

**PLEASE PRINT CLEARLY OR TYPE**

STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS

COUNTY OF (1) Wake

(2) Wake Stone Corporation )  
 )  
 )  
 (your name) PETITIONER, )  
 )  
 )  
 v. )  
 )  
 (3) North Carolina Department of Environmental Quality )  
 )  
 )  
Division of Energy, Mineral, and Land Resources )  
 )  
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.)

inappropriately denied and refused to issue Petitioner the modification of mining permit as required by N.C. Gen. Stat. 74-51.

The denial letter issued by Respondent is attached as Exhibit A. In further support, please see a factual summary attached as Exhibit B.

(4) Amount in controversy \$ \_\_\_\_\_ (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)

<input type="checkbox"/> deprived me of property;		<input checked="" type="checkbox"/> exceeded its authority or jurisdiction;
<input type="checkbox"/> ordered me to pay a fine or civil penalty; or		<input checked="" type="checkbox"/> acted erroneously;
<input checked="" type="checkbox"/> otherwise substantially prejudiced my rights;	<b>AND</b>	<input checked="" type="checkbox"/> failed to use proper procedure;
		<input checked="" type="checkbox"/> acted arbitrarily or capriciously; or
		<input checked="" type="checkbox"/> failed to act as required by law or rule.

(6) Date: March 14, 2022 (7) Your phone number: ( ) 252.215.4000

(8) Print your full address: Ward and Smith, P.A., Counsel for Petitioner, Post Office Box 8088, Greenville, NC 27835-8088

(9) Print your name: A. Charles Ellis and Hayley R. Wells (city) (state) (zip)

(10) Your signature: *Hayley Wells*

**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) Mr. Bill Lane as Registered Agent (name of person served) (12) North Carolina Department of Environmental Quality, Division of Energy, Mineral, and Land Resources (State agency or board listed on line 3)

(13) 1601 Mail Service Center, Raleigh, NC 27699-1601 (street address/p.o. box) (city) (state) (zip code)

(14) This the 14th day of March, 2022.

(15) *Hayley Wells* (your signature)

When you have completed this form, you **MUST** mail or deliver the **ORIGINAL** to the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, NC 27609.

**This box for OAH use only.**

<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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**INSTRUCTIONS FOR FORM H-06  
“PETITION FOR A CONTESTED CASE” AND “CERTIFICATE OF SERVICE”**

**FILL IN BLANKS:**

Fill in your county of residence (1), print your name on line (2), and the name of the agency or board about which you are complaining on line (3). Be sure to briefly state the facts about your case. Enter the dollar amount in controversy, if applicable on line (4). Check all of the items that apply in section (5). Enter the date on line (6), your telephone number on line (7), your address on line (8), print your name on line (9), and **sign your name on line (10)**.

**CERTIFICATE OF SERVICE:**

You must mail or deliver a copy of your completed petition to the agency or board named on line (3) and complete the “certificate of service” section on your petition, entering the name of the person to whom you mailed or delivered the petition on line (11). You should contact the agency or board to determine the name of the person to be served. Print the name of the state agency involved on line (12), the address of the agency or board on line (13), the date on line (14), and **sign your name on line (15)**.

**FILING FEE**

Filing fees can be paid by either, cash, money order, certified check or checks drawn on attorney trust accounts. The fee must be paid at the time the petition is filed. Checks should be made payable to the Office of Administrative Hearings. If your case is involving a mandated federal cause of action there is no fee. The filing fee for Certificate of Need cases is \$125.00 as well as Environmental issues concerning Clean Water Act permitting, Clean Air Act permitting, Animal Waste Management System permitting, and permitting for water use within capacity use areas and any case when the amount in controversy is \$50,000.00 or more. All other case types shall pay \$20.00.

**FILING YOUR PETITION WITH THE OFFICE OF ADMINISTRATIVE HEARINGS:**

Your contested case will commence as soon as you file your completed original petition, properly signed and appropriate fee paid, with the Office of Administrative Hearings. Below is the mailing and physical address:

**Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh, NC 27609**

If you mail this form, the case commences when it is received and filed in this office.

You may file your petition by fax during normal business hours by faxing the petition to the Clerk's Office at (984) 236-1871.

