

PLEASE PRINT CLEARLY OR TYPE

STATE OF NORTH CAROLINA

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

COUNTY OF (1) Wake

(2) New Hill Community Association
(your name) PETITIONER,
v.
(3) North Carolina Department of Environment and Natural Resources, Division of Water Quality
RESPONDENT.
(The State agency or board about which you are complaining)

PETITION FOR A CONTESTED CASE HEARING

I hereby ask for a contested case hearing as provided for by North Carolina General Statute § 150B-23 because the Respondent has:

(Briefly state facts showing how you believe you have been harmed by the State agency or board.)

See attached Petition which is incorporated herein

(If more space is needed, attach additional pages.)

(4) Because of these facts, the State agency or board has: (check at least one from each column)

- X deprived me of property;
ordered me to pay a fine or civil penalty; or
X otherwise substantially prejudiced my rights;
AND
X exceeded its authority or jurisdiction;
X acted erroneously;
X failed to use proper procedure;
X acted arbitrarily or capriciously; or
X failed to act as required by law or rule.

(5) Date: September 9, 2010 (6) Your phone number: (919) 323-3380 ext. 113

(7) Print your full address: 115 Market Street; Suite 470 Durham NC 27701
(street address/p.o. box) (city) (state) (zip)

(8) Print your name: Christopher A. Brook

(9) Your signature: [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:

(10) Mary Penny Thompson (11) NC DENR-DWQ
(name of person served) (State agency or board listed on line 3)
(12) 1601 Mail Service Center Raleigh NC 27699-1601
(street address/p.o. box) (city) (state) (zip code)

(13) This the 9th day of September, 2010

(14) [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.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
10 EHR \_\_\_\_\_

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NEW HILL COMMUNITY ASSOCIATION )  
 )  
Petitioner, )  
 )  
v. )  
 )  
N.C. DEPARTMENT OF ENVIRONMENT )  
AND NATURAL RESOURCES, DIVISION )  
OF WATER QUALITY, )  
 )  
Respondent. )

PETITION FOR  
CONTESTED CASE HEARING

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Pursuant to North Carolina General Statutes § 150B-23, The New Hill Community Association (the "Association"), by and through its undersigned attorney, hereby requests a contested case hearing on the issuance of North Carolina 401 Water Quality Certification No. 3833 (the "Certificate") by the N.C. Department of Environment and Natural Resources, Division of Water Quality (the "Division"), on July 16, 2010, to the Western Wake Regional Wastewater Management Facilities Project Partners (the "Partners"). This Petition adopts by reference the comments submitted by the Association on February 9, 2010, to the Division.

The Association alleges as follows:

1. The Association, an alliance of neighbors in the historic community of New Hill, North Carolina, brings this Petition on behalf of its 280 members in an effort to require the Partners to re-open the site selection process for the Western Wake Regional Wastewater Management Facility (the "Wastewater Management Facility") and to ensure compliance with the North Carolina Environmental Policy Act in the site selection process. The Partners want to construct the Wastewater Management Facility in New Hill despite evidence that constructing the Wastewater Management Facility in New Hill would have a disparate impact on African-American and low-income individuals and negative environmental impacts on the New Hill community, the New Hill Historic District, and nearby Raven Rock State Park.

2. New Hill, North Carolina is an unincorporated community located in the western portion of Wake County.

3. The mission of the Association is to preserve and sustain the unique quality of life in the New Hill area by facilitating interaction between citizens. The Association is committed to resisting condemnation of property for facilities that will not benefit the community and advancing common interests by acting as a group with neighboring communities. The Association is a 501(c)(4) organization whose address is Post Office Box 68, New Hill, NC

27562.

4. Members of the Association have participated in the process culminating in the issuance of the Certificate by, among other activities, attending meetings and testifying at hearings.

4. The Partners is a partnership formed by the towns of Apex, Cary, Holly Springs, and Morrisville to pursue construction of regional wastewater management facilities in Wake County.

5. The Partners propose construction of a wastewater management facility, the Wastewater Management Facility at a site located in New Hill, North Carolina ("Site 14").

6. The US Army Corps of Engineers issued a Final Environmental Impact Statement ("FEIS"), evaluating the Partners' proposal for the Wastewater Management Facility, on December 18, 2009. The Division adopted the FEIS in the Certificate.

