the General Permit. Section 2.2 of the Application lists the "Notice of Intent Contents and Other Required Information." Section 2.2 (B) of the General Permit states that "[y]ou must provide the following information on the NOI form."

Importantly, and as a preliminary matter, the identity of the record owner of the property that is the subject of the permit application is not listed in as “required” information within the General Permit. Nor is information related to “Notice to Comply” or “Notice of Violation” listed as “required” within the General Permit. Finally, there is no requirement within the mandatory information listed in Section 2.2 (B) of the General Permit that the applicant list other permits applied for or issued. Yet, the identity of the property owner, the issuance of a Notice to Comply or Notice of Violation, and the inclusion of the permit application number assigned as an identifier to Jasper Station are the basis for DHEC’s termination action, and the information that DHEC claims is relevant.

Further inquiry into what information is relevant, for purposes of determining the propriety of a termination of permit coverage, includes consideration of S. C. Code Reg. 61-122.21(f): *Information requirements. All applicants for NPDES permits ... must provide the following information to the Department, using the application form provided by the Department.* The list of items enumerated in R. 61-122.21(f) does not include identification of the property owner, or notification of the existence of Notice to Comply or Notice of Violation. However, this list does include “a listing of all permits or construction approvals received or applied for under any of the following programs.” The listed programs include the “NPDES program under CWA.” S. C. Code Reg. 61-122.21(f)(6)(iii).

The Department alleges three sections of the NOI were not sufficiently completed and therefore constituted grounds for termination. Specifically, the Department alleges that the following sections of the NOI “contained misrepresentations”:

- a. II (B) (name of property owner);
- b. III (G) (whether a Notice to Comply or Notice of Violation has been issued);

- c. III (I) (list state and federal approvals applied for or obtained).

FINDINGS OF FACT

Based on the testimony and evidence before me and the arguments of counsel, I make the following findings of fact and conclusions of law.

The 18.4 acre parcel

1. On July 25, 2006, Jasper Station submitted an application to DHEC for a land disturbance permit. The request was modified on November 28, 2006. Jasper Station sought authorization to clear, muck and fill the Jasper Station tract, including a 30 acre contiguous NJW wetland located within the tract.
2. DHEC took no action on Jasper Station's application from the time the application was submitted until September 30, 2008, when DHEC sent a denial letter to Jasper Station. However, beginning in June of 2007, Jasper Station began notifying DHEC that it had a permit by operation of law pursuant to Reg. 72-305(M)⁴.
3. Jasper Station commenced land disturbing activities within an 18.4 acre section of the Jasper Station tract in the fall of 2008. These activities included the filling of six acres of NJW wetland located within the 18.4 acre parcel, part of the 30 acre NJW identified on the Jasper Station tract. DHEC inspected this construction activity on October 15, 2008, October 23, 2008, and January 6, 2009. DHEC did not take any enforcement action during this time period; DHEC

⁴ S.C. Code Ann. Reg. 72-305(M) provides that "upon receipt of a completed 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."

merely sent one “warning notice” to Jasper Station on November 5, 2008. That notice indicated that additional action was being given “further consideration.”

4. DHEC prepared an “Enforcement Referral Form” on January 8, 2009. With regard to whether any previous enforcement activity had occurred prior to January 8, 2009, DHEC staff noted that there were no prior notices of violation issued and no previous orders issued.

5. On April 10, 2008, Jasper Station entered into a contract with DTG for the sale of the 18.4 acres referenced in Finding # 3 above for the amount of Two Million, Two Hundred Nine Thousand Two Hundred Dollars (\$2,209,200.00). The contract provided that “[t]his Purchase Agreement is further contingent upon the acceptance, approvals and permits by all governmental agencies as required for the Purchaser’s full development of the 18.4 acres.”

6. On February 9, 2009, DTG Holdings’ consultants, Thomas & Hutton Engineering Co., Inc., submitted a request for permit coverage under the Department’s General Permit for Stormwater Discharges from Large and Small Construction Sites for Red Oaks Plaza Phase 3. The purpose of the land disturbance was to prepare the property for commercial development.

7. The application package included the following information:

- a. Site development plans;
- b. Plan Review Checklist;
- c. NOI;
- d. Administrative fee;
- e. Permanent Stormwater System Maintenance and Responsibility Agreement and Plan;
- f. Stormwater Management Report;
- g. USACOE Wetland Verification Letter;
- h. Digital Project Boundary Submittal Form;
- i. Firm Map.

8. Ryan Smith, a licensed Professional Engineer with Thomas and Hutton Engineering, was responsible for the preparation of DTG Holdings’ NPDES application for Red Oaks Plaza Phase

II.

9. The 18.4 acre parcel that is proposed for development as Red Oaks Plaza Phase III is contiguous to Phase I and II of the commercial development known as Red Oaks Plaza.

10. Along with the NOI, DTG submitted a letter from the U.S. Army Corps of Engineers (“Corps”), verifying 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.” Pursuant to section 404 of the Federal Clean Water Act, 33 U.S.C. § 1344 provides the authority to the Corps to verify the existence and jurisdictional nature of wetlands on a site. DHEC acknowledged that it relies on the Corps’ wetland determinations.

11. On February 13, 2009, Smith was notified that the permit application was on public notice. On March 4, 2009, DHEC notified Smith that the staff had completed the Coastal Zone Consistency review and that the application was considered complete.

12. Permit coverage was granted to DTG on March 27, 2009.

Termination

13. DHEC issued the Notice of Intent to Terminate Permit Coverage on August 21, 2009. DHEC stated that the Notice of Intent submitted for Red Oaks Plaza Phase III contained three misrepresentations, all of which were grounds for termination of permit coverage. DHEC cited the following grounds for termination: the failure to accurately name the property owner; the failure to indicate that a Notice to Comply or a Notice of Violation had been issued for the site; and the failure to list other approvals applied for at this site.

Failure to List Property Owner

14. Under Section I of the NOI, the project owner/operator was shown as DTG Holdings. Under Section II of the NOI, the property owner was also listed as DTG Holdings. It is

undisputed that DTG did not own the 18.4 acre parcel at the time the NOI was filled out or submitted to SCDHEC. However, it is further undisputed that a purchase contract was in place at the time the NOI was completed and submitted and that the sale would close upon fulfillment of the contingencies including obtaining General Permit coverage.

15. Therefore, because the owner of the property would be DTG Holdings at the time the land disturbance was conducted, Smith listed DTG Holdings as the project owner/operator and property owner, which is the procedure he has used in preparation of other NPDES applications.

16. As noted by Smith, the applicable regulation governing requests for NPDES permit coverage is Reg. 61-9.122.21. There is no requirement in Reg. 61-9.122.21 that the name of the property owner be disclosed on the NOI. Moreover, there is no requirement within the terms and conditions of the General Permit for disclosure of the property owner. Mitchell Bohannon, President and CEO of Thomas and Hutton Engineering Co., sent DHEC a letter consistent with Smith's testimony, stating that "[o]ur intent was not to mislead or misrepresent, but instead to reflect the situation at the time permit coverage is triggered – when construction commences. This is what we understood to be the correct representation as in most NOI applications we prepare; the actual land owner is under contract with a third party."

17. Petitioner provided evidence that in reviewing NOI's that were submitted over the last six months in Beaufort, Charleston, and Berkeley Counties, three out of 24 NOI's in Berkeley County included incorrect information regarding the identity of the property owner, four out of 33 NOI's in Charleston County included incorrect information, and five out of 12 NOI's in Beaufort County included incorrect information. In each instance, a title examination revealed that the entity or individual shown as property owner and as project owner did not own the property at the time the NOI was submitted.

18. Smith, with experience in preparing at least 50 permit applications seeking a land disturbance permit or permit coverage under the General Permit, listed DTG as property owner based on a desire “to represent accurately who the owner of the property is and the operator that needs to be notified when the land disturbing activities take place or when the permit is activated.”

19. Through the testimony of the project’s engineer, Ryan Smith, the written communication of the CEO of Thomas and Hutton Engineering Co., Mitchell Bohannon, and through review of DHEC’s files, Petitioner established that there are instances where the property owner identified on the NOI is an entity or individual who has entered into a contract to purchase the property. I find that this is not an unreasonable practice, in light of the fact that a contract for sale is often contingent upon the receipt of environmental approvals, and those approvals are sought on behalf of the prospective purchaser. I further find that DHEC has failed to demonstrate that the identity of the property owner is a “relevant” fact as is required under S. C. Code Reg. 61-9.122.64. The identity of the property owner is not referenced in S. C. Code Reg. 61-9. 122.21, which lists the information that must be included in an NPDES permit application. Moreover, it is not considered as “required information” in the General Permit.

20. In addition, the DTG permit application included multiple references to the Jasper Station tract. The following documents were included as part of the DTG submittal, were reviewed by DHEC, and demonstrate a relationship between the 18.4 acre parcel and the Jasper Station tract:

- a) a site map indicating that the 18.4 acre parcel is located at the intersection of SC Hwy 170 and Jasper Station Rd., which is also the location of the Jasper Station tract;
- b) TMS number which is for the entire Jasper Station tract, not limited to the 18.4 acre parcel;
- c) a January 16, 2009 letter from the U. S. Army Corps of Engineers to Newkirk Environmental determining that the 18.4

acre tract “does not contain any wetland areas or other waters of the United States.” This letter references “This Plat Prepared At The Request Of Jasper Station Associates, LLC/A Boundary Survey of a 18.41 Acre Tract/ Being A Portion of Tax Map #080-00-03-385.” This TMS number is the TMS number provided for both the Jasper Station tract and the DTG parcel on their respective NOIs; d) site development plans that include a plan identified as sheet C2.2, depicting water and sewer connections. These plans depict the 18.4 acre parcel within the Jasper Station tract and identify Jasper Station Associates, LLC, as the property owner of the surrounding tract.

21. The DTG submittal also included a “Digital Project Boundary Submittal Form.” Digital boundaries are submitted with all permit applications. This allows DHEC staff to input the information into a data base referred to as “Arcview.” The digitized boundary lines allow DHEC staff to see the overlap between parcels and permit coverage. Importantly, DHEC staff reviewing the DTG submittal, Amanda Nodolf, acknowledged that she utilized Arcview, and identified the form as a depiction of the data that Arcview provides. Importantly, the digital boundary form shows the boundaries of the DTG parcel within the boundaries of the Jasper Station parcel. Nodolf explained that in her review she failed to activate the data layer that would have revealed the Jasper Station parcel boundaries and instead she “only selected the layer called SW-09, which only showed applications that had been received in the year 2009.” Nodolf also testified that it was her normal practice to activate all layers of data in her review, but in this particular instance she deviated from her normal practice and only activated the data for 2009. Had she activated all data layers, as was her normal practice, she would have seen the overlapping boundaries between the Jasper Station tract and the DTG parcel.

