

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
22 EHR 02252

Timothy Hill, Petitioner,  v.  Division of Water Quality, Respondent,  and  Terramor Homes, LLC, Respondent-Intervenor.	<b>FINAL DECISION GRANTING PARTIAL JUDGMENT ON THE PLEADINGS AND PARTIAL SUMMARY JUDGMENT IN FAVOR OF RESPONDENT AND RESPONDENT-INTERVENOR</b>
--	--

THIS MATTER came before the undersigned Administrative Law Judge John C. Evans upon Respondent's Motion for Partial Judgment on the Pleadings and Partial Summary Judgment and Motion to Dismiss or Drop Party, and Respondent-Intervenor's Motion for Summary Judgment, filed in the Office of Administrative Hearings on October 17, 2022. That same day, the Undersigned issued a Request for Response, which required Petitioner to respond to the Motions on or before October 28, 2022. Petitioner timely filed a written response to the Motions, in which he requested summary judgment be awarded in his favor. Respondent and Respondent-Intervenor timely filed written responses to Petitioner's Motion for Summary Judgment on November 7, 2022. The Undersigned, having considered the record in this matter, finds that the Motions are ripe for disposition.

**APPEARANCES**

For Petitioner: Timothy B. Hill, *pro se*  
214 Argonne Dr, Durham, NC 27705

For Respondent: Scott A. Conklin, Assistant Attorney General  
Ashton H. Roberts, Assistant Attorney General  
N.C. Department of Justice  
P.O. Box 629, Raleigh, NC 27602

For Respondent-Intervenor: Joseph A. Ponzi  
Brooks, Pierce, McLendon, Humphrey, and Leonard, LLP  
230 North Elm St, Greensboro, NC 27401

**ISSUES**

1. Whether Respondent substantially prejudiced Petitioner's rights and exceeded its authority or jurisdiction; acted erroneously; failed to use proper procedure; acted arbitrarily or

capriciously; or failed to act as required by law or rule when it issued a Section 401 Certification to Respondent-Intervenor?

### **UNCONTESTED FACTS**

1. Petitioner, Timothy Hill (“Petitioner”), is a resident of Durham County, North Carolina. Petitioner’s residence is adjacent to the proposed residential development of Respondent-Intervenor, Terramor Homes, LLC (“Terramor Homes”).

2. Terramor Homes plans to develop approximately 380 single-family lots and townhouses, as well as associated streets, sidewalks, stormwater control measures, and utility improvements on N. Roxboro Street in Durham, NC.

3. On September 16, 2021, Terramor Homes applied for a permit pursuant to the federal Clean Water Act (“CWA”) § 404 (“404 Permit”) in order to construct and develop its residential development. Respondent-Intervenor’s Summary Judgment Joint Appendix (“Joint Appendix”), Exhibit 18, 404 Permit Application.

4. The U.S. Army Corps of Engineers is the federal agency responsible for issuing 404 Permits, which are required to discharge fill material into streams, wetlands, and open waters. The 404 Permit process requires a Section 401 Certificate from the local or state agency responsible for enforcing state water quality standards. The 401 Certificate is issued where the applicable water quality agency finds that the project will not violate state water quality standards. CWA § 401, 33 U.S.C. § 1341(a).

5. Respondent, the North Carolina Department of Environmental Quality, Division of Water Resources (“DWR”), is the applicable local or state agency to certify that Terramor Homes’ proposed residential development will not violate applicable state water quality standards.

6. On September 16, 2021, Terramor Homes filed a 401 Certification Application with the DWR in connection with its application for the 404 Permit. Joint Appendix, Exhibit 7, 401 Certification Application. That same day, Terramor Homes also applied for an authorization under the Neuse River Riparian Buffer Protection Rules (“Neuse River Buffer Authorization”) for certain disturbances to the Neuse River riparian buffer.

7. The DWR held a public comment period on Terramor Homes’ 401 Certification Application from September 27, 2022, through October 28, 2022, to accept comments on the proposed project.

8. On January 20, 2022, the DWR issued a notice of public hearing and held a public hearing on February 21, 2022, on Terramor Homes’ 401 Certification Application.

