

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
23 CV 024626-910

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NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY,  
DIVISION OF ENERGY, MINERAL, AND LAND RESOURCES,

PETITIONER,

v.

WAKE STONE CORPORATION,

RESPONDENT.

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**PETITIONER'S  
MOTION TO STAY**

NOW COMES Petitioner, the North Carolina Department of Environmental Quality (“Department”), Division of Energy, Mineral, and Land Resources (“Division”), pursuant to N.C.G.S. § 150B-48 and N.C.G.S. § 1A-1, Rule 65, and requests entry of an Order staying the Office of Administrative Hearings’ (“OAH”) 11 August 2023 Final Decision (“Final Decision”) in the above captioned matter, pending the outcome of the Division’s Petition for Judicial Review, filed concurrently with this Motion to Stay. In support of this Motion, the Division shows the following:

In his Final Decision, the Administrative Law Judge (“ALJ”) ordered the Division to issue the modified Permit 92-10 (“the Permit”) within thirty days, incorporating the proposed sound wall as mitigation and all other site and erosion control plans as last agreed to by Wake Stone Corporation (“Wake Stone”). However, the Permit referenced in the Final Decision was not subject to OAH’s jurisdiction, and thus the Division cannot be ordered to issue the Permit.

The Division asserts that the Final Decision contains erroneous findings of fact and conclusions of law. The Division is therefore aggrieved by the Final Decision and has filed a

Petition for Judicial Review seeking reversal. The Division Requests the operation of the Final Decision be stayed, and that the Division not be required to issue modified Permit 92-10 as specified by the Final Decision, until the such time as judicial review of the Final Decision is completed.

When a party seeks judicial review of administrative decisions, the Administrative Procedure Act expressly provides that the party may seek a stay of that administrative decision in Superior Court. “At any time before or during the review proceedings, the person aggrieved may apply to the reviewing court for an order staying the operation of the administrative decision pending the outcome of the review. The Court may grant or deny the stay in its discretion upon such terms as it deems proper and subject to the provisions of G.S. 1A-1, Rule 65.” N.C.G.S. § 150-B-48.

Under Rule 65, “[a] temporary injunction will ordinarily be granted pending trial on the merits (1) if there is probable cause for supposing that plaintiff will be able to sustain his primary equity and (2) if there is reasonable apprehension of irreparable loss unless injunctive relief be granted, or if in the court’s opinion it appears reasonably necessary to protect plaintiff’s right.” Automobile Dealer Resources, Inc. v. Occidental Life Ins. Co., 15 N.C. App. 634, 638, 190 S.E.2d 729, 732 (1972). “[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” Landis v. N. Am. Co., 299 U.S. 248, 254 (1936).

The Division asserts that judicial efficiency counsels strongly in favor of staying the Final Decision pending review. The Division has a high likelihood of success on the merits of its Petition because: (1) The ALJ lacks authority and jurisdiction to order the Division to issue a mining permit because the powers of the ALJ are set forth in statute and limited in nature; (2) the ALJ erroneously

concluded that the Division acted arbitrary or capriciously in making its decision to deny the mining permit.

The Division was therefore aggrieved by the Final Decision. The Final Decision will more broadly cause irreparable harm to the Division because it is an incorrect interpretation of the law that could divest the Division of its final decision-making authority and, by implication, its statutory and delegated authority to implement the Mining Act.

Furthermore, to the extent that the Division is obligated to issue a mining permit pursuant to the ALJ's Final Decision, this could enable Wake Stone to begin mining operations, which could include, *inter alia*, the commencement of land-clearing, grading, and excavation activities which would irreparably damage the natural landscape of the Odd Fellows Tract.

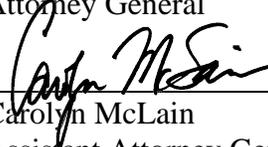
By granting this Motion to Stay, this Court will maintain the status quo while it reviews the Division's Petition and allow the Division to properly process the application of the modification of the Permit. See Western Conference of Original Free Will Baptists of N.C. v. Creech, 256 N.C. 128, 142, 123 S.E.2d 619, 628 (1962) (the purpose of a preliminary injunction under Rule 65 is to "as nearly as possible" maintain the status quo).

WHEREFORE, the Division respectfully requests that this Court enter an Order staying the operation of the Final Decision pending the outcome of the Division's Petition for Judicial Review. Because the Division is required pursuant to the deadline and mandates set forth in the Final Decision to issue a permit prior to a decision on this Motion to Stay, the Division respectfully requests that this Court also stay the effective date of any permit issued pursuant to the Final Decision until such time as judicial review is completed.

Respectfully submitted,

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September 7, 2023

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing PETITIONER’S MOTION TO STAY has been served on all parties listed below by depositing a copy in the United States mail, first class and postage prepaid, and addressed as follows:

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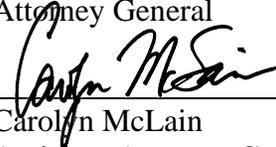
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September 7, 2023