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N.C. Home Builders Ass'n v. Env'tl. Mgmt. Comm'n, 573 S.E.2d 732 (N.C. Ct. App. 2002)

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Because Smithfield's lagoon waste management systems existed pursuant to express legislative authority, the court would not enjoin as a nuisance an action authorized by valid legislative authority. The North Carolina General Assembly established a permitting program for animal waste management systems to help protect water quality and promote innovative systems and practices which attempted to minimize the regulatory burden.

The landowners did claim injury to their riparian property or businesses. However, none of the landowners sought individual compensation for the invasion of a more personal right not "merged in the general public right." The landowners sought only a judgment prohibiting use of sprayfields and cesspools and monetary damages for the restoration and remediation of the rivers.

Because landowners did not contend that the General Assembly exceeded its authority in violation of the state's constitution, the court declined to prohibit an activity the legislature legally allowed.

Regan Rozier

N.C. Home Builders Ass'n v. Env'tl. Mgmt. Comm'n, 573 S.E.2d 732 (N.C. Ct. App. 2002) (holding North Carolina Environmental Management Commission had statutory authority to adopt certain rules regarding wetlands regulations and complied with the local Administrative Procedure Act in adopting those rules).

A builders association, as well as other parties, filed a petition for a declaratory ruling with the North Carolina Environmental Management Commission ("EMC") asserting that EMC did not have statutory authority to adopt specific wetlands rules and did not comply with the North Carolina Administrative Procedure Act ("APA"). The EMC originally denied this petition, but subsequently issued a declaratory ruling that it did possess statutory authority to adopt the wetlands rules, and that it adopted the rules in compliance with the requirements of the APA. The builders association brought this petition for judicial review before the Wake County Superior Court. The court affirmed EMC's prior declaratory ruling and dismissed the petition for review. The builders association then filed a notice of appeal to the North Carolina Court of Appeals. In their appeal, it asserted two claims of error. They contended the lower court made erroneous interpretations of law in determining that the EMC complied with requirements of the APA in adopting the wetland rules; and that the EMC had statutory authority to enact these rules.

On March 14, 1996, the EMC adopted certain wetlands rules. The rules classified and designated uses of state wetlands and set forth procedures for the EMC to review water quality certifications issued pursuant to Section 404 of the Clean Water Act. The adopted regulations differed, in part, from the proposed regulations as

published, but the changes to the regulations were not published prior to their adoption. On July 18, 1996, the North Carolina Rules Review Commission ("RRC") objected to the adoption of the wetlands rules on the bases that the EMC lacked the statutory authority to adopt the rules and that the rules were ambiguous. The EMC decided to file the wetlands rules with the Codifier of the Rules, over the RRC's objections.

The appellate court examined each of the builders association's arguments, ruling on the first claim that the EMC did not need to publish the changes that altered the wetlands rules, because those changes did not differ substantially from the text of the proposed rule already published in the North Carolina Register. Therefore, the EMC complied with the APA requirements for rule adoption. The appellate court then investigated the second claim, examining relevant state statutes to determine if the EMC had statutory authority. After reviewing the state law regarding the authority of the EMC to develop and adopt water quality standards, and reviewing the statutory definition of waters as understood by the state, the appellate court found that the EMC had statutory authority to enact these rules, and affirmed the trial court's judgment.

David Hall

N.C. Forestry Ass'n v. N.C. Dep't of Env't & Natural Res., Div. of Water Quality, 571 S.E.2d 602 (N.C. Ct. App. 2002) (holding a party not aggrieved by the exclusion does not have standing to challenge the Division of Water Quality's decision to exclude certain segments of the timber industry from coverage under a general stormwater permit).

The Environmental Management Commission ("Commission") approved the decision of the Department of Environment and Natural Resources Division of Water Quality ("DWQ") to exclude wood chip mills from coverage under a general stormwater discharge permit. The North Carolina Forestry Association ("NCFA") sought judicial review in the Wake County Superior Court of the Commission's final agency decision. The trial court found NCFA was an aggrieved person and therefore had standing; DWQ had the authority to issue or not issue a general permit for any class of activities; and the Commission's final agency decision was timely. NCFA appealed to the North Carolina Court of Appeals. The appellate court reversed the trial court's decision holding that NCFA lacked standing because it was not an aggrieved person for two reasons: (1) NCFA did not have a right to a general permit; and (2) NCFA was not denied a permit.

The DWQ issued a general National Pollutant Discharge Elimination System Permit ("NPDES") permit in 1992, expiring in 1997, that included wood chip mills. In 1998, DWQ issued another general permit that excluded wood chip mills, thereby requiring new or expanding wood chip mills to apply for individual permits. NCFA, a