9. On April 15, 2022, the DWR issued the 401 Certification to Terramor Homes stating, “The State of North Carolina certifies that this activity will not violate the applicable portions of Section 301, 302, 303, 306, 307 of the Public Laws 92-500 [CWA] and PL 95-217 [CWA amended] and the discharge will comply with the water quality requirements if conducted in accordance with the

application, the supporting documentation, and conditions hereinafter set forth.” Joint Appendix, Exhibit 2, 401 Certification.

10. On April 15, 2022, the DWR also issued a Neuse River Buffer Authorization to Terramor Homes authorizing temporary impacts to Neuse River riparian buffer. Joint Appendix, Exhibit 17, Buffer Authorization. Petitioner did not appeal the issuance of the Buffer Authorization.

11. On June 14, 2022, Petitioner filed a Petition for Contested Case Hearing (the “Petition”) contesting the issuance of the 401 Certification, listing Paul Wojoski and the DWR as individual respondents. In the Petition,

- a. Petitioner alleged that the DWR failed to properly consider contaminated soils on the Faith Hills Community Church property being purchased by the Respondent-Intervenor (“**Soil Remediation Claim**”);<sup>1</sup>
- b. Petitioner alleged that the DWR failed to require proper stormwater control measures (SCM) at the proposed Branch Meadow Creek Road crossing (“**Stormwater Claim**”);
- c. Petitioner alleged that the DWR failed to ensure compliance with Section 106 of the National Historic Preservation Act (“NHPA”) (“**NHPA Claim**”); and
- d. Petitioner alleged that the DWR failed to ensure compliance with section 7(a) of the federal Endangered Species Act (“ESA”) (“**ESA Claim**”).

12. On July 14, 2022, Terramor Homes moved to intervene in this contested case with the full rights of a party. Petitioner timely filed a response to the intervention motion on July 19, 2022, and this Tribunal granted the Motion to Intervene by order dated July 26, 2022.

13. On September 22, 2022, this contested case was reassigned to the undersigned Administrative Law Judge.

14. An Amended Scheduling Order was issued on October 10, 2022, establishing the following deadlines:

- a. Discovery was to be completed on or before October 7, 2022; and
- b. Dispositive motions were to be filed on or before October 17, 2022.

15. On October 17, 2022, the DWR filed a Motion for Partial Judgment on the Pleadings with respect to the NHPA and ESA Claims and Motion for Partial Summary Judgment on the Stormwater Claim. The DWR filed a memorandum in support of these motions that included an affidavit from Paul Wojoski, Supervisor of DWR’s 401 and Buffer Permitting Branch (“Wojoski Affidavit”). The DWR also filed a Motion to Dismiss or Drop Party, seeking to dismiss Paul Wojoski as an individual respondent.<sup>2</sup>

---

<sup>1</sup> During the discovery period for this matter, Petitioner was deposed and waived his Soil Remediation Claim. Accordingly, that cause of action is no longer pending before this Tribunal. Joint Appendix, Exhibit 6, Hill Deposition pp. 11-12.

<sup>2</sup> Petitioner does not oppose dismissing Paul Wojoski as a respondent.

16. On October 17, 2022, Terramor Homes filed a Motion for Summary Judgment with respect to the NHPA, ESA, and Stormwater Claims.

17. On October 28, 2022, Petitioner timely filed a response to the DWR and Terramor Homes' motions, in which he also requested summary judgment be awarded in his favor. However, Petitioner's request for summary judgment was untimely because the deadline to file dispositive motions was October 17, 2022. Therefore, Petitioner's request for summary judgment will not be considered.

18. On November 7, 2022, the DWR filed a response to the Petitioner's October 28, 2022, request for Summary Judgment. Included in this response was a second affidavit from Paul Wojoski, Supervisor of DWR's 401 and Buffer Permitting Branch ("Wojoski Affidavit II").

19. On November 22, 2022, the parties participated in a WebEx meeting with the Undersigned, in which the parties clarified the DWR and Terramor Homes' arguments regarding the Stormwater Claim.