You may file your petition by electronic mail by an attached file either in PDF format or a document that is compatible with or convertible to the most recent version of Word for Windows by sending the electronic transmission to [oah.clerks@oah.nc.gov](mailto:oah.clerks@oah.nc.gov). Electronic mail without attached file shall not constitute a valid filing.

# **EXHIBIT A**

ROY COOPER  
Governor

ELIZABETH S. BISER  
Secretary

BRIAN WRENN  
Director



NORTH CAROLINA  
Environmental Quality

February 17, 2022

Certified Mail

Return Receipt Requested

7008 1300 0000 1124 7482

Mr. Samuel T. Bratton, CEO and President  
Wake Stone Corporation  
PO Box 190  
6821 Knightdale Blvd.  
Knightdale, NC 27545

Subject: Denial of the Triangle Quarry Modification Application  
Mining Permit No. 92-10  
Wake County  
Neuse River Basin

Dear Mr. Bratton:

This letter is in response to your submittal of the permit application request dated April 8, 2020 including additional information submitted November 12, 2020, January 11, 2021, March 22, 2021, April 30, 2021, August 12, 2021, November 1, 2021, and January 18, 2022 for the above referenced mine site. The application proposes to develop and operate a quarry on the Odd Fellows tract on the west side of Crabtree Creek adjacent to the existing Triangle Quarry. The Odd Fellows tract lies immediately to the south of William B. Umstead State Park (the Park). The application was reviewed with respect to the requirements of the North Carolina Mining Act of 1971 (Act) and the North Carolina Administrative Code.

Pursuant to N.C.G.S. §74-51, your application request is hereby denied on the grounds that the following denial criteria would be triggered:

*N.C.G.S. §74-51(d)(5) That the operation will have a significantly adverse effect on the purposes of a publicly owned park, forest, or recreation area;*

The proposed quarry is located and designed such that normal operation would have significantly adverse effects on the purposes of the Park through noise, visual, and traffic impacts.

Pursuant to N.C.G.S. §74-51(g), the Department is required to notify your company of any modifications in the application that would make the application acceptable. During the extensive evaluation of the application, the Division has requested information and design considerations on multiple occasions to mitigate these impacts. However, as the current configuration of the pit is



North Carolina Department of Environmental Quality | Division of Energy, Mineral and Land Resources

512 North Salisbury Street | 1612 Mail Service Center | Raleigh, North Carolina 27699-1612

919.707.9200

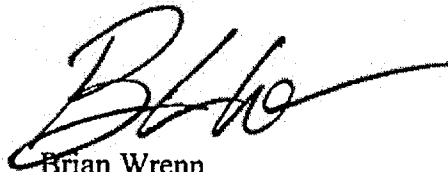
proposed, the Department is not aware of modifications which would mitigate all significantly adverse effects on the purposes of the Park.

You may appeal this denial by filing an appeal within thirty (30) days as provided in N.C.G.S. §74-61. This petition must conform to the requirements of N.C.G.S. §150B-23 and be filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina 27699-6714. A copy of the petition must be served on the Department as follows:

Mr. Bill Lane  
Registered Agent  
N.C. Department of Environmental Quality  
1601 Mail Service Center  
Raleigh, North Carolina 27699-1601

If you have any questions about this letter, please contact me at (919) 707-9222.

Sincerely,



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Brian Wrenn  
Director  
Division of Energy, Mineral, and Land Resources

# **EXHIBIT B**

## EXHIBIT B

Petitioner, Wake Stone Corporation, ("Petitioner" or "Wake Stone") brings this Petition challenging the denial of its Application for Modification of Mining Permit 92-10 ("Permit Modification Application") by Respondent, North Carolina Department of Environmental Quality, Division of Energy, Mineral and Land Resources ("Respondent" or "DEMLR"). Petitioner submits that the evidence developed and presented show that the denial criteria set forth in N.C. Gen. Stat. § 74-51(d)(5) do not exist and that DEMLR, in denying the Permit Modification Application, substantially prejudiced Petitioner's rights and acted erroneously, exceeded its authority or jurisdiction, failed to use proper procedure, acted arbitrarily or capriciously, and/or failed to act as required by law.