22. In addition to the information contained in the DTG submittal, clearly showing the relationship between the 18.4 acre parcel and the Jasper Station tract, Gabe Smith, project engineer for the Jasper Station tract, sent an email to Shannon Hicks, with a map attached. This communication, sent January 6, 2009, indicates that the boundaries of the 18.4 acre tract are within the Jasper Station tract.

23. Regardless of whether the identity of the record owner of the 18.4 acre parcel is a relevant fact, I find that the relationship between the Jasper Station tract and the DTG parcel, with the Jasper Station tract as the "parent tract," was disclosed to DHEC through the information discussed above. Moreover, there is no evidence that this relationship between the Jasper Station tract and the DTG parcel was ever misrepresented in any of the information submitted by DTG.

Failure to Indicate Notice to Comply or Notice of Violation

24. Under Section III.G of the NOI, DTG indicated that DHEC had not issued either a Notice to Comply or a Notice of Violation for the site. On October 15, 2008, the DHEC staff conducted a site inspection at the Jasper Station site. The form created as a result of that inspection indicated that DHEC's intent regarding an enforcement action at the site was yet "to be determined." On October 23, 2008, the staff conducted another inspection and again stated the enforcement action was "to be determined." The staff conducted another inspection on January 6, 2009 and again stated that an enforcement action was "to be determined." On November 5, 2008, DHEC sent a "warning notice" to Dan Lynch of Jasper Station Associates; however, nowhere in the letter is it designated as a "Notice of Violation" or "Notice to Comply." Therefore, Smith indicated on the NOI that there had been no such notices issued for the site.

25. DHEC's Enforcement Procedures provide that a "Notice of Violation" is an official notice which precedes issuance of an Administrative Order. There is no record that DTG or Jasper Station received a "Notice of Violation" as contemplated in the Department's enforcement procedures. There is no reference in DHEC's Enforcement Procedures to a "Notice to Comply." In fact all communications from the Department staff, in the form of Compliance Inspection Reports, indicated that enforcement was "to be determined."

26. On January 8, 2009, following its last Compliance Inspection, DHEC staff sent a "Bureau of Water Enforcement Referral Form" to the "Water Enforcement Division." That form included a request for information regarding "Notices of Violation (and responses)/Previous Orders:(Central Office use.)(include dates issued, violations cited, and order compliance.)" In response to this request for information DHEC staff responded "None noted in EFIS."⁵

27. While there is evidence in the record of this contested case to support a finding and conclusion that the Department had conducted numerous inspections of the 18.4 acre parcel and had expressed concern about the construction activity, there is no evidence that the Department had directed DTG or Jasper Station "to Comply" or had issued a "Notice of Violation" as contemplated in the Department's enforcement procedures. Moreover, the Department acknowledged in its Enforcement Referral that as of January 8, 2009 no notices had been issued to Jasper Station.

I find that there is no evidence that DHEC sent a Notice to Comply and/or Notice of Violation regarding the site. Therefore, the information provided in Sec. III part G. of the NOI, in which DTG and Smith indicated that no Notice to Comply or Notice of Violation had been issued, is accurate, does not contain any misrepresentations, and is not a basis for termination of permit coverage.

⁵ EFIS is a data base utilized by DHEC staff that includes records of permitting and enforcement activity.

Failure to List other Approvals

28. DHEC bases its termination, in part, on DTG's failure to include any information under Sec. III (I) - "List all state and federal environmental permits or approvals applied for or obtained for this site."

29. The Instructions that DHEC distributes to aid in preparing the NOI address whether a project is properly considered part of a Larger Common Plan ("LCP"). According to these instructions, "If the site is part of a subdivision, industrial park, commercial park, etc., then it is considered to be part of an LCP." The applicant is specifically instructed to list the previous state permit numbers of other phases of the LCP.

30. Smith determined that the project described in the NOI, Red Oaks Plaza Phase III, was indeed part of the LCP known as Red Oaks Plaza. According to Smith, "we cut out parent parcels all the time ... And what I did in this specific case is I drew a line taking Red Oaks away from Jasper Station and adding it to the larger common plan development, which is what I – in my experience, would be what DHEC wants to consider." Consequently, Sec. III (B) includes the previous State permit number for the LCP Red Oaks Plaza, since the 18.4 acre parcel is now part of a LCP.

31. In listing the previous State permit number for the LCP Red Oaks Plaza in Section III (B) of the NOI, Smith provided the relevant permitting history for the site known as Red Oaks Plaza.

32. The NOI was reviewed by DHEC staff Christine Koczera and Amanda Nodolf. According to Smith, Koczera reviews the permit applications that he submits for completeness; her practice is to contact him by telephone if there is a question regarding completeness of the application. Smith noted that Nodolf also has contacted Smith during her review of applications to address questions.. Here, neither Koczera or Nodolf contacted Smith regarding the lack of

information, or blank, for Section III (I) of the NOI. Nodolf confirmed that Koczera is responsible for making sure that any incomplete NOI's were "filled in." Nodolf acknowledged that she was aware of the lack of information in response to Section III (I) of the NOI, but that she didn't contact the engineer to discuss whether the NOI was incomplete. Nodolf also stated that "most" of the applications that she reviews leave Section III (I) "blank."

33. DHEC's termination is based on Smith's failure to list the permit application that Jasper Station submitted in 2006. However, a review of the multiple communications between DHEC staff and Jasper Station indicate that there is little conformity among DHEC staff as to how to properly identify the Jasper Station permit application. The Jasper Station site was inspected on July 26, 2007 by DHEC staff Josh Young. The inspection form is blank where Permit # is required to be listed and where EFIS ID # is required to be listed. The Jasper Station site was inspected on February 14, 2008 by DHEC staff Shinique Henderson, and these blanks are filled in, including a permit application number "27-06-08-01." Henderson used the application number consistently in her inspections, but in the final inspection, no NPDES permit is listed, that portion of the form is left blank, and instead the number "27-06-08-01" is used as the State Tracking Number. Moreover, where in previous reports generated by Ms. Henderson the "State Tracking Number" is shown as 744962 in the final report, the number previously used by Ms. Henderson as the permit application number is now shown as the "State Tracking Number."

34. S. C. Code Reg. 61-9.122.21(f) lists the information that is required for an NPDES permit applicant. The information includes "A listing of all permits or construction approvals received or applied for" 61-9.122.21(f)(6)(ix) seeks information on "other relevant environmental permits, including State permits." Here, based on clear instructions dictated by DHEC staff

related to LCPs, Smith concluded that the appropriate and relevant permit to list was the State permit issued for Red Oaks Plaza.

35. The information that was not included in Section III (I) of the NOI was readily available to DHEC staff when they reviewed the DTG submittal. Nodolf admitted that she utilized the Arcview data base to review the DTG permit application, and that database includes a layer of data for 2006 stormwater permit applications. Nodolf's normal practice is to activate on all data layers, which would reveal project boundaries, site names, and permit numbers for data collected since 1994. However, in her review of the DTG permit application Nodolf reviewed only the data available for 2009.

36. Section III (I) of the NOI seeks all permits applied for or obtained for the "site." The instructions provided by DHEC regarding the NOI expressly state that "[i]f the site is part of a subdivision, industrial park, commercial park, etc., then it is considered to be part of an LCP." Consequently, in accordance with DHEC's express instructions, the "site" is Red Oaks Plaza and the previous State permitting history was provided with Smith's inclusion of the permit number "27-02-03-065." Based on DHEC's instructions related to LCPs, I find that Smith, and DTG, included the relevant permit history in response to Section III (B) of the NOI.

37. My finding is consistent with DHEC's action, or inaction, upon review of the permit application. Neither Koczera or Nodolf considered the lack of information in response to Section III (I) to be relevant enough to warrant any follow up with Mr. Smith. In addition, while Nodolf had the opportunity to utilize Arcview and review all past permitting history in and around the 18.4 acre parcel, she limited her review to only data collected in 2009.

Stipulated Facts and Further Findings

38. The parties stipulated to the following facts at the conclusion of the hearing:

- The Respondent's staff that was responsible for the review of the Jasper Station Associates, LLC NOI and for inspections and enforcement matters arising from actions taken on the Jasper Station tract did not have any participation in the review of the DTG Holdings, LLC NOI. The staff that reviewed the DTG Holdings NOI were entirely different individuals from the staff that reviewed the Jasper Station Associates NOI and performed the inspection of construction activities at the Jasper Station tract.

- The Respondent's employee Jeff Thompson inspected the acreage that comprises the 18.4 acre parcel previously under contract by DTG Holdings, LLC, and concluded that there were wetlands on the 18.4 acre parcel, including within the six acre portion of the tract where Petitioners conducted clearing, mucking, and filling activities. Mr. Thompson's observations and conclusions regarding the presence of wetlands were based on the presence of hydric soils as determined by excavating many soil borings identification of a predominance of hydrophytic vegetation, and evidence of hydrology using hydrologic indicators including buttressed trunk trees, water standing on leaves, and the fact that the entire tract was inundated from three inches up to over two feet of water at the time of his last inspection. Mr. Thompson used a three parameter approach using the U.S. Army Corps of Engineers for identifying wetlands. Mr. Thompson found all three criteria on the site. Mr. Thompson concluded that soil profiles indicated very little actual fill on the site, mostly only an inch or two. Mr. Thompson's findings are set forth in a report he prepared, DHEC Exhibit 42, which is incorporated into these stipulations and admitted into the record. Mr. Thompson also took photographs which support his conclusion that there were still wetlands on the site. Photographs dated 7/28/2009 are attached as DHEC Exhibits 43a through 43f and photographs dated December 17, 2009, are attached as DHEC Exhibits 44a through 44r, and incorporated into this stipulation and admitted into the record.

- DHEC requires that an applicant for permit coverage must obtain a Corps wetland verification letter and correspondence signed, sealed and dated wetland plat. It cites to the Checklist for Design Professionals. The DTG NOI was accompanied by a letter from the Corps of Engineers verifying on January 16, 2009, that there were no wetlands on the 18.41 acre tract. DHEC staff notified the Corps of Mr. Thompson's findings. To date the Corps has taken no action related to its January 19, 2009 verification letter, which is valid on its face for five years from the date of the letter "unless new information warrants revision of the delineation before the expiration date."

- Mr. Thompson's findings were not referenced as a basis for termination in the Respondent's notice of termination or termination of permit coverage.

- Respondent's employee Shannon Hicks, manager of the stormwater permitting section at Respondent's Ocean and Coastal Resource Management office, is familiar with the Jasper Station file. Based on her familiarity with the file and her training of staff, Ms. Hicks believes that if Amanda Nodolf had looked at the Jasper Station file, Ms. Nodolf would have discovered the underlying dispute between the Department and Jasper Station related to whether Jasper Station had authorization to impact the wetlands on the Jasper Station tract. The Department's position in this underlying dispute is that Jasper Station did not have authorization to impact wetlands on the Jasper Station tract.

- Respondent's staff does not prepare abstracts of title, perform title examinations, or research record title when reviewing NOIs. Respondent's staff presumes that the information provided on the NOI as to the identity of the record owner of the property that is the subject of the NOI is accurate, and relies on the representations of the applicant as to the correct identity of the record owner.

- Respondent's staff is not aware of any other permits that were issued based on an application which contained misrepresentations. When possible violations are brought to staff's attention, they are referred to enforcement staff to determine whether administration action is warranted.

- Petitioner served discovery requests upon Respondent wherein Petitioners sought to inspect all stormwater permit files over a six-month period for the eight coastal counties. After the Court granted Petitioners' motion to compel, Respondent produced 264 files to Petitioners' counsel for inspection. Of these 264 files, Petitioners' counsel requested copies of Notice of Intent from 123 files.

39. In accordance with the Checklist for Design Professionals, a tool developed by DHEC to aid in preparation of a request for permit coverage, DHEC requires that "[a]ny freshwater wetlands on the site must be identified and verified by the U. S. Army Corps of Engineers (USACOE). A Corps wetland verification letter and corresponding signed, sealed and dated wetland plat must accompany the application package. The dates on the plat and the verification letter must coincide. The Corps verification letter must reference the plat as an 'accurate depiction' and not preliminary approximation. The plat needs to identify whether or not the wetlands are jurisdictional or non jurisdictional. Include the USACOE permit number on the permit application if applicable."

40. I find DTG complied with this requirement by submitting the letter from the Corps of Engineers dated January 16, 2009, in which the Corps concluded that there were no "wetland areas or other waters of the United States" on the 18.4 acre parcel. DHEC staff relies on the Corps for this determination.

41. In addition, DHEC did not terminate DTG's permit based on whether it was appropriate for DTG to indicate in Section IV of the NOI that there were no wetlands on the site. The issue of the sufficiency of the information provided by DTG in Section IV of the NOI related to wetlands is not before this Court.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over this case pursuant to the S.C. Administrative Procedures Act, S.C. Code Ann. §1-23-310, 1-23-370, 1-23-600; and the Pollution Control Act, S.C. Code Ann. §48-1-10 and its regulations, 24 S.C. Code Ann. Reg. 61-9.

Standard of Review

2. The hearing before the ALC is a contested case hearing pursuant to the APA and is heard *de novo*. Marlboro Park Hosp. v. S. C. Dep't of Health and Env'tl. Control, 358 S.C. 573, 595 S.E.2d 851 (2004). The proper standard of proof to be applied is a preponderance of the evidence. Anonymous (M-156-90) v. State Bd. of Med. Examiners, 329 S.C. 371, 496 S.E.2d 17(1998); National Health Corp. v. Dep't of Health and Env'tl. Control, 298 S.C. 373, 380 S.E.2d 841 (Ct. App. 1989).

3. DHEC, as the regulatory agency, bears the burden of proof in matters involving the assessment of civil penalties, or the enforcement of administrative orders. SCALCR Rule 29(B).

4. "It is generally recognized that the trier of fact, who has the opportunity to observe the witnesses and listen to their testimony in person, is in the best position to determine issues of witness credibility." Dixon v. Dixon, 336 S.C. 260, 263, 519 S.E.2d 357, 358 (Ct. App. 1999). The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See, S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992).

5. The S.C. Stormwater Management and Sediment Reduction Act of 1991, S.C. Code Ann. §48-14-10 et seq. and the regulations promulgated thereunder, 26 S.C. Code Ann. Reg. 72-300 et seq. require a permit for land disturbing activities, unless an exemption applies. §48-14-30(A). In addition, the S.C. Pollution Control Act, S.C. Code § 48-1-10, et seq. and the regulations at R. 61-9.122 require that new construction projects be consistent with the terms and conditions of the General Permit for Storm Water Discharges from Large and Small Construction Activities. Compliance under both sets of requirements is accomplished in one permitting action through authorization of coverage under the NPDES General Permit.

6. Reg. 61-9.122.64(a)(2) sets forth the grounds for termination of a permit during its term: “the permittee’s failure in the application process or during the permit issuance process to disclose fully all relevant facts or the permittee’s misrepresentation of any relevant facts at any time.” Black’s Law Dictionary defines “misrepresentation” as a “[t]he act of making a false or misleading assertion about something, usually with the intent to deceive. The word denotes not just written or spoken words but also any other conduct that amounts to a false assertion.”

7. As provided in Reg. 61-9.122.21, an applicant for coverage under an NPDES general permit must submit the following information to the Department:

The activities conducted by the applicant which require it to obtain an NPDES permit.

- a. Name, mailing address, and location of the facility for which the application is submitted.
- b. Up to four SIC codes which best reflect the principal products or services provided by the facility.
- c. The operator’s name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

- d. Whether the facility is located on Indian lands.
- e. A listing of all permits or construction approvals received or applied for under any of the following programs:
 - (i) Hazardous Waste Management Program under RCRA.
 - (ii) UIC program under SDWA.
 - (iii) NPDES program under CWA.
 - (iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.
 - (v) Nonattainment program under the Clean Air Act.
 - (vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.
 - (vii) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act.
 - (viii) Dredge or fill permits under section 404 of the CWA.
 - (ix) Other relevant environmental permits, including State permits.

8. The NPDES General Permit For Stormwater Discharges from Large and Small Construction Activities includes a list of information that an applicant "must provide" on the NOI form. Absent from this list is the identification of the property owner, information regarding the issuance of a Notice of Violation or Notice to Comply, and information related to other permits for the site.

9. DHEC's instructions included with the NOI define "plan" in "larger common plan of development" as "any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer


design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plat.’ [63 Federal Register No. 128, July 6, 1998, p. 36491] For example, if master calculations have been prepared and/or submitted for an entire site, then all phases and parcels at that site would be considered part of an LCP, if the site is part of a subdivision, industrial park, commercial park, etc., then it is considered to be part of an LCP.”

10. DHEC has failed to demonstrate that cause exists for termination of the General Permit coverage granted to DTG. Termination is a drastic administrative action with the potential for significant negative impact on the permittee, as was demonstrated in this contested case with the loss of the sales contract and opportunity associated with that contract. This Court considers the adjective “relevant” as used in S. C. Code Reg. 61-9.122.64 to have meaning in the context of determining whether cause exists for permit termination. Based on the terms and conditions of the General Permit and the regulatory requirements set forth in S. C. Code Reg. 61-9.122.21, this Court does not consider identification of the property owner on the NOI or information regarding the issuance of a Notice of Violation or Notice to Comply to be “relevant” within the context of determining the existence of cause for termination. With regard to compliance with Reg. 61-9.122.21, this Court considers information related to previous permits for the LCP Red Oaks Plaza to be relevant information.

Here, the Department staff failed to apprehend that the 18.4 acre parcel that was the subject of the DTG NOI was part of the Jasper Station tract. That information was not hidden from the Department, nor was it misrepresented. In fact, in reviewing the permit application in its totality, that information was provided to the Department.

It is, therefore, ORDERED, that the Department's termination of NPDES permit coverage issued to DTG, identified as 27-02-03-02E is, hereby reversed, and the permit coverage identified as 27-02-03-02E is reinstated.

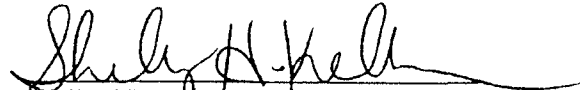
AND IT IS SO ORDERED.


CAROLYN C. MATTHEWS
ADMINISTRATIVE LAW JUDGE

February 11, 2011
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Shelby H. Kellahan, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).


Shelby H. Kellahan
Judicial Law Clerk

February 11, 2011
Columbia, South Carolina



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29201
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May 18, 2011

Davis Arjuna Whitfield-Cargile, Esquire
SCDHEC - Ocean & Coastal Resource Management
1362 McMillan Ave
Ste 400
Charleston, SC 29405-2047

Re: DTG Holdings, LLC v. SCDHEC
Case Tracking #: 2011191826

Dear Mr. Whitfield-Cargile:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc: Mary D. Shahid, Esquire
Leslie S. Riley, Esquire
The Honorable Jana E. Shealy



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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SCDHEC - Ocean & Coastal Resource Management
1362 McMillan Ave
Ste 400
Charleston, SC 29405-2047

Re: DTG Holdings, LLC v. SCDHEC
Case Tracking #: 2011191826

Dear Mr. Whitfield-Cargile:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the

notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,
Tanya A. Gee
CLERK


TAG/ec

cc: Mary D. Shahid, Esquire
Leslie S. Riley, Esquire
The Honorable Jana E. Shealy



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

May 20, 2011

VIA U.S. MAIL

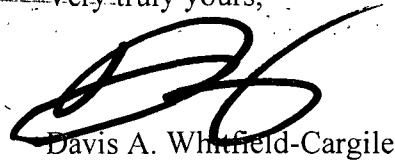
The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: DTG Holdings, LLC v. SCDHEC
Case Tracking #: 2011191826

Dear Ms. Gee:

I write to inform the court that the parties possessed the transcript in the above-referenced matter when the Notice of Appeal was filed on April 29, 2011.

Very truly yours,



Davis A. Whitfield-Cargile

cc: Mary D. Shahid, Esq.

RECEIVED
MAY 23 2011
SC Court of Appeals

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Office of General Counsel

Charleston Office • 1362 McMillan Avenue • Suite 400 • Charleston, SC 29405 • Phone: (843) 953-0200 • Fax: (843) 953-0201 • www.scdhec.gov

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Docket No. 10-ALJ-07-0217-CC

RECEIVED

MAY 25 2011

SC Court of Appeals

DTG Holdings, LLC and Jasper Station Associates, LLC

Respondents,

vs.

South Carolina Department of Health and Environmental Control

Appellant,

MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S INITIAL BRIEF
AND DESIGNATION OF MATTER TO BE INCLUDED IN THE
RECORD ON APPEAL

TO: THE COURT AND COUNSEL FOR ALL PARTIES

PLEASE TAKE NOTICE that, pursuant to Rule 263, SCACR, Appellant South Carolina Department of Health and Environmental Control ("DHEC" or the "Department") respectfully requests a thirty (30) day extension of time to file Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal in this matter. The parties were in possession of the transcript when the Notice of Appeal was filed on April 29, 2011. Therefore, the deadline for the filing of the Department's Initial Brief and Designation of Matter is May 31, 2011. If this motion is granted, the deadline for the filing of the Department's Initial Brief and Designation of Matter would be June 30, 2011.

This is the Department's first extension request during the briefing of this matter and is made because Department's counsel has been unable to prepare the brief due to his

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attention to other matters. In addition, counsel for the Department is getting married on May 28, 2011 and will be out of the office through the first week of June. Counsel for the Department has consulted with counsel for Respondents and is informed that she graciously consents to this request.