### **Stormwater Claim**

20. Petitioner alleged the DWR failed to require proper stormwater control measures (SCM) at the proposed Branch Meadow Creek Road crossing because Terramor Homes' Stormwater Management Plan did not adhere to the Neuse River Riparian Buffer Rule at 15A NCAC 02B .0714(9). Joint Appendix, Exhibit 4, Pet's Prehearing Statement, p. 2.

21. The DWR has delegated the authority to review and approve post-construction stormwater management plans to the City of Durham. Respondent's Memorandum in Support of Motion for Partial Summary Judgment on the Pleadings and for Partial Summary; Wojoski Affidavit ¶ 10.

22. Petitioner did not appeal the City of Durham's approval of the Stormwater Management Plan.

23. Petitioner alleges that the Stormwater Management Plan did not adhere to Neuse River Riparian Buffer Rule 15A NCAC 2B .0714(a)(9) because this provision requires "Stormwater Treatment in the Riparian Buffer (specifically at the entrance road.)" Joint Appendix, Exhibit 5, Pet.'s Response to Discovery, p. 1.

24. The DWR reviewed the Stormwater Management Plan that was approved by the City of Durham and determined that the portion of stormwater at issue in this case met the "dispersed flow" requirement at 15A NCAC 2B.0714(9). Respondent's Memorandum in Support of Motion for Partial Summary Judgment on the Pleadings and for Partial Summary Judgment; Wojoski Affidavit ¶15. ("Petitioner identified a portion of the entrance road to the proposed development as the area in question that does not meet the Buffer Rules because the stormwater is not treated before entering the buffer, relying on the .0714(9) for this assertion. However, I concluded that Terramor's plans for the areas comply with .0714(9) because the untreated stormwater at the entrance road will meet the dispersed flow through the use of proper grading and appropriate SCMs, consistent with this requirement.")

25. In the 401 Certification, the DWR included an additional condition ensuring continued compliance with the dispersed flow requirement. Respondent's Memorandum in Support of Motion for Partial Summary Judgment on the Pleadings and for Partial Summary Judgment; Wojoski Affidavit ¶15.

26. Petitioner, in response to the DWR and Terramor Homes' Motions for Summary Judgment, alleged the DWR relied on false information, including the statement that "100% of the impervious areas will be treated by an SCM," contained in the Stormwater Impact Analysis submitted by Terramor Homes to the City of Durham. Pet.'s Response to Motion for Summary Judgment, pp. 1, 2. Petitioner did not submit any affidavits or other documentary exhibits in support of his contention that DWR relied on false information in reviewing Terramor Homes' 401 Certification Application.

27. The DWR did not rely on the statement referenced in Finding of Fact 18 when making its decision to issue the 401 Certification. Wojoski Affidavit II, ¶4.

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this contested case and there is no question as to misjoinder and nonjoinder.

2. To the extent the Uncontested Facts contain Conclusions of Law and the Conclusions of Law contain Findings of Fact, they should be so considered regardless of their given label. *See Westmoreland v. High Point Healthcare, Inc.*, 218 N.C. App. 76, 79, 721 S.E.2d 712, 716 (2012) (citations omitted); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011) (citations omitted).

3. This Tribunal is authorized to grant summary judgment and judgment on the pleadings. N.C. Gen. Stat. § 150B-34(e).

4. To succeed in a contested case before the Office of Administrative Hearings, Petitioner must demonstrate (1) that the respondent agency substantially prejudiced its rights; and (2) that the agency exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule. N.C. Gen. Stat. § 150B-23(a).

5. Petitioner raised four causes of action in his Petition: the Soil Remediation Claim<sup>3</sup>, the NHPA Claim, the ESA Claim, and the Stormwater Claim. Because Petitioner waived his Soil Remediation Claim, only three causes of action are pending before the Undersigned.

### **Judgment on the Pleadings**

6. Rule 12(h)(2) of the North Carolina Rules of Civil Procedure provides that the defense of failure to state a claim upon which relief can be granted as set forth in Rule 12(b)(6) may be

---

<sup>3</sup> As noted above, Petitioner has waived his Soil Remediation Claim.

raised “by motion for judgment on the pleadings.” N.C. Gen. Stat. § 1A-1, Rule 12(h)(2).

