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# 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)

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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

private organization with members in the timber, forest, and wood chip mill industries, claimed that this new permit would subject its members to burdensome additional administrative procedures and requirements.

NCFA argued that the trial court erred in determining that DWQ had the authority to issue a general permit and erred in finding the Commission's decision was timely. The DWQ claimed the trial court erred in finding that NCFA had standing. The appellate court reviewed de novo whether the North Carolina Administrative Procedure Act ("NCAPA") conferred standing on NCFA by examining North Carolina General Statute section 143-215.1. The appellate court determined that the statute authorized the Commission to issue water pollution permits and general permits. The statute did not require the Commission to make general permits available. The appellate court stated that wood chip mills had no more rights to general permitting than any other segment of the timber industry that was excluded from general permits.

Next, the appellate court explained that any aggrieved person is entitled to a contested case hearing, but NCFA was not an aggrieved person since NCFA did not claim that DWQ denied it or any of its members a permit as a result of the new general permit exclusion of wood chip mills. The appellate court stated that no abrogation of any right occurred because neither NCFA nor any of its members filed an application for a permit since implementation of the new procedures.

*Stefania Niro*

## OREGON

**Port of Morrow v. Aylett, 62 P.3d 427 (Or. Ct. App. 2003)** (reversing and remanding lower court's judgment of relief on the grounds relief granted specifically disavowed by party seeking relief).

Port of Morrow ("Port") owned an irrigation system capable of delivering water to certain property owned by Port and also property owned ("Section 21") and leased ("Sections 27 and 28") by the Aylett family ("Ayletts"). Due to previous litigation in 1993 between the Ayletts and Port's predecessors in interest, the Ayletts operated two pumps to control water flow through Section 21 to Sections 27 and 28. Port sued the Ayletts in the Morrow County Circuit Court, and alleged that although the Ayletts had the right to use the water delivery system for the delivery of water to Section 21, no similar right of delivery to Section 27 and 28 applied. Port noted that neither the control of the two pumps operated by the Ayletts nor the price of the water flowing into Section 21 were at issue in this case. The trial court concluded that the agreement pursuant to which the Ayletts claimed a right to delivery of water to Sections 27 and 28 did not give them such a right.