7. The Certificate is necessary for the construction and operation of the Wastewater Treatment Plant.

8. The actions allowed by the Certificate would have a significant and adverse impact on the health and well-being of the members of the Association. These impacts include, but are not limited to: health impacts from exposure to sewage sludge, exposure to noxious odors, increased noise, increased traffic, and light spill, as well as a decrease in property values.

9. In issuing the Certificate, the Division substantially prejudiced the rights of the members of the Association and exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, failed to act as required by law or rule, and acted arbitrarily or capriciously.

10. Specifically, the Petitioners allege and would show the following at the contested case hearing:

A. In issuing the Certificate, the Division relied on an FEIS that lacked sufficient information to evaluate the social and economic impacts of Site 14 and alternative sites, as required by 01 N.C.A.C. 25.0603(4)(e).

i. The FEIS lacked sufficient information to address environmental justice issues because it lacked sufficient information on the disparate impact of Site 14 on low-income and African-American individuals, including members of the Association.

ii. The FEIS failed to provide information about and an analysis of the interviews conducted around Site 14 during the site selection process.

iii. The FEIS relied on misleading statistics in evaluating the potential impact of the Wastewater Management Facility on the property value of surrounding properties.

iv. The Partners took deliberate steps to avoid public knowledge of the project early in the planning and site selection process.

B. The Partners selected Site 14 for the Wastewater Management Facility and condemned the property before the requisite environmental review was conducted, in violation of the North Carolina Environmental Policy Act, N.C. Gen. Stat. § 113A-4(2),(2a), 01 N.C.A.C 25.0601, which calls for an Environmental Impact Statement (“EIS”) to be prepared in advance of any proposed action that may have a significant impact on the environment, in order to inform the decision on that action.

C. The Partners selected Site 14, built water infrastructure, and cleared rights-of way for the electrical infrastructure to support the Wastewater Management Facility before the requisite environmental review was conducted, in violation of the North Carolina Environmental Policy Act, N.C. Gen. Stat. § 113A-4(2),(2a), 01 N.C.A.C 25.0601, which calls for an EIS to be prepared in advance of any proposed action that may have a significant impact on the environment, in order to inform the decision on that action.

D. In issuing the Certificate, the Division relied on an FEIS that lacked sufficient information to establish the need and extent of the need for the Wastewater Management Facility, as required by 01 N.C.A.C. 25.0603(3).

i. The FEIS cited population growth as a justification for construction of the Wastewater Management Facility but used faulty methodology in projecting population growth. The methodology employed did not take into account physical, political, or economic hurdles to future growth.

ii. The FEIS cited a deadline under an existing interbasin transfer certificate (the “IBT Deadline”), regarding withdrawal of water from the Haw River Subbasin, as justification for construction of the Wastewater Management Facility, but the projected permitting and construction timeline shows that the Wastewater Management Facility will not be operational prior to the deadline.

iii. The Town of Holly Springs operates a Wastewater Treatment Plant that discharges into Utley Creek, a tributary to Harris Lake in the Cape Fear River Basin. The FEIS cited a deadline requiring the Town of Holly Springs to cease existing discharge into Utley Creek (“Holly Springs Deadline”) as justification for construction of the Wastewater Management Facility, but the projected permitting and construction timeline shows that the Wastewater Management Facility will not be operational prior to the deadline. The Division issued a finding of no significant impact regarding the discharge into Utley Creek and has stated that it will not enforce the Holly Springs Deadline. As the Holly Springs Deadline is no longer in effect, it cannot be used to justify the construction of the Wastewater Management Facility and issuance of its requisite permits.

E. In issuing the Certificate, the Division relied on an FEIS that lacked sufficient

analysis of potential alternatives, as required by N.C. Gen. Stat. § 113A-4(2)(d) and 01 N.C.A.C 25.0603(4).

i. Harris Lake is one of the four alternative discharge sites that the FEIS considered for the Wastewater Treatment Plant. Despite its many identified benefits, the FEIS dismissed the Harris Lake discharge site because the project could not be completed in time to meet the IBT deadline. However, the Wastewater Management Facility, if constructed at Site 14, will not be completed in time to meet the IBT Deadline either. This deadline that the Partners cannot meet was the sole reason the FEIS dismissed the Harris Lake discharge site.

ii. The FEIS failed to consider alternative means of meeting the IBT and Holly Springs Deadlines.

iii. The Partners' action to condemn Site 14 prior to the environmental documentation process frustrated any true consideration of alternatives.