7. When a court reviews the sufficiency of a complaint, before the reception of any evidence, its task is necessarily a limited one. The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. *Scheuer v. Rhodes*, 416 U.S. 232, 94 S. Ct. 1683 (1974). Rule 12(b)(6) of the North Carolina Rules of Civil Procedure authorizes a motion to dismiss for failure to state a claim upon which relief may be granted. N.C. Gen. Stat. § 1A-1, Rule 12(b)(6). The “well-pleaded factual allegations of the [petition] are treated as true for purposes of a 12(b)(6) motion.” *Dalenko v. Wake County Dep’t of Human Servs.*, 157 N.C. App. 49, 56, 578 S.E.2d 599, 604, *cert. denied*, 357 N.C. 458, 585 S.E.2d 386 (2003), *cert. denied*, 540 U.S. 1178 (2004).

8. If a petition asks for relief that the law does not authorize, then the claim should be dismissed for failure to state a claim upon which relief can be granted. *Forrester v. Garrett*, 280 N.C. 117, 119, 184 S.E.2d 858, 860 (1971); N.C. Gen. Stat. § 1A-1, Rule 12(b)(6).

9. Here, Petitioner alleged the DWR failed to comply with the NHPA and the ESA during its review of Terramor Homes’ 401 Certification Application.

10. Neither the NHPA nor the ESA impose requirements on DWR as part of the 401 Certification process. “By its terms, section 7(a)(2) applies only to ‘federal agenc[ies]’ not to state governmental bodies. Accordingly, the EPA’s pollution permitting decisions are subject to section 7(a)(2), but state pollution permitting decisions are not.” *Devs of Wildlife v. EPA*, 420 F.3d 946, 951 (9th Cir. 2005). Similarly, the “NHPA imposes obligations only on federal agencies, a term expressly defined to exclude Congress and the District of Columbia. . . . NHPA imposes no obligations on state governments and includes the District of Columbia in its definition of ‘state.’” *Lee v. Thornburg*, 877 F.2d 1053, 1056 (D.C. Cir 1989) (citations omitted).

11. The DWR is not a federal agency.

12. Accordingly, compliance with the NHPA and ESA is an element of the federal CWA 404 permitting process, not the 401 Certification review which is focused on state water quality standards.

13. 15A NCAC 2H .0506, entitled “Review of Applications,” governs the DWR’s review of a 401 Certification application.

14. Even assuming the Petitioner’s allegations about compliance with the NHPA and ESA are true, none of the provisions in 15A NCAC 2H .0506 require the DWR to evaluate compliance with the NHPA or the ESA as a condition of issuing a 401 Certification. Joint Appendix, Exhibit 6, Hill Dep. At pp. 58-59.

15. Therefore, the NHPA and ESA claims are dismissed for failure to state a claim for which relief may be granted. N.C. Gen. Stat. § 1A-1, Rule 12(b)(6). The DWR was not required to ensure compliance with either the NHPA or ESA.

## Summary Judgment

16. Summary judgment is properly granted when the pleadings, depositions, answers to interrogatories, admissions, and affidavits show no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Davis v. Town of Southern Pines*, 116 N.C. App. 663, 665, 449 S.E.2d 240, 242 (1994), *disc. rev. denied*, 339 N.C. 737, 454 S.E.2d 648 (1995). An issue is material only if its resolution would prevent the party against whom it is resolved from prevailing. *Bone International, Inc. v. Brooks*, 304 N.C. 371, 375, 283 S.E.2d 518, 520 (1981). The party moving for summary judgment has the burden of showing a lack of a triable issue of fact. *Pembee Mfg. Corp. v. Cape Fear Construction Co.*, 313 N.C. 448, 491, 329 S.E.2d 350, 353 (1985). The moving party may meet this burden by showing an essential element of the opposing party's claim is nonexistent, or that the opposing party will be unable to produce evidence to support an essential element of the claim. *Roumillat v. Simplistic Enterprises, Inc.*, 331 N.C. 57, 63, 414 S.E.2d 339, 342 (1992).

