

NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE
OF ADMINISTRATIVE HEARINGS
FILE NO. 12 EHR

CITY OF RALEIGH,)
)
Petitioner,)
vs.)
)
CHUCK WAKILD, DIRECTOR)
DIVISION OF WATER QUALITY;)
N.C. DEPT. OF ENVIRONMENT &)
NATURAL RESOURCES; and N.C.)
ENVIRONMENTAL)
MANAGEMENT COMMISSION)
)
Respondents.)

MOTION FOR A STAY OF
CONTESTED AGENCY ACTION

Petitioner, pursuant to N.C. Gen. Stat. §§150B-33(b)(6) and 1A-1, Rule 65, moves the Court, after notice and a hearing, to grant a stay of the contested agency action, to remain in effect until a final judgment has been entered in this matter. In support of this motion, Petitioner shows the Court as follows:

1. This is an action brought under Chapter 150B of the North Carolina General Statutes to contest an agency action. On August 10, 2012, Petitioner filed a Contested Case Petition challenging the issuance by the Respondents of General Permit NCG550000 on July 30, 2012.

2. The agency action on July 30, 2012 was a renewal of General Permit NCG550000. The previously issued version of General Permit NCG550000 expired on July 31, 2012. The new version of General Permit NCG550000 was made effective on August 1, 2012. It applies in all waters and all basins of the State, including the Falls Lake watershed.

3. Under a General NPDES permit, such as General Permit NCG550000, individual owners and operators of wastewater treatment facilities covered by the general permit can apply for and receive a certificate of coverage. The certificate of coverage acts as the NPDES permit for the discharge for the facility. By using the general permit, the owners and operators avoid the notice and comment and higher fee that apply to an application for an individual NPDES permit at a similar facility.

4. In 2008, Respondents declared that Falls Lake was a 303(d) impaired water body. The impairment was from too many water quality samples showing concentrations of chlorophyll-*a*, in excess of the State water quality standard as set by the Respondents.

5. In January 2011, the Respondent N.C. Environmental Management Commission (EMC) adopted a water management plan and effluent limitations to address the water quality impairment in Falls Lake. The plan was the most stringent set of requirements ever adopted in North Carolina to address the overloading of nutrients in surface waters. The rules adopted by the EMC relied on its prior classification of Falls Lake as a WS [water supply]-IV classified water body. In addition, the Rules classified all other waters in the Falls Lake basin, not previously classified with a WS classification, as WS-V waters.

6. The water management plan requires a reduction by 20% of the total nitrogen loading into the Falls Lake watershed and 40% of the total phosphorous loading into the Falls Lake watershed by 2021. The second stage of the plan requires overall reductions of 40% of the 2006 levels of total nitrogen loading and 77% of the total phosphorous loading into Falls Lake.

7. Respondents have concluded that failed septic systems in the Falls Lake watershed are the 4th largest contributor of total nitrogen and the 3rd largest contributor of total phosphorous to the excessive nutrient loadings into Falls Lake.

8. The Petitioner entered into a contract in 1972 with the United States to purchase the raw water in Falls Lake for use as its primary water supply. Petitioner provides treated potable water to over 489,000 people from Falls Lake and one much smaller lake.

9. Raw water from Falls Lake is treated at the Petitioner's EM Johnson Water Treatment Plant which is nearly out of treatment capacity. The EM Johnson Water Treatment Plant is not designed to treat and remove the level of excess nutrients from the raw water supply that will occur in Falls Lake unless the water quality is restored.

10. The excess loading of nutrients, if not controlled, will necessitate further improvements to the Petitioner's EM Johnson Water Treatment Plant. Based on current projected needs for additional water supply, Petitioner will have to decide by 2018 whether to include advanced treatment technology in the construction of the final phase of capacity expansion to the EM Johnson Plant. The 2010 cost to add advanced treatment technology is estimated at \$125 million.

11. General Permit NCG55000 authorizes the owners and operators of failed septic systems, and other discharging septic systems, to obtain a certificate of coverage under the general permit whereby they can continue to discharge wastewater into the Falls Lake watershed without complying with the stringent reductions requirements established in the Falls Lake rules by the Respondent N.C. Environmental Management Commission.

12. Unless the Respondents are enjoined from further authorizing nutrient loading of the Falls Lake watershed via General Permit NCG550000, the water management plan adopted by the Respondent NC Environmental Management Commission will fail to protect Petitioner's drinking water supply from Falls Lake from excessive chlorophyll-*a*, and Petitioner will suffer irreparable harm.

WHEREFORE, Petitioner respectfully requests that:

1. The Court accept this verified motion as an affidavit;
2. The Court grant it a stay of the contested agency action by prohibiting and restraining Respondents from issuing certificates of coverage under General Permit NCG550000 in the Falls Lake watershed.

This the 10th day of August, 2012.

CITY OF RALEIGH, Petitioner
Thomas A. McCormick, City Attorney

By: _____



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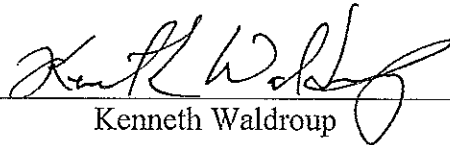
Counsel for Petitioner

NORTH CAROLINA

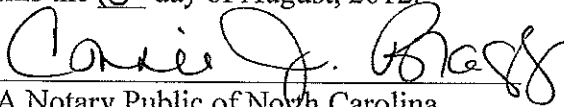
VERIFICATION

WAKE COUNTY

Kenneth Waldroup, being duly sworn, deposes and says that he is an Assistant Director of the Public Utilities Department for the City of Raleigh, that he has read the foregoing motion and that the allegations contained therein are true to his knowledge except as to those matters stated upon information and belief, and as to those matters, he believes them to be true.


Kenneth Waldroup

Sworn to and subscribed before me
this the 10th day of August, 2012.


A Notary Public of North Carolina

Connie J. Bragg
(Printed name of Notary)

My Commission Expires: 5/19/2015