Wake Stone submitted the Permit Modification Application to DEMLR on April 8, 2020, requesting a modification to its existing Mining Permit No. 92-10 (the "Mining Permit") to allow Wake Stone to expand mining operations on a 106 +/- acre tract (the "Odd Fellows Tract") located adjacent to Wake Stone's existing Triangle Quarry in Wake County, North Carolina, which Wake Stone leases from the Raleigh-Durham Airport Authority through a mineral lease agreement. Wake Stone uses the Triangle Quarry to mine and produce quality crushed stone products. The Permit Modification Application sought to allow Wake Stone to add 106 +/- acres to the current Mining Permit boundary in order to disturb/mine an additional 59 +/- acres on the Odd Fellows tract for soil, weathered bedrock and sound/unweathered bedrock.

Wake Stone originally obtained the Mining Permit in 1981 for the Triangle Quarry. Since that time, Wake Stone has operated the Triangle Quarry in compliance with the Mining Permit and all federal and state laws governing its operations.

The April 8, 2020 Permit Modification Application followed the completion of four years of analysis and due diligence by Wake Stone to address any anticipated concerns that could serve as a basis for denial under N.C. Gen. Stat. § 74-51(d). In support of the Permit Modification Application, Wake Stone initially submitted 253 pages of information and supporting documentation, including:

- Signed Application for a Mining Permit and required attachments (maps);
- Erosion and Sediment Control Plan and calculations;
- A detailed description of the washing protocol for the mined material and process for treating the related chemicals used in that process;
- Stormwater General Permit;
- Detailed summary providing the sequence of land disturbing activities;
- Hydrogeological assessment;
- North Carolina Division of Air Quality Permit;
- Proposed buffers and security fencing diagrams;



- U.S. Army Corps of Engineers Approved Jurisdictional Determination plat;
- North Carolina Division of Water Resources Neuse River Buffer Determination;
- North Carolina Division of Water Resources Stream Buffer Impact analysis;
- Reclamation Plan;
- Assignment of collateral in lieu of surety bond;
- Monitoring well records;
- Dyno Nobel Blasting Analysis;
- Federal Emergency Management Agency No Impact Certification Application;
- Notice to adjoining landowners;
- Retaining wall engineering plans; and
- Detailed site plans illustrating all existing and proposed mining activities;

The North Carolina Mining Act (N.C. Gen. Stat. § 74-46 *et seq.*) (the "Mining Act") requires DEMLR to grant or deny a permit as expeditiously as possible, but in no event any later than 60 days after the application form and any relevant and material supplemental information reasonably required shall have been filed with the Department, or if a public hearing is held, within 30 days following the hearing and the filing of any relevant and material supplemental information reasonably required by DEMLR. N.C. Gen. Stat. § 74-51(b).

Following the submission of the Permit Modification Application, Wake Stone provided substantial additional information requested by DEMLR on seven different occasions: November 12, 2020, January 11, 2021, March 22, 2021, April 30, 2021, August 12, 2021, November 1, 2021, and January 18, 2022. The Permit Modification Application and supplemental materials establish that the Permit Modification Application should be granted and that no facts exist to support its denial under N.C. Gen. Stat. § 74-51(d)(5) or any other criteria in the Mining Act.

DEMLR's denial of the Permit Modification Application based on the conclusion that it will have a "significantly adverse effect on the purpose of a publicly owned park, forest or recreation area" is not supported by the Permit Modification Application or any supplemental information and is arbitrary or capricious. Further, DEMLR acted erroneously by denying the Permit Modification Application and refusing to issue Wake Stone the modification to its Mining Permit. DEMLR also failed to use proper procedure and/or failed to act as required by law in denying the Permit Modification Application and refusing to issue the Permit Modification.

The Triangle Quarry is adjacent to Umstead State Park, and Wake Stone has been conducting mining operations at this location since 1981. DEMLR renewed the Wake Stone Mining Permit in 1991, 2001, and 2011 and no denial criteria or other issues arose during those renewals. During this time there have been no significant

adverse impacts on the purposes of a publicly owned park, forest or recreation area, including, but not limited to, Umstead State Park. The Umstead State Park has become one of North Carolina's most-visited state parks and grown its annual visitor numbers from around 400,000 in 2000 to over one million visitors per year in 2020. DEMLR denied the Permit Modification Application based on the erroneous conclusion that it will have a significantly adverse effect on the purposes of the Umstead State Park (a publicly owned park, forest, or recreation area) due to noise, visual, and traffic impacts.

The Permit Modification Application and supporting documentation establish that the Permit Modification would not have a significant adverse effect on the noise levels, visual impacts, or traffic of a publicly owned park, forest