17. Although findings of fact are not appropriate when the issue is a question of law, an order may employ a recitation of the undisputed facts to explain the resolution of the issue. *In re Estate of Pope*, 192 N.C. App. 321, 330, 666 S.E.2d 140, 147 (2008), *disc. review denied*, 363 N.C. 126, 673 S.E.2d 129 (2009); *Krueger v. N. Carolina Criminal Justice Educ. & Training Standards Comm'n*, 198 N.C. App. 569, 578, 680 S.E.2d 216, 222 (2009).

18. The purpose of summary judgment is to bring litigation to an expeditious and efficient conclusion on the merits where only a question of law on the indisputable facts is in controversy. Summary judgment is proper under Rule 56 of the North Carolina Rules of Civil Procedure if "there is no genuine issue of material fact and . . . the moving party is entitled to judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56 and 26 N.C. Admin. Code 3 .0101(b).

19. Summary judgment "is an extreme remedy and should be awarded only where the truth is quite clear." *Lee v. Shor*, 10 N.C. App. 231, 233, 178 S.E.2d 101, 103 (1970). "[A]ll inferences of fact . . . must be drawn against the movant and in favor of the party opposing the motion." *Caldwell v. Deese*, 288 N.C. 375, 378, 218 S.E.2d 379, 381 (1975).

20. "[W]hen a moving party has met his burden of showing that he is entitled to an award of summary judgment in his favor the nonmoving party cannot rely on the allegations or denials set forth in her pleading, and must, instead, forecast sufficient evidence to show the existence of a genuine issue of material fact in order to preclude an award of summary judgment." *Steele v. Bowden*, 238 N.C. App. 566, 577, 768 S.E.2d 47, 57 (2014) (internal citation omitted).

21. The North Carolina Administrative Procedure Act ("APA") APA, provides that "[t]he Administrative Law Judge shall decide the case based upon a preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency." N.C. Gen. Stat. § 150B-34(a).

22. "There is a rebuttable presumption that an administrative agency has acted properly in performing its official duties." *In re Appeal from Civil Penalty*, 92 N.C. App. 1, 6, 373 S.E.2d 572, 575 (1988) (citation omitted), *rev'd on other grounds*, 324 N.C. 373, 379 S.E.2d 30 (1989).

23. The burden is upon the party asserting the contrary to overcome the presumption by competent and substantial evidence. *Overcash v. N.C. Dep't of Env't & Natural Res.*, 179 N.C. App. 697, 703, 635 S.E.2d 442, 447 (2006), *disc. rev. denied*, 361 N.C. 220, 635 S.E.2d 442 (2007); *see also Styers v. Phillips*, 277 N.C. 460, 178 S.E.2d 583 (1971).

24. The burden is on Petitioner to show that, in granting Terramor Homes a 401 Certification, that the agency: (1) exceeded its authority; (2) acted erroneously; (3) failed to use proper procedure; (4) acted arbitrarily or capriciously; or (5) failed to act as required by law or rule. N.C. Gen. Stat. § 150B-23(a) (in pertinent part).

### **Stormwater Claim**

25. 15A NCAC 02H .0506 is the regulatory provision governing DWR's review of 401 Certification applications. Paragraph (a) of this regulation provides that the DWR is required to issue a 401 Certification "upon determining that the proposed activity will comply with state water quality standards, which includes designated uses, numeric criteria, narrative criteria and the state's antidegradation policy, as defined in the rules of 15A NCAC 02B .0200 and the rules of 15A NCAC 02L .0100 and .0200."

26. 15A NCAC 2H .0506(b) provides, "In assessing whether the proposed activity will comply with water quality standards, the Division shall evaluate if the proposed activity:

- (1) has avoided and minimized impacts to surface waters and wetlands to ensure any remaining surface waters or wetlands, and any surface waters or wetlands downstream, continue to support existing uses during and after project completion;
- (2) would cause or contribute to a violation of water quality standards;
- (3) would result in secondary or cumulative impacts that cause or contribute to, or will cause or contribute to, a violation of water quality standards;
- (4) provides for replacement of existing uses through compensatory mitigation as described in Paragraph (c) of this Rule;
- (5) for Class SWL wetlands, is water dependent and requires access to water as a central element of its basic function. Projects funded by government agencies may be exempted from this requirement; and
- (6) for Class UWL wetlands and wetlands that are habitat for state or federally listed threatened or endangered species, is necessary to meet a demonstrated public need.

