

PLEASE PRINT CLEARLY OR TYPE

STATE OF NORTH CAROLINA

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

COUNTY OF WAKE

CITY OF RALEIGH )
PETITIONER, )
v. )
CHUCK WAKILD, in official capacity as DIRECTOR DIVISION )
OF WATER QUALITY of NORTH CAROLINA DEPARMENT OF )
ENVIRONMENT & NATURAL RESOURCES; NC )
DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES; )
and )
NC ENVIRONMENTAL MANAGEMENT COMMISSION, )
RESPONDENTS. )

PETITION FOR A CONTESTED CASE HEARING

Petitioner City of Raleigh hereby asks for a contested case hearing as provided for by North Carolina General Statute § 150B-23 because the Respondent issued a renewal of GENERAL PERMIT NCG550000, Discharge of Domestic Wastewater From Single Family Residences and Other 100% Domestic Discharges With Similar Characteristics Under the National Pollutant Discharge Elimination System, in violation of law. The discharges authorized by GENERAL PERMIT NCG550000 will adversely impact the Petitioner City of Raleigh by further increases in the nutrient loading of Falls Lake, the primary public water supply for the 489,000 people served by Petitioner. GENERAL PERMIT NCG550000 was issued in violation of 15A NCAC 2H .0127; 40 CFR §122.28; 15A NCAC 2B .0279; NC Gen. Stat. §143-215.1 and other applicable laws and rules and regulations. (Continued on attached)

(4) Amount in controversy \$ 0 (if applicable)
(If more space is needed, attach additional pages.)

(5) Because of these facts, the State agency or board has: (check at least one from each column)
deprived me of property;
ordered me to pay a fine or civil penalty; or
otherwise substantially prejudiced my 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.

(6) Date: August 10, 2012 (7) Your phone number: (919) 831-6560

(8) Print your full address: 1020 One Exchange Plaza Suite 1020/PO Box 590 Raleigh, NC 27601 (street) 27602 (po box)
(street address/p.o. box) (city) (state) (zip)

(9) Print your name: Daniel F. McLawhorn

(10) Your signature: [Handwritten Signature]

You must mail or deliver a COPY of this Petition to the State agency or board named on line (3) of this form. You should contact the agency or board to determine the name of the person to be served.

CERTIFICATE OF SERVICE

I certify that this Petition has been served on the State agency or board named below by depositing a copy of it with the United States Postal Service with sufficient postage affixed OR by delivering it to the named agency or board:

(11) William Cary, General Counsel (12) Chuck Wakild, DWQ; NC DENR; NC Environmental Management Commission
(name of person served) (State agency or board listed on line 3)

(13) 217 W. Jones Street/1601 Mail Service Center Raleigh, NC 27602 (street) 27699-1601 (mail service center)
(street address/p.o. box) (city) (state) (zip code)

(14) This the 10th day of August, 2012.

(15) [Handwritten Signature] (your signature)

When you have completed this form, you MUST mail or deliver the ORIGINAL AND ONE COPY to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

Respondent NC Environmental Management Commission adopted 15A NCAC 2H .0127 which governs the issuance of general NPDES permits by Respondent Wakild. The rule requires, *inter alia*, that (1) EPA approve the general permit; (2) an application for renewal of a general permit be filed at least 180 days in advance of the expiration date of the general permit; and (3) the Division of Environmental Health approve the general permit for its application in WS [water supply] waters. Respondents issued the renewal for General Permit NCG550000 on July 30, 2012 without EPA approval and without filing an application for renewal of the General Permit 180 days before July 31, 2012. The Petitioner not determined whether Respondents obtained Division of Environmental Health approval for use in WS waters which will be a fatal defect if such was not secured.

In addition, US Environmental Protection Agency regulations and policy guidance require that a state program director, i.e. Respondent Wakild, include in a general NPDES permit the same effluent limitations, water quality standards, monitoring and sampling requirements, and enforceability as apply to individual NPDES discharge permits for a comparable discharge. See 40 CFR §122.28. Respondents violated 40 CFR §122.28 by the issuance of the renewal for General Permit NCG550000. The renewal General Permit did not include the requirements in the Falls Lake rules which apply to individual NPDES permits for similar discharges. General Permit NCG550000 failed to conform to the standards set in 15A NCAC 2B .0279(8) and (9) for individual domestic NPDES permits.

The Falls Lake rules require local governments, including the Petitioner, to reduce the nutrient loading from pre-2007 existing development to the background level. General Permit NCG550000 exempts failed septic systems and other discharging septic systems certified under the General Permit from reducing nutrient loading to the Falls watershed. The exemption is inconsistent with the Falls rules requirements, as set forth in 15A NCAC 2B .0278. Because failed septic systems account for 16% to 25% of the nutrient loading in 3 of the 5 sub-watersheds draining into Falls Lake, it will be impossible for some local governments to meet the reduction requirements of the rule. In addition, the failure by Respondents to enforce the duly adopted rules of the Environmental Management Commission will irreparably harm the Petitioner since the full enforcement of the Falls rules was determined necessary by Respondents for the Petitioner to avoid the installation of an advanced treatment technology system at its EM Johnson Water Treatment Plant, at an estimated cost of \$125 million in 2010.

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<p>Amount Paid \$ _____</p> <p><input type="checkbox"/> Cash – receipt number _____</p> <p><input type="checkbox"/> Money Order <input type="checkbox"/> Certified Check <input type="checkbox"/> Attorney Trust Account</p> <p>Check number _____</p>	<p><input type="checkbox"/> Indigent (must complete form HOI )</p> <p><input type="checkbox"/> Mandated federal cause of action</p> <p><b>Received by:</b> _____</p>
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