F. In issuing the Certificate, the Division relied on an FEIS that lacked sufficient analysis of possible conflicts between construction of the Wastewater Management Facility at Site 14 and the objectives of federal, state, and local plans, policies, and controls for the affected area, as required by 01 N.C.A.C. 25.0603(6)(f).

i. The FEIS failed to sufficiently analyze potential conflicts between construction of the Wastewater Management Facility at Site 14 and Progress Energy's proposal to construct two new reactors at its Shearon Harris Nuclear site, which will require water withdrawal from the Cape Fear River Basin.

ii. The FEIS failed to sufficiently consider potential downstream impacts, including water quality and present and future use of water by municipalities.

iii. The FEIS failed to sufficiently consider cumulative impacts to Cape Fear River from existing and potential future discharges.

G. In issuing the Certificate, the Division relied on an FEIS that lacked sufficient information on potential environmental impacts, as required by 01 N.C.A.C. 0603(5-6).

i. The FEIS failed to identify the sludge management method that will be employed at Site 14. Absent identification of the sludge management method, the FEIS cannot analyze the potential environmental impact of the proposed project.

ii. The FEIS lacked sufficient information on the environmental impacts of the Wastewater Management Facility on the New Hill Historic District, including but not limited to impacts from sludge management, smell, noise, light spill, and traffic impacts.

iii. The FEIS lacked sufficient information on the potential impacts from sludge management, smell, noise, light spill, and traffic effects of the Wastewater Management Facility on the New Hill community.

iv. The FEIS failed to properly analyze the effect of the Wastewater Management Facility's discharge into the Cape Fear River on Raven Rock State Park. The FEIS fails to consider the discharge's impact on public enjoyment of the park or biotic life protected in the state park system.

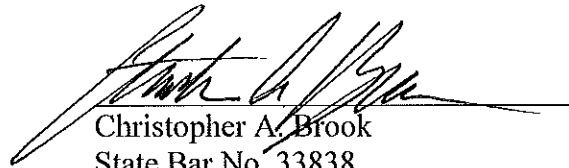
H. Errors and omissions in the FEIS make the Division's decision to issue the Certificate erroneous, arbitrary, and capricious.

#### PRAYER FOR JUDGMENT

Wherefore, Petitioner prays that that Administrative Law Judge:

1. Allow a contested case hearing on this matter;
2. Issue a declaration that in issuing the Certificate in reliance on the FEIS, the Division substantially prejudiced the rights of the members of the Association and exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, failed to act as required by law or rule, and acted arbitrarily or capriciously.
3. Issue an injunction requiring the Division to withdraw North Carolina 401 Water Quality Certification No. 3833 and not re-issue any such permit or take any further action related to the Wastewater Management Facility project until the aforementioned inadequacies are remedied; and
4. Grant such other and further relief as is just and proper, including attorney's fees.

This the 9th day of September, 2010.



Christopher A. Brook  
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Rebecca Jaffe  
State Bar No. 40726  
Attorney for Petitioner  
Southern Coalition for Social Justice  
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Petition and Cover Sheet were filed pursuant to the Office of Administrative Hearings rules by e-mail to: oah.clerks@oah.nc.gov, on September 9, 2010. This also certifies that hard copies of these documents were mailed via U.S.P.S. to the following addressees:

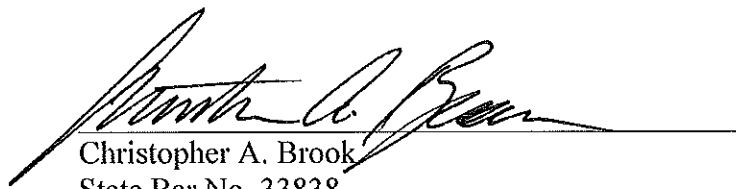
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This 9<sup>th</sup> day of September, 2010.

  
Christopher A. Brook  
State Bar No. 33838