27. The DWR is authorized to delegate post-construction stormwater management to local government agencies. Consistent with authority, the DWR has delegated the authority to review and approve post-construction stormwater management plans to the City of Durham. Respondent's Memorandum in Support of Motion for Partial Summary Judgment on the Pleadings and for Partial Summary; Wojoski Affidavit ¶ 10.

28. Terramor Homes submitted a Stormwater Management Plan to the City of Durham and the plan was approved. Respondent's Memorandum in Support of Motion for Partial Summary Judgment on the Pleadings and for Partial Summary; Wojoski Affidavit ¶ 11.



29. Petitioner's interpretation of 15A NCAC 02B .0714(9) that all stormwater in the Riparian Buffer must be treated is incorrect. The plain language of the regulation states, "Stormwater runoff into the riparian buffer shall meet dispersed flow as defined in 15A NCAC 02H .1002 except as otherwise described in this Item."

30. The DWR reviewed the portion of stormwater at issue and determined that the stormwater in question meets the 15A NCAC 02B .0714(9) dispersed flow requirement. *See* Wojoski Affidavit ¶13-16; Wojoski Affidavit II ¶3-4.

31. To survive a summary judgment motion, Petitioner may not rest upon mere allegations contained in the pleadings. *Culler v. Hamlett*, 148 N.C. App. 389, 391, 559 S.E.2d. 192, 194 (2002). In response to the Motions for Summary Judgment, Petitioner did not provide or file any opposing affidavits or provide any reasons justifying the allegation that the portion of stormwater at the entrance did not meet the 15A NCAC 2B.0714(9) dispersed flow requirement.

32. Giving due regard to the DWR's demonstrated knowledge and expertise regarding the facts and inferences within its specialized knowledge, Petitioner failed to prove by a preponderance of the evidence that Respondent substantially prejudiced Petitioner's rights, exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule in concluding that the stormwater at issue met the 15A NCAC 02B .0714(9) dispersed flow requirement.

33. There are no genuine issues of material fact with respect to the Stormwater Claim and the DWR and Terramor Homes are entitled to summary judgment as a matter of law.

### **FINAL DECISION**

BASED UPON the foregoing Uncontested Facts and Conclusions of Law, the Undersigned hereby GRANTS Respondent's Motion for Partial Judgment on the Pleadings with respect to Petitioner's NHPA and ESA claims. The Undersigned further GRANTS Respondent and Respondent-Intervenor's Motions for Summary Judgment with respect to Petitioner's Stormwater Claim. Respondent's Motion to Dismiss or Drop Paul Wojoski as a Respondent is hereby GRANTED. Respondent's decision to issue a 401 Certification with Additional Conditions to Terramor Homes is hereby AFFIRMED. Petitioner has not demonstrated by a preponderance of the evidence that the DWR exceeded its authority, erred in its decision, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule when it issued the 401 Certificate to Terramor Homes.

### **NOTICE OF APPEAL**

**This is a Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision

resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties as indicated by the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

**IT IS SO ORDERED.**

This the 1st day of December, 2022.



John C. Evans  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service.

Timothy Bryn Hill  
timothybryanhill@gmail.com  
Petitioner

Ashton H Roberts  
N.C. Department of Justice  
ahroberts@ncdoj.gov  
Attorney For Respondent

Scott A Conklin  
North Carolina Department of Justice  
sconklin@ncdoj.gov  
Attorney For Respondent

Joseph A Ponzi  
Brooks, Pierce, McLendon, Humphrey, and Leonard, LLP  
jponzi@brookspierce.com  
Attorney for Respondent-Intervenor

This the 1st day of December, 2022.



Christine E. Cline  
Law Clerk  
N.C. Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh, NC 27609-6285  
Phone: 984-236-1850