The Department respectfully requests that all other deadlines be held in abeyance pending the Court's disposition of this request.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL

By: 

Carlisle Roberts, Jr., General Counsel
South Carolina Department of Health
and Environmental Control
2600 Bull Street
Columbia, SC 29201
(803) 898-3350

Davis A. Whitfield-Cargile
South Carolina Department of Health
and Environmental Control
1362 McMillan Avenue, Suite 400
Charleston, SC 29405
(843) 953-0213
(843) 953-0201 (fax)
Attorneys for Appellant SCDHEC

Charleston, South Carolina
May 20, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Docket No. 10-ALJ-07-0217-CC

RECEIVED

MAY 25 2011

SC Court of Appeals

Respondents,

DTG Holdings, LLC and Jasper Station Associates, LLC

vs.

South Carolina Department of Health and Environmental Control

Appellant,

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she has this day served the *Department's Motion for Extension of Time to File Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal* by mailing a copy of the same by U.S.

First Class Mail, postage pre-paid:

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Mary D. Shahid
Nexsen Pruet, LLC
Post Office Box 486
Charleston, SC 29402

May 23, 2011


Laura E. H. Harvell



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

May 20, 2011

RECEIVED

MAY 25 2011

SC Court of Appeals

VIA U.S. MAIL

The Honorable Tanya A. Gee
Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: DTG Holdings, LLC v. SCDHEC
Case Tracking #: 2011191826

Dear Ms. Gee:

Please find enclosed the Department's Motion for Extension of Time to File Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal in the above referenced case. By copy of this letter, I am serving all parties of record. Thank you for your attention in this matter.

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

Very truly yours,

Davis A. Whitfield-Cargile

DWC/lehh

Enclosure

cc: Mary D. Shahid, Esq.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Office of General Counsel

Charleston Office • 1362 McMillan Avenue • Suite 400 • Charleston, SC 29405 • Phone: (843) 953-0200 • Fax: (843) 953-0201 • www.scdhec.gov



The South Carolina Court of Appeals

JOHN CANNON FEW
CHIEF JUDGE

JOHN C. CALHOUN BUILDING
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June 16, 2011

Davis Arjuna Whitfield-Cargile, Esquire
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1362 McMillan Ave
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Charleston, SC 29405-2047

Mary D. Shahid, Esquire
Leslie S. Riley, Esquire
McNair Law Firm, PA
P O Box 1431
Charleston, SC 29402

Re: DTG Holdings, LLC v. SCDHEC
Case Tracking #: 2011191826

Dear Counsel:

This letter serves as an Order granting Appellant's request for an extension of time in which to file the Appellant's Initial Brief and Designation of Matter. I have extended the due date until July 8, 2011. I realize that this extension may not give you all the time you need to complete the Appellant's Initial Brief and Designation of Matter. I have set a conference call for 9:30 a.m. on Friday, July 1, 2011, to discuss an overall approach to setting due dates for all filings in this appeal.

The Appellant's Counsel is responsible for initiating the conference call by getting all parties on the phone at the allotted time. The call should last less than ten minutes. The participants in the call will include counsel for all parties and me. In preparation for the call, please consider the other time commitments you have in the near future so we can discuss a suitable timeframe for all parties to complete their briefs. If the time scheduled for the conference call creates a conflict, please contact the Clerk's Office at 734-1890 with all counsel on the phone. We will reschedule the call to suit you.

I look forward to talking to you on Thursday.

Sincerely yours,

John Cannon Few, by James L. G. Clerk
John Cannon Few

FILED

6/16/11

NEXSEN | PRUET

Mary D. Shahid
Member
Admitted in SC

June 20, 2011

The Honorable John Cannon Few
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: DTG Holdings, LLC v. SCDHEC
Case Tracking No.: 2011191826

Dear Judge Few:

This is to advise that I represent DTG Holdings, LLC in the above-referenced appeal. However, I have changed employment and am now with Nexsen Pruet, LLC.

I would appreciate your changing your records to reflect my new firm address, telephone number, fax number and e-mail.

By copy of this letter, I am advising all counsel of record.

Very truly yours,



Mary D. Shahid

MS/rp

cc: Davis Whitfield-Cargile, Esquire

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Nexsen Pruet, LLC

Attorneys and Counselors at Law

The South Carolina Court of Appeals

DTG Holdings, LLC, and Jasper
Station Associates, LLC,

Respondents,

v.

South Carolina Department of Health &
Environmental Control,

Appellant.

The Honorable Carolyn C. Matthews
Richland County
Trial Court Case No. 2010-AL-07-00217

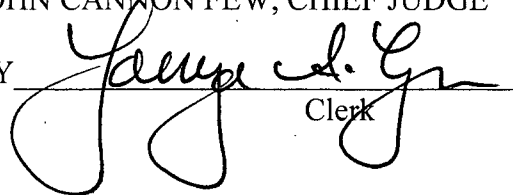
ORDER

Pursuant to a conference call with the parties, the due date for the Appellant's Initial Brief and Designation of Matter has been extended to August 8, 2011. The Respondents' Initial Brief and Designation of Matter shall be served and filed by October 3, 2011, and the Appellant's Initial Reply Brief and Designation of Matter are due thirty days thereafter.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE

BY


Clerk

Columbia, South Carolina

cc: Davis Arjuna Whitfield-Cargile, Esquire
Mary D. Shahid, Esquire
Leslie S. Riley, Esquire

FILED

Charters 7/5/11



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

July 20, 2011

VIA U.S. MAIL

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: DTG Holdings, LLC v. SCDHEC
Case Tracking #: 2011191826

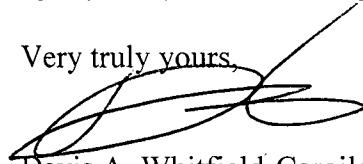
RECEIVED
JUL 25 2011

SC Court of Appeals

Dear Ms. Gee:

In my letter dated May 20, 2011, I informed the court that the parties were in possession of the transcript at the time the Notice of Appeal was filed on April 29, 2011. In preparing my brief, it has come to my attention that the transcript that the parties were in possession of did not include a record of the argument on a pre-trial motion to dismiss or a motion for summary judgment that was heard August 31, 2010. I am enclosing a letter to the Court reporter requesting a copy of that transcript. For the sake of completeness, my letter to the Court Reporter contemporaneously requests a copy of the transcript of an earlier motion hearing in this case, as I believe they both contain argument and rulings from the Court that are relevant to this appeal. I am asking that these be expedited in hopes of avoiding any delay in the briefing process.

Very truly yours,



Davis A. Whitfield-Cargile

cc: Mary D. Shahid, Esq.

enclosure, as noted

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Office of General Counsel

Charleston Office • 1362 McMillan Avenue • Suite 400 • Charleston, SC 29405 • Phone: (843) 953-0200 • Fax: (843) 953-0201 • www.scdhec.gov



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

July 20, 2011

VIA Email and Fax

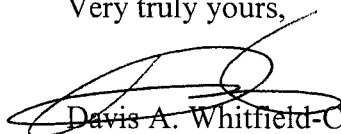
Creel Court Reporting
1230 Richland Street
Columbia, SC 29201
803-799-5668 (fax)
crystal@creelreporting.com

Re: DTG Holdings, LLC v. SCDHEC
Case Tracking #: 2011191826

Dear Crystal:

I write to request a copy of the transcript of the motion hearings in this matter (docket # 10-ALJ-07-0217-CC) held on August 31, 2010 and June 22, 2010. If you would please expedite this request and have an electronic copy to me by July 27, 2011, I would be most appreciative. DHEC will pay the costs of the transcript.

Very truly yours,



Davis A. Whitfield-Cargile

Cc: Mary D. Shahid, Esq. (via email and U.S. Mail)
The Honorable Tanya Gee (via U.S. Mail)

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Office of General Counsel

Charleston Office • 1362 McMillan Avenue • Suite 400 • Charleston, SC 29405 • Phone: (843) 953-0200 • Fax: (843) 953-0201 • www.scdhec.gov

RECEIVED

JUL 25 2011

SC Court of Appeals



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

August 8, 2011

VIA U.S. MAIL

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: DTG Holdings, LLC v. SCDHEC
Case Tracking #: 2011191826

Dear Ms. Gee:

Please find enclosed the original and one copy of the Initial Brief of Appellant and Appellant's Designation of Matter to be Included in the Record. I would appreciate your returning a clocked copy of each document in the enclosed envelope.

By copy of this letter, and as set forth in the attached certificate of service, I am serving all parties of record. I appreciate your assistance.

Very truly yours,

Davis A. Whitfield-Cargile

cc: Mary D. Shahid, Esq.

enclosure, as noted

RECEIVED
AUG 10 2011
SC Court of Appeals

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Office of General Counsel

Charleston Office • 1362 McMillan Avenue • Suite 400 • Charleston, SC 29405 • Phone: (843) 953-0200 • Fax: (843) 953-0201 • www.scdhec.gov

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Administrative Law Court Docket No. 10-ALJ-07-0217-CC

DTG Holdings, LLC and Jasper Station Associates, LLC.....Respondents,

vs.

South Carolina Department of Health and Environmental Control.....Appellant.

CERTIFICATE OF MAILING

I certify that I have placed the *INITIAL BRIEF OF APPELLANT* and *Appellant's Designation of Matter to Be Included In the Record on Appeal* in the U.S. Mail, First Class, With Proper Postage Affixed, for filing with the Court and service on Respondents, addressed as follows:

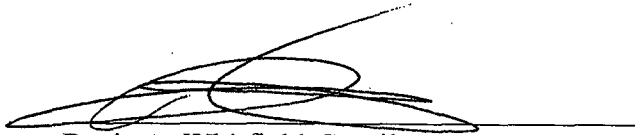
The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Mary D. Shahid, Esq.
McNair Law Firm, P.A.
Post Office Box 1431
Charleston, SC 29402

RECEIVED
AUG 10 2011
SC COURT OF APPEALS

Mary D. Shahid, Esq.
Nexsen Pruet
205 King Street, Suite 400
Charleston, SC 29401

August 8, 2011
Charleston, South Carolina


Davis A. Whitfield-Cargile

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Administrative Law Court Docket No. 10-ALJ-07-0217-CC

DTG Holdings, LLC and Jasper Station Associates, LLC.....Respondents,

vs.

South Carolina Department of Health and Environmental Control.....Appellant.

RECEIVED
AUG 10 2011
SC COURT of Appeals

**APPELLANT'S DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Appellant proposes that the following matter be included in the Record on Appeal:

Final Order and Decision, February 11, 2011
Order Denying Motion for Summary Judgment (July 15, 2010)
Order Granting Motion to Compel and Denying Motion in Limine (July 15, 2010)
DHEC's Motion to Reconsider and Alter or Amend
Department's Reply To Return To Motion To Reconsider and Alter or Amend
Department's Motion for Extension to File Post-Trial Motions
Email Granting DHEC's Motion for Extension
DHEC's Proposed Order (and cover letter)
Notice of Motion and Motion to Dismiss (August 7, 2010)
Notice of Motion and Motion to Compel (August 7, 2010)
Reply To Petitioner's Return to Motion for Summary Judgment (June 1, 2010)
Department's Motion In Limine, Motion for Summary Judgment
Department's Amended Prehearing Statement
Department's Prehearing Statement
Agency Information Sheet
Denial of Request for Final Review
Acknowledgement of Request for Final Review
Petitioners' Trial Exhibits 5, 6, 9, 11, 12, 16, 17, 18, 19, 20, 21,23, 24, 25, 31, 32

DHEC's Trial Exhibits 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 14, 17, 19, 20, 24, 28,32, 33, 35, 36, 37a-37i

Courts Exhibit Number 1 (7/1610 Shahid to Smith email, 7/20 Shahid to Smith email)
Stipulation

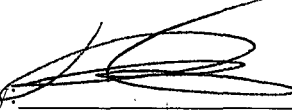
Transcript of Motions Hearing June 22, 2010, pages 3-12, 34-47, 53-60

Transcript of Motions Hearing August 1, 2010, pages 3-7, 20-24, 27-52

Trial Transcript, September 1, 2010: pages 7-9, 23, 25-51, 54, 58-69, 82-85, 90, 118-122, 156-172, 177, 178-180, 210-211, 232-296, 314-320

I certify that this designation contains no matter which is irrelevant to this appeal.

Respectfully submitted,

By: 

Carlisle Roberts, Jr.
General Counsel
South Carolina Department of Health
and Environmental Control
2060 Bull Street
Columbia, SC 29201
(803) 898-3350

Bradley D. Churdar
Chief Counsel
Davis A. Whitfield-Cargile
Staff Attorney
South Carolina Department of Health
and Environmental Control
1362 McMillan Avenue, Suite 400
North Charleston, SC 29405
(843) 953-0229

Attorneys for Appellant

Charleston, South Carolina
August 8, 2011

STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

DTG Holdings, LLC and Jasper Station Associates, LLCRespondents,

Vs

South Carolina Department of Health and Environmental ControlAppellant.

MOTION FOR EXTENSION OF TIME IN WHICH
TO FILE INITIAL BRIEF
(First Extension)

RECEIVED

SEP 23 2011

Mary D. Shahid, Esquire
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.577.9440
Telecopier: 843.720.1777
Email: mshahid@nexsenpruet.com

Attorney for Respondents.

10-3-11

11-2-11

1st
motion

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS

COMES NOW the Respondents, DTG Holding, LLC and Jasper Station Associates, LLC, pursuant to Rule 224 of the South Carolina Appellate Court Rules, and respectfully requests this Court of Appeals to grant it a thirty-day (30) extension of time in which to file its Respondents' Initial Brief. The basis for this motion is the fact that the parties are discussing settlement. Appellant's counsel has consented to this request as is evidenced by the attached email.

Based upon the current briefing schedule, Respondent's Initial Brief is due on or before October 3, 2011. Consequently, anticipating a favorable reception and subsequent grant of this motion, the Initial Brief would then be due on November 2, 2011.

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

Respectfully submitted:

BY: Mary D. Shahid
Mary D. Shahid, Esquire
205 King Street, Suite 400
Charleston, SC 29401
Telephone: 843.577.9440
Telecopier: 843.720-1777
E-Mail: mshahid@nexsenpreut.com

Attorneys for Respondents

Charleston, South Carolina

Dated: September 22, 2011

Shahid, Mary D.

From: Davis Whitfield-Cargile [whitficd@dhec.sc.gov]
Sent: Monday, September 19, 2011 10:12 PM
To: Shahid, Mary D.
Cc: Parish, Ruthie R.
Subject: Re: DTG/Jasper [IWOV-NPCHAR1.FID574573]
Attachments: np.png; links_l.png

No, that's fine.

From: Shahid, Mary D. [mailto:MShahid@nexsenpruet.com]
Sent: Monday, September 19, 2011 06:45 PM
To: 'Whitfield-Cargile, Davis' <whitficd@dhec.sc.gov>
Cc: Parish, Ruthie R. <RParish@nexsenpruet.com>; {F574573}.NPCHAR1@worksite.lawfirm.local <{F574573}.NPCHAR1@worksite.lawfirm.local>
Subject: DTG/Jasper [IWOV-NPCHAR1.FID574573]

Do you have any objection to extending the deadline to submit Respondent's Brief for 30 days in order to allow me to get this settlement/permit application together and presented to you? Ruthie is preparing me a Motion - I'll be back in office on Thursday to get it filed, and just wondered if you had a problem with it.

Mary D. Shahid
Member
 Nexsen Pruet, LLC
 205 King Street, Suite 400
 Charleston, SC 29401
 PO Box 486 (29402)
 T: 843.720.1788, F: 843.414.8242
MShahid@nexsenpruet.com
www.nexsenpruet.com

NEXSEN PRUET



*** CONFIDENTIAL COMMUNICATION *** The information contained in this message may contain legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or duplication of this transmission is strictly prohibited. If you have received this communication in error, please notify us by telephone or email immediately and return the original message to us or destroy all printed and electronic copies. Nothing in this transmission is intended to be an electronic signature nor to constitute an agreement of any kind under applicable law unless otherwise expressly indicated. Intentional interception or dissemination of electronic mail not belonging to you may violate federal or state law.

*** IRS CIRCULAR 230 NOTICE *** Any federal tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending any transaction or matter addressed in this communication.

9/22/2011

STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

RECEIVED
SEP 23 2011

DTG Holdings, LLC and Jasper Station Associates, LLC Respondents,

EC Court of Appeals

Vs

South Carolina Department of Health and Environmental Control Appellant.

CERTIFICATE OF MAILING

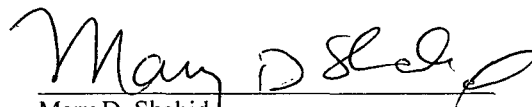
I certify that I have placed the MOTION FOR EXTENSION OF TIME TO FILE RESPONDENTS' INITIAL BRIEF in the U.S. Mail, for filing with the Court and service on Appellants, addressed as follows:

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Carlisle Roberts, Jr.
General Counsel
South Carolina Department of Health
and Environmental Control
2060 Bull Street
Columbia, SC 29201

Bradley D. Churdar
Chief Counsel
Davis A. Whitfield-Cargile
Staff Attorney
South Carolina Department of Health
And Environmental Control
1362 McMillan Avenue, Suite 400
North Charleston, SC 29405

September 22, 2011
Charleston, South Carolina


Mary D. Shahid

Mary D. Shahid
Member
Admitted in SC

September 22, 2011

The Honorable Tanya Gee
Clerk of Court
South Carolina Court Of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED

SEP 23 2011

Re: DTG Holdings, LLC and Jasper Station Associates, LLC
v. South Carolina Department of Health and
Environmental Control
Administrative Docket No.: 10-ALJ-07-0217-CC

SC Court of Appeals

Dear Ms. Gee:

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Raleigh

Enclosed please the original and seven copies of a Motion for Extension of Time in Which to File Respondent's Initial Brief, submitted on behalf of the Respondents, in the above-referenced matter. I also enclose the original and one copy of a Proof of Service indicating service of a copy of the Motion for Extension of Time in Which to File Respondent's Initial Brief upon counsel for the Appellants. Finally, I also enclose our firm check in the amount of \$25.00 to cover the applicable motion filing fee in each case.

I would appreciate your filing this Motion for Extension of Time in Which to File Respondent's Initial Brief, as well as the Proof of Service, with the Court of Appeals and returning one stamped copy of to my attention in the enclosed self-addressed stamped envelope.

If you need anything else or I otherwise may be of any assistance to you regarding this matter, please feel free to contact me at your convenience. My direct

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

Honorable Tanya Gee
September 22, 2011
Page 2

telephone number is 843.720.1788, direct telecopier is 843.414.8242, and the e-mail is mshahid@nexsenpruet.com.

With kindest regards, I remain

Very truly yours,

NEXSEN PRUET, LLC



Mary D. Shahid

MDS/rp
Enclosures
CCE

Carlisle Roberts, Jr.
Bradley D. Churdar
Davis A. Whitfield-Cargile

The South Carolina Court of Appeals

DTG Holdings, LLC, and Jasper
Station Associates, LLC,

Respondents,

v.

South Carolina Department of Health &
Environmental Control,

Appellant.

The Honorable Carolyn C. Matthews
Richland County
Administrative Law Court Case No. 2010-AL-07-00217

ORDER

For good cause having been shown, the time for the Respondents' Initial Brief and Designation of Matter to be served and filed in the above entitled matter is hereby extended until November 2, 2011.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For the Court

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc: Bradley D. Churdar, Esquire
Davis A. Whitfield-Cargile, Esquire
Carlisle Roberts, Jr., Esquire
Mary D. Shahid, Esquire
Leslie S. Riley, Esquire

FILED

9/27/11

Mary D. Shahid
Member
Admitted in SC

October 25, 2011

The Honorable Tanya Gee
Clerk of Court
South Carolina Court Of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED

OCT 26 2011

SC Court of Appeals

Re: DTG Holdings, LLC and Jasper Station Associates, LLC
v. South Carolina Department of Health and
Environmental Control
Administrative Docket No.: 10-ALJ-07-0217-CC

Dear Ms. Gee:

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Raleigh

Enclosed please the original and seven copies of a *Motion for Extension (2nd) of Time in Which to File Respondent's Initial Brief*, submitted on behalf of the Respondents, in the above-referenced matter. I also enclose the original and one copy of a *Proof of Service* indicating service of a copy of the *Motion for Extension (2nd) of Time in Which to File Respondent's Initial Brief* upon counsel for the Appellants. Finally, I also enclose our firm check in the amount of \$25.00 to cover the applicable motion filing fee in each case.

I would appreciate your filing this *Motion for Extension (2nd) of Time in Which to File Respondent's Initial Brief*, as well as the *Proof of Service*, with the Court of Appeals and returning one stamped copy of to my attention in the enclosed self-addressed stamped envelope.

If you need anything else or I otherwise may be of any assistance to you regarding this matter, please feel free to contact me at your convenience. My direct

Honorable Tanya Gee
September 22, 2011
Page 2

telephone number is 843.720.1788, direct telecopier is 843.414.8242, and the e-mail is mshahid@nexsenpruet.com.

With kindest regards, I remain

Very truly yours,

NEXSEN PRUET, LLC



Mary D. Shahid

MDS/rp
Enclosures
CCE

Carlisle Roberts, Jr.
Bradley D. Churdar
Davis A. Whitfield-Cargile
Jasper Station Associates c/o Bryan and Carole Moss

STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

RECEIVED
OCT 25 2011

DTG Holdings, LLC and Jasper Station Associates, LLC Respondents,

SC Court of Appeals

Vs

South Carolina Department of Health and Environmental Control Appellant.

**MOTION FOR EXTENSION OF TIME IN WHICH
TO FILE INITIAL BRIEF
(Second Extension Request)**

**Mary D. Shahid, Esquire
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.577.9440
Telecopier: 843.720.1777
Email: mshahid@nexsenpruet.com**

Attorney for Respondents.

11/2/11
12/2/11
2nd motion

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS

COMES NOW the Respondents, DTG Holdings, LLC and Jasper Station Associates, LLC, pursuant to Rule 224 of the South Carolina Appellate Court Rules, and respectfully requests this Court of Appeals to grant it a second extension of time in which to file its Respondents' Initial Brief.

As of this writing the undersigned has not been able to obtain Appellant's counsel's consent to a second extension, as he and his wife and they are awaiting the birth of their first child. The basis for this second request for an extension is that the parties are in active settlement discussions in a closely related action filed in the Court of Common Pleas for Colleton County, Jasper Station, LLC v. SCDHEC, Civil Action No.: 2010-CP-15-00931. Any settlement in this related action will encompass the issues raised in the appeal that is before this Court.

The delay in settling the related action is because the settlement is contingent upon Respondents providing certain information to Appellant regarding their development project which is the subject of this appeal and the subject of the related case, and Respondents need additional time to collect all of the necessary information. In order to accommodate Respondents' need for additional time in the related case, SCDHEC sent the attached letter and Consent Order to the Colleton County Court of Common Pleas in which all parties consented to keep the related case from being reached on the trial roster until February, 2012. (See Attachment A to this Motion.)

Based on the efforts to resolve the related case, the fact that any resolution of the related case will address the matters before this Court, and the time needed by my clients to consummate

the settlement, I would request a second extension of time to file Respondents' Initial Brief and ask that the Court consider granting an extension until December 31, 2011. It is the Respondents' intentions to either have the related case, and this case, resolved by the end of this year or to proceed with this appeal and with setting the related case for trial early in 2012.

If this Court isn't inclined to extend the deadline to file Respondents' Initial Brief to December 31, 2011, then Respondents would request an additional thirty day extension. Based upon the current briefing schedule, Respondents' Initial Brief is due on or before November 2, 2011. With an additional thirty day extension the Initial Brief would then be due on November 30, 2011.

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

Respectfully submitted:

BY: Mary D. Shahid
Mary D. Shahid, Esquire
205 King Street, Suite 400
Charleston, SC 29401
Telephone: 843.577.9440
Telecopier: 843.720-1777
E-Mail: mshahid@nexsenpreut.com

Attorneys for Respondents

Charleston, South Carolina

Dated: October 25, 2011

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
(Clerk) (Deputy Clerk)

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

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

DTG Holdings, LLC and Jasper Station Associates, LLCRespondents,

Vs

South Carolina Department of Health and Environmental ControlAppellant.

CERTIFICATE OF MAILING

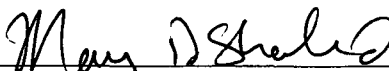
I certify that I have placed the MOTION FOR EXTENSION OF TIME TO FILE RESPONDENTS' INITIAL BRIEF in the U.S. Mail, for filing with the Court and service on Appellants, addressed as follows:

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Carlisle Roberts, Jr.
General Counsel
South Carolina Department of Health
and Environmental Control
2600 Bull Street
Columbia, SC 29201

Bradley D. Churdar
Chief Counsel
Davis A. Whitfield-Cargile
Staff Attorney
South Carolina Department of Health
And Environmental Control
1362 McMillan Avenue, Suite 400
North Charleston, SC 29405

October 25, 2011
Charleston, South Carolina



Mary D. Shahid



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

October 19, 2011

VIA US MAIL

The Honorable Perry M. Buckner
Chief Administrative Judge, Fourteenth Judicial Circuit
P O Drawer 470
101 Hampton Street
Walterboro, SC 29488-0470

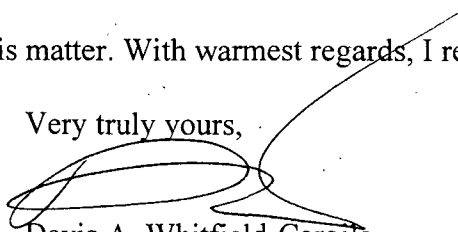
Re: Jasper Station, LLC v. S.C. Dept. of Health & Env. Control
C/A No. 2010-CP-15-00931

Dear Judge Buckner:

I am counsel for Defendant South Carolina Department of Health and Environmental Control in this matter. We appear as priority # 5 on the non-jury trial roster for November. We also appear on the November 10, 2011 Motions Roster as priority # 20. By way of this letter I am requesting protection for the November term of Court. My wife and I are expecting our first son on October 23 and I have worked it out with my office to be out of the office for a couple of weeks. In addition, you ordered the parties to return to Mediation in August. We scheduled mediation with Judge Cooper but had to cancel due to a conflict the other attorneys had with a matter before the United States Court of Appeals for the Fourth Circuit. At that time the parties agreed that it would be more productive to engage in informal settlement negotiations instead of mediation, and we agreed to ask to hold this matter in abeyance so that we could focus on settlement instead of trial preparation. It appears that the parties inadvertently neglected to file the appropriate paper work with the Court. From my conversations with counsel, I believe further settlement negotiations would be productive, and therefore also request protection based on the need for settlement discussions.

Thank you for your assistance in this matter. With warmest regards, I remain

Very truly yours,



Davis A. Whitfield-Cargile

Enclosure

cc: Mary D. Shahid, Esq. ✓
Amy E. Armstrong, Esq.

20915

EXHIBIT

A

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Office of General Counsel

Charleston Office • 1362 McMillan Avenue • Suite 400 • Charleston, SC 29405 • Phone: (843) 953-0200 • Fax: (843) 953-0201 • www.scdhec.gov

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)
)
Jasper Station, LLC,)
)
Plaintiff,)
v.)
)
South Carolina Department of Health and)
Environmental Control,)
)
Defendant and)
)
South Carolina Coastal Conservation)
League,)
)
Intervenor.)
_____)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
C/A NO. 2010-CP-15-00931

ORDER

IT APPEARING THAT counsel for the defendant will be unavailable during the November non-jury term of court; and

IT APPEARING THAT the parties desire to hold this matter in abeyance through the end of the year to attempt to resolve this matter by way of settlement; now therefore

IT IS ORDERED that counsel for defendant is hereby granted protection from being called to court during the non-jury term of Court for November, 2011; and

IT IS FURTHER ORDERED that this matter is held in abeyance through the January 2012 term of Court. This matter will not be called for trial during the time that this matter is held in abeyance.

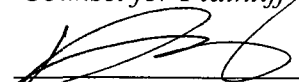
AND IT IS SO ORDERED!

Walterboro, South Carolina
October _____, 2011

Perry M. Buckner
Chief Administrative Judge

WE SO MOVE AND CONSENT:

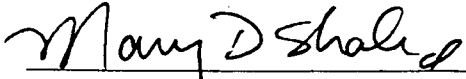
Mary D. Shahid, Esq.
Counsel for Plaintiff



Davis A. Whitfield-Cargile, Esq.
Counsel for Defendant

Amy E. Armstrong, Esq.
Counsel for Intervenor

WE SO MOVE AND CONSENT:



Mary D. Shahid, Esq.
Counsel for Plaintiff

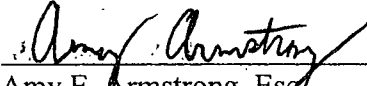
Davis A. Whitfield-Cargile, Esq.
Counsel for Defendant

Amy E. Armstrong, Esq.
Counsel for Intervenor

WE SO MOVE AND CONSENT:

Mary D. Shahid, Esq.
Counsel for Plaintiff

Davis A. Whitfield-Cargile, Esq.
Counsel for Defendant


Amy E. Armstrong, Esq.
Counsel for Intervenor



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 14, 2011

Mary D. Shahid, Esquire
Leslie S. Riley, Esquire
McNair Law Firm, PA
P O Box 1431
Charleston, SC 29402

Re: DTG Holdings, LLC v. SCDHEC
2011191826

Dear Counsel:

The following Order has been endorsed on your Motion for Extension of Time in which to File Initial Brief (Second Extension Request) in the above entitled case on appeal.

“Granted.”

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

November 14, 2011.”

Please be advised the Respondents’ Initial Brief and Designation of Matter must be served and filed no later than December 2, 2011.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Bradley D. Churdar, Esquire
Davis A. Whitfield-Cargile, Esquire
Carlisle Roberts, Jr., Esquire

Mary D. Shahid
Member
Admitted in SC

November 30, 2011

RECEIVED

DEC 01 2011

SC Court of Appeals

The Honorable Tanya Gee
Clerk of Court
South Carolina Court Of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: DTG Holdings, LLC and Jasper Station Associates, LLC
v. South Carolina Department of Health and Environmental Control
Administrative Docket No.: 10-ALJ-07-0217-CC

Dear Ms. Gee:

Enclosed please the original and seven copies of a *Motion for Extension (3rd) of Time in Which to File Respondent's Initial Brief*, submitted on behalf of the Respondents, in the above-referenced matter. I also enclose the original and one copy of a *Proof of Service* indicating service of a copy of the *Motion for Extension (3rd) of Time in Which to File Respondent's Initial Brief* upon counsel for the Appellants. Finally, I also enclose our firm check in the amount of \$25.00 for the filing fee of the enclosed Motion.

I would appreciate your filing this *Motion for Extension (3rd) of Time in Which to File Respondent's Initial Brief*, as well as the *Proof of Service*, with the Court of Appeals and returning one stamped copy to my attention in the enclosed self-addressed stamped envelope.

If you need anything further or I may be of any assistance to you regarding this matter, please feel free to contact me at your convenience. My direct

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Raleigh

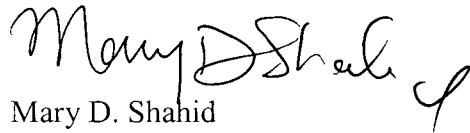
The Honorable Tanya Gee
November 30, 2011
Page 2

telephone number is 843.720.1788, direct telecopier is 843.414.8242, and the e-mail is mshahid@nexsenpruet.com.

With kindest regards, I remain

Very truly yours,

NEXSEN PRUET, LLC



Mary D. Shahid

MDS:khl

Enclosures

cc:

Carlisle Roberts, Jr.

Bradley D. Churdar

Davis A. Whitfield-Cargile

Jasper Station Associates c/o Bryan and Carol Moss

STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

ALJ Docket No.: 10-ALJ-07-0217

RECEIVED

DEC 01 2011

SC Court of Appeals

DTG Holdings, LLC and Jasper Station Associates, LLCRespondents,

v

South Carolina Department of Health and Environmental Control
.....Appellant.

**RESPONDENTS' MOTION FOR EXTENSION OF TIME IN WHICH
TO FILE INITIAL BRIEF
(Third Extension Request)**

Mary D. Shahid, Esquire
Stephen P. Groves, Esquire
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.577.9440
Telecopier: 843.720.1777
Email: mshahid@nexsenpruet.com
sgroves@nexsenpruet.com
Attorneys for Respondents.

12/2/11

3rd

1/3/12

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS

COMES NOW the Respondents, DTG Holdings, LLC and Jasper Station Associates, LLC, pursuant to Rule 224 of the South Carolina Appellate Court Rules, and respectfully requests this Court of Appeals to grant it a third extension of time in which to file its Respondents' Initial Brief. This Court has previously determined that Respondents' initial brief must be filed and served by December 2, 2011.

The undersigned has consulted with Appellant the South Carolina Department of Health and Environmental Control, and its counsel of record, Davis A. Whitfield-Cargile, has provided his verbal consent to this request for a third extension. As Respondents stated in their Second Extension Request, the parties are in active, good-faith settlement negotiations attempting to settle the dispute that gave rise to this appeal and a related case filed in the Colleton County Court of Common Pleas. Settlement has not been accomplished but if these matters, including this appeal, are going to be resolved such resolution will have to be accomplished before the end of this year.

In addition Respondents' co-counsel, Stephen Groves, whose practice is almost exclusively appellate work, has been unavailable this week as a result of the hospitalization of his father and death of his step-mother.

Based on the consent provided by Appellant's counsel, the fact that the parties are engaged in good faith efforts to negotiate a global settlement, and on Mr. Groves' unavailability to assist in the preparation of this brief, Respondents request a third thirty day extension to file this initial brief. In addition, Respondents would ask that the

deadline for filing Respondents' brief be suspended while this request is being considered by the Court.

Respectfully submitted:

NEXSEN PRUET, LLC

BY: Mary D. Shahid

Mary D. Shahid, Esquire
Stephen P. Groves, Esquire
205 King Street, Suite 400
P. O. Box 486 (29402)
Charleston, SC 29401
Telephone: 843.577.9440
Telecopier: 843.414.8242
E-Mail: mshahid@nexsenpruet.com
sgroves@nexsenpruet.com
Attorneys for Respondents

Charleston, South Carolina

Dated: November 30, 2011

GRANTED

JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Christie Allen
(Clerk) (Deputy Clerk)

FILED
12/8/11 *JA*

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

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

DTG Holdings, LLC and Jasper Station Associates, LLCRespondents,

v

South Carolina Department of Health and Environmental ControlAppellant.

CERTIFICATE OF MAILING


I certify that I have placed the MOTION FOR EXTENSION OF TIME TO FILE RESPONDENTS' INITIAL BRIEF in the U.S. Mail, for filing with the Court and service on Appellants, addressed as follows:

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Carlisle Roberts, Jr.
General Counsel
South Carolina Department of Health
and Environmental Control
2600 Bull Street
Columbia, SC 29201

Bradley D. Churdar
Chief Counsel
Davis A. Whitfield-Cargile
Staff Attorney
South Carolina Department of Health
And Environmental Control
1362 McMillan Avenue, Suite 400
North Charleston, SC 29405

November 29, 2011
Charleston, South Carolina



Mary D. Shahid



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 8, 2011

Mary D. Shahid, Esquire
Leslie S. Riley, Esquire
Steven P. Groves, Esquire
McNair Law Firm, PA
P O Box 1431
Charleston, SC 29402

Re: DTG Holdings, LLC v. SCDHEC
2011191826

Dear Counsel:

The following Order has been endorsed on your Motion for Extension of Time in Which to file Initial Brief in the above entitled case on appeal.

“Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

December 08, 2011.”

Please be advised the Respondents’ Initial Brief and Designation of Matter must be served and filed no later than January 9, 2012.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Bradley D. Churdar, Esquire
Davis A. Whitfield-Cargile, Esquire
Carlisle Roberts, Jr., Esquire

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

Appeal from The Administrative Law Court
Honorable Carolyn Matthews, Administrative Law Judge
Docket No. 10-ALJ-07-0217-CC

DTG Holdings, LLC & Jasper Station
Associates, LLC,

Respondents,

v.

South Carolina Department of Health
And Environmental Control

Appellant.

**DESIGNATION OF MATTERS OF
RESPONDENTS DTG Holdings, LLC and Jasper Station
Associates, LLC**

Stephen P. Groves, Sr., Esquire
Mary D. Shahid, Esquire
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.577.9440
Telecopier: 843.720.1777

*Attorneys for the Respondents,
DTG Holdings, LLC and Jasper
Station Associates, LLC*

TO: THE HONORABLE JUDGE OF THE SOUTH CAROLINA COURT OF APPEALS

COMES NOW the Respondents, DTG Holdings, LLC, and Jasper Station Associates, LLC, pursuant to Rule 209 of the South Carolina Appellate Court Rules, and hereby designates the parts of the transcripts, orders, pleadings, affidavits, exhibits, and other materials which they propose to include in the Record on Appeal. These designated materials may be cumulative of and/or in addition to those items designated by the Appellant, South Carolina Department of Health and Environmental Control

ORDERS

1. Final Order and Decision of the ALC Filed February 11, 2011.
2. Order Holding Matter in Abeyance Filed April 13, 2011.
3. Order Denying Motion for Reconsideration and/or Alter or Amend.
4. Order Denying Motion for Summary Judgment Filed July 15, 2010.
5. Amended Order Denying Motion for Summary Judgment Filed in 2009-CP-15-0931/2010-CP-15-0931.

PLEADINGS AND MOTIONS

1. Notice of Request for Contested Case Hearing Filed January 21, 2010;
2. Petitioner's Prehearing Statement Filed March 6, 2010;

3. Department's Motion for Extension of Time to File Post Trial Motions, February 18, 2011;
4. Complaint filed in 2009-CP-15-0931/2010-CP-15-0931.

TESTIMONY

1. Transcript of Administrative Hearing Day 1, p. 11-p. 314.

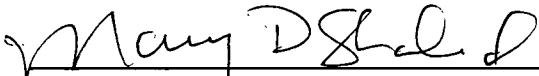
EXHIBITS

1. Court's Exhibit 1-2
2. Petitioners' (Jasper Station/DTG) Exhibits 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36
3. Respondent's (SCDHEC) Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

I, Mary D. Shahid, Esquire, hereby certify pursuant to Rule 209(c), SCACR, that the Designation of Matters to be Included in the Record on Appeal of the Respondents Jasper Station Associates, LLC and DTG Holdings, LLC, does not contain any matter and/or items which are not relevant to this appeal.

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: 843.720.1777

*Attorneys for the Respondents,
Jasper Station Associates, LLC and DTG
Holdings, LLC*

Charleston, South Carolina
January 9, 2012

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

Appeal From The Administrative Law Court
Honorable Carolyn Matthews, Administrative Law Judge
Docket No. 10-ALJ-07-0217-CC

DTG Holdings, LLC & Jasper Station
Associates, LLC,

Respondents,

v.

South Carolina Department of Health
And Environmental Control

Appellant.

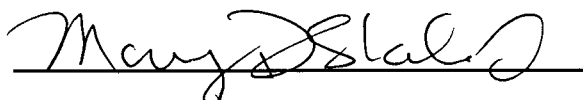
**PROOF OF SERVICE FOR
RESPONDENT'S INITIAL BRIEF
AND DESIGNATION OF MATTERS**

Stephen P. Groves, Sr., Esquire
Mary D. Shahid, Esquire
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.720.1725
Telecopier: 843.720.1777

*Attorneys for the Respondents,
Jasper Station Associates, LLC and DTG
Holdings, LLC*

I, Mary D. Shahid, Esquire hereby to certify that I mailed a copy of both the Initial Brief of the Respondents, as well as, the Respondents' Designation of Matters to be Included in the Record on Appeals to opposing counsel by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 9th Day of January, 2012.

BRAD CHURDAR, CHIEF COUNSEL
SCDHEC-OCRM
1362 McMillan Avenue
Suite 400
Charleston, South Carolina 29405

A handwritten signature in cursive script, appearing to read "Mary D. Shahid", written over a horizontal line.

Mary D. Shahid

Charleston, South Carolina

January 9, 2012

NPCHAR1:794244.1-LT-(MSHAHID) 048646-00001



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

January 23, 2012

The Honorable Tanya A. Gee
Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: *DTG Holdings, LLC v. SCDHEC*
Case Tracking #: 2011191826

Dear Ms. Gee:

Please find enclosed the Department's Motion for Extension of Time to File Appellant's Initial Reply Brief and Designation of Matter to be included in the Record on Appeal in the above referenced case.

Mary D. Shahid, attorney for the Respondent, has consented to this request.

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

Very truly yours,

Bradley D. Churdar
Chief Counsel

BDC/mdc
Enclosure
cc: Mary D. Shahid, Esquire

RECEIVED

JAN 26 2012

SC COURT OF APPEALS

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Docket No. 10-ALJ-07-0217-CC

DTG Holdings, LLC and Jasper Station Associates, LLC

Respondents,

vs.

South Carolina Department of Health and Environmental Control

Appellant,

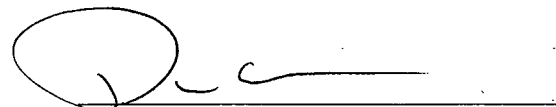
CERTIFICATE OF SERVICE

The undersigned hereby certifies that she has this day served the *Department's Motion for Extension of Time to File Appellant's Initial Reply Brief and Designation of Matter to be Included in the Record on Appeal* by mailing a copy of the same by U.S.

First Class Mail, postage pre-paid:

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Mary D. Shahid
Nexsen Pruet, LLC
Post Office Box 486
Charleston, SC 29402



M. Denise Crawford

January 23, 2012
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Docket No. 10-ALJ-07-0217-CC

DTG Holdings, LLC and Jasper Station Associates, LLC

Respondents,

vs.

South Carolina Department of Health and Environmental Control

Appellant,

MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S INITIAL REPLY
BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD
ON APPEAL

TO: THE COURT AND COUNSEL FOR ALL PARTIES

PLEASE TAKE NOTICE that, pursuant to Rule 263, SCACR, Appellant South Carolina Department of Health and Environmental Control ("DHEC" or the "Department") respectfully requests a thirty (30) day extension of time to file Appellant's Initial Reply Brief and Designation of Matter to be Included in the Record on Appeal in this matter. The Respondent filed their Initial Brief on January 9, 2012. Therefore, the deadline for the filing of the Department's Initial Reply Brief and Designation of Matter to be Included in the Record on Appeal was January 19, 2012. However, the Department did not receive a copy of the Respondent's Initial Brief until today, January 23, 2012, so we could not respond in a timely manner. Further, the parties are attempting to settle the Jasper Station circuit court case, and if settlement is reached, this would also resolve the matter before the Court.

