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3. Allowing the Order in the present case to stand will promote inconsistency in DOAH's rulings, in violation of the judicial concept of *stare decisis*. When a point of law is settled by a decision of the same or a superior court, departure generally should not be made. *See, State v. Dwyer*, 332 So. 2d 233 (Fla. 1976); 12A Fla. Jur. 2d §162.

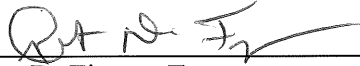
4. Allowing the posting of a bond pursuant to Rule 9.310 (c), Florida Rules of Appellate Procedure, will ensure the payment of the Department's penalties and costs with interest in the event Respondent does not prevail upon appeal.

5. As for the submission of a Site Assessment Addendum within 60 days as required by the Order, Respondent would point out that it has spent in excess of \$300,000 in tank removal and replacement, clean up costs, and site assessment, so risk of danger to the public health and welfare is far less than that of a heavily contaminated site which is eligible for but has not yet been cleaned up under a state cleanup program.

6. Respondent's counsel has conferred with counsel for the Department, who has no objection to the filing of this motion.

WHEREFORE, ZK Mart requests the entry of an Order setting aside the order entered July 2, 2009, and entering an Order staying the enforcement of its Final Order pending the outcome of its appeal, conditioned on the posting of a bond pursuant Florida Rule of Appellate Procedure 9.310 (c).

Respectfully submitted this 9th day of July, 2009.



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COUNSEL FOR ZK MART, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Reconsideration of Order has been furnished to Jason Wiles (Jason.Wiles@dep.state.fl.us), Assistant General Counsel, MS 35, 3900 Commonwealth Boulevard, Tallahassee, FL 32399-3000 by email this 9th day of July, 2009.



Robert D. Fingar, Esq.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF ENVIRONMENTAL	)	
PROTECTION,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 07-4175EF
	)	
L. B. KING, JR.,	)	
	)	
Respondent.	)	
	)	

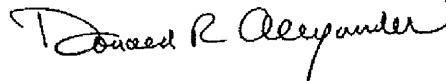
ORDER GRANTING MOTION

This cause came before the undersigned on Respondent's Motion for Stay Pending Appeal (Motion) filed under Florida Rule of Appellate Procedure 9.190(e). Petitioner, Department of Environmental Protection (Department), has filed a Response in opposition to that filing. The Motion seeks a stay of a Final Order rendered in the Department's favor on February 27, 2008, which assessed an administrative penalty, required the payment of investigative costs, and required that certain corrective action be taken within a time certain. On March 27, 2008, Respondent filed a Notice of Appeal with the First District Court of Appeal. See King v. Department of Environmental Protection, Case No. 1D08-1461.

Having considered the matter, Respondent's Motion is granted conditioned on him posting a good and sufficient bond pursuant to Florida Rule of Appellate Procedure 9.310(c). A "good and sufficient bond" is "a bond with a principal and a surety company authorized to do business in the State of Florida, or cash deposited in the [lower tribunal] clerk's office." Id. Although the Department opposes a stay, in the event one is granted, it has recommended that a good and sufficient bond should be required in the amount of \$5,500.00 plus twice the statutory rate of interest, which amount (exclusive of interest) represents the administrative penalty (\$5,000.00) and investigative costs (\$500.00) imposed by the Final Order. This amount appears to be reasonable and is hereby approved. Within twenty days from the date of this Order, Respondent shall post with the clerk of the Division of

Administrative Hearings a bond in the amount of \$5,500.00 plus twice the statutory rate of interest as a condition of the stay and provide notice of such with the undersigned. This stay shall remain in effect pending further order. A failure by Respondent to post a bond within the above time period will result in the automatic lifting of the stay.

DONE AND ORDERED this 1st day of May, 2008, in Tallahassee, Leon County, Florida.



DONALD R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of May, 2008.

COPIES FURNISHED:

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