RECEIVED

JAN 26 2012

SC Court of Appeals

2/8/12

3/9/12

138

The Department respectfully requests that all other deadlines be held in abeyance pending the Court's disposition of this request.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL

By: 

Carlisle Roberts, Jr., General Counsel
South Carolina Department of Health
and Environmental Control
2600 Bull Street
Columbia, SC 29201
(803) 898-3350

Bradley D. Churdar, Chief Counsel
South Carolina Department of Health
and Environmental Control
1362 McMillan Avenue, Suite 400
Charleston, SC 29405
(843) 953-0213
(843) 953-0201 (fax)
Attorneys for Appellant SCDHEC

January 23, 2012
Charleston, South Carolina

The South Carolina Court of Appeals

DTG Holdings, LLC, and Jasper
Station Associates, LLC,

Respondents,

v.

South Carolina Department of Health &
Environmental Control,

Appellant.

The Honorable Carolyn C. Matthews
Richland County
Administrative Law Court Case No. 2010-AL-07-00217

ORDER

For good cause having been shown, the time for the Appellant's Initial Reply Brief to be served and filed in the above entitled matter is hereby extended until March 9, 2012.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For the Court

BY *V. Claire Allen, Deputy*
CLERK

Columbia, South Carolina

cc: Bradley D. Churdar, Esquire
Davis A. Whitfield-Cargile, Esquire
Carlisle Roberts, Jr., Esquire
Mary D. Shahid, Esquire
Leslie S. Riley, Esquire
Steven P. Groves, Esquire

FILED

1-31-12 LAP

MCNAIR
ATTORNEYS

Leslie S. Riley

February 9, 2012

lriley@mcnair.net
T (843) 723-7831
F (843) 722-3227

Honorable Tanya A. Gee
Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: DTG Holdings, LLC and Jasper Station Associates, LLC
vs. SCDHEC
Administrative Law Court Case No.: 2010-AL-07-00217

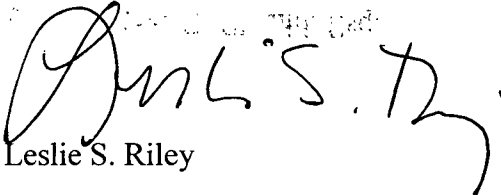
Dear Ms. Gee:

The purpose of this letter is to notify the Court that this firm does not represent the Respondents in the above referenced appeal. Mary Shahid was previously with our firm, and she continues to represent the Respondents with her present firm, Nexsen Pruet. I believe you have Mary Shahid's current contact information, but I am merely asking to be removed as an attorney in this matter.

Please let me know if you should have any questions regarding this matter.

Sincerely,

McNAIR LAW FIRM, P.A.



Leslie S. Riley

LSR:rgm

cc: Mary D. Shahid, Esq.
Bradley Churdar, Esq.
Carlisle Roberts, Jr. Esq.

RECEIVED
FEB 10 2012
SC Court of Appeals

McNair Law Firm, P. A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net

CHARLESTON 335585v1

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Docket No. 10-ALJ-07-0217-CC

DTG Holdings, LLC and Jasper Station Associates, LLC Respondents,

vs.

South Carolina Department of Health and Environmental Control Appellant,

MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S INITIAL REPLY
BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD
ON APPEAL
(2nd Extension Request)

TO: THE COURT AND COUNSEL FOR ALL PARTIES

PLEASE TAKE NOTICE that, pursuant to Rule 263, SCACR, Appellant South Carolina Department of Health and Environmental Control ("DHEC" or the "Department") respectfully requests a forty-five (45) extension of time to file Appellant's Initial Reply Brief and Designation of Matter to be Included in the Record on Appeal in this matter, making the Department's deadline for filing its Initial Reply Brief and Designation of matter to be Included on Appeal April 23, 2012. The basis for this motion is as follows:

This extension is requested due to Appellant's counsel's work load. Counsel has several hearings coming up in multiple courts, which includes extensive trial preparation. In addition, counsel has recently concluded several lengthy hearings before the

2nd
RECEIVED

MAR 09 2012

3/9/12
4/23/12
SC Court of Appeals

Administrative Law Court involving extensive discovery and trial preparation. Further, for the last few months, counsel has been covering the case load of former SCDHEC counsel, Davis Whitfield-Cargile, as well as his own case load, since Mr. Whitfield-Cargile left to pursue private practice. Respondent's Counsel also serves in the US Army Reserves and will be on temporary active duty in the upcoming weeks. Further, the parties are attempting to settle the Jasper Station circuit court case, and if settlement is reached, this would also resolve the matter before the Court.

WHEREFORE, Appellant SCDHEC respectfully moves this Court for an Order extending the time for filing its Final Brief until April 23, 2012. The Department respectfully requests that all other deadlines be held in abeyance pending the Court's approval of this extension.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL

By: 

Carlisle Roberts, Jr., General Counsel
South Carolina Department of Health
and Environmental Control
2600 Bull Street
Columbia, SC 29201
(803) 898-3350

Bradley D. Churdar, Chief Counsel
South Carolina Department of Health
and Environmental Control
1362 McMillan Avenue, Suite 400
Charleston, SC 29405
(843) 953-0213
(843) 953-0201 (fax)
Attorneys for Appellant SCDHEC

March 7, 2012
Charleston, South Carolina

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: _____
(Clerk) (Deputy Clerk)

FILED

3/23/12 CAP

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Docket No. 10-ALJ-07-0217-CC

DTG Holdings, LLC and Jasper Station Associates, LLC

Respondents,

vs.

South Carolina Department of Health and Environmental Control

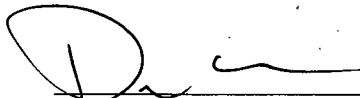
Appellant,

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she has this day served the *Department's Motion for Extension (2nd) of Time to File Appellant's Initial Reply Brief and Designation of Matter to be Included in the Record on Appeal* by mailing a copy of the same by **U.S. First Class Mail**, postage pre-paid:

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Mary D. Shahid
Nexsen Pruet, LLC
Post Office Box 486
Charleston, SC 29402


M. Denise Crawford

March 7, 2012
Charleston, South Carolina

RECEIVED

MAR 09 2012

SC Court of Appeals



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

March 7, 2012^{PM}

The Honorable Tanya A. Gee
Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: *DTG Holdings, LLC v. SCDHEC*
Case Tracking #: 2011191826

Dear Ms. Gee:

Please find enclosed the Department's Motion for Extension (2nd) of Time to File Appellant's Initial Reply Brief and Designation of Matter to be included in the Record on Appeal in the above referenced case.

By copy of this letter, I am notifying Mary D. Shahid, attorney for the Respondent, of this request.

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

Very truly yours,

Bradley D. Churdar
Chief Counsel

BDC/mdc
Enclosure
cc: Mary D. Shahid, Esquire

RECEIVED
MAR 09 2012
SC Court of Appeals



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

March 23, 2012

Bradley D. Churdar, Esquire
Davis A. Whitfield-Cargile, Esquire
S.C. Department of Health and Environment Control
1362 McMillan Ave., Ste 400
North Charleston, SC 29405

Carlisle Roberts, Jr., Esquire
S.C. Department of Health and Environment Control
Office of General Counsel
2600 Bull Street
Columbia, SC 29201

Re: DTG Holdings, LLC v. SCDHEC

Dear Counsel:

The following Order has been endorsed on your Motion for Extension of Time to File Appellant's Initial Brief and Designation of Matter in the above entitled case on appeal.

- "Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

March 23, 2012."

Please be advised the Appellant's Initial Brief and Designation of Matter must be served and filed no later than April 23, 2012.

Very truly yours,

V. Claire Allen, Deputy
CLERK

JAK/laf

cc: Steven P. Groves, Esquire
Mary D. Shahid, Esquire

RECEIVED
APR 23 2012
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Docket No. 10-ALJ-07-0217-CC

DTG Holdings, LLC and Jasper Station Associates, LLC Respondents,

vs.

South Carolina Department of Health and Environmental Control Appellant,

MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S INITIAL REPLY
BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD
ON APPEAL
(3rd Extension Request)

TO: THE COURT AND COUNSEL FOR ALL PARTIES

PLEASE TAKE NOTICE that, pursuant to Rule 263, SCACR, Appellant South Carolina Department of Health and Environmental Control ("DHEC" or the "Department") respectfully requests a forty-five (45) extension of time to file Appellant's Initial Reply Brief and Designation of Matter to be Included in the Record on Appeal in this matter, making the Department's deadline for filing its Initial Reply Brief and Designation of matter to be Included on Appeal June 6, 2012. The basis for this motion is as follows:

This extension is requested due to Appellant's counsel's work load. Counsel has recently concluded several lengthy hearings before the Administrative Law Court involving extensive discovery and trial preparation. Counsel also serves in the US Army Reserves

4/23/12

6/6/12

3rd AIRB

and will be on temporary active duty in the upcoming weeks. Further, the parties are attempting to settle the Jasper Station circuit court case, and if settlement is reached, this would also resolve the matter before the Court.

WHEREFORE, Appellant SCDHEC respectfully moves this Court for an Order extending the time for filing its Final Brief until June 6, 2012. The Department respectfully requests that all other deadlines be held in abeyance pending the Court's approval of this extension.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL

By: Brad Churdar
Jacquelyn S. Dickman, Acting General Counsel
South Carolina Department of Health
and Environmental Control
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(803) 898-3350

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Charleston, SC 29405
(843) 953-0213
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Attorneys for Appellant SCDHEC

April 20, 2012
Charleston, South Carolina

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
~~(Clerk)~~ (Deputy Clerk)

FILED
5/12/12 LAF

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Docket No. 10-ALJ-07-0217-CC

RECEIVED
APR 23 2012
SC Court of Appeals

DTG Holdings, LLC and Jasper Station Associates, LLC

Respondents,

vs.

South Carolina Department of Health and Environmental Control

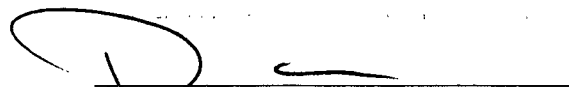
Appellant,

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she has this day served the *Department's Motion for Extension (3rd) of Time to File Appellant's Initial Reply Brief and Designation of Matter to be Included in the Record on Appeal* by mailing a copy of the same by **U.S. First Class Mail**, postage pre-paid:

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Mary D. Shahid
Nexsen Pruet, LLC
Post Office Box 486
Charleston, SC 29402


M. Denise Crawford

April 20, 2012
Charleston, South Carolina



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

April 20, 2012

RECEIVED
APR 23 2012
SC Court of Appeals

The Honorable Tanya A. Gee
Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: *DTG Holdings, LLC v. SCDHEC*
Case Tracking #: 2011191826

Dear Ms. Gee:

Please find enclosed the Department's Motion for Extension (3rd) of Time to File Appellant's Initial Reply Brief and Designation of Matter to be included in the Record on Appeal in the above referenced case.

By copy of this letter, I am notifying Mary D. Shahid, attorney for the Respondent, of this request.

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

Very truly yours,

Bradley D. Churdar
Chief Counsel

BDC/mdc
Enclosure
cc: Mary D. Shahid, Esquire

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Office of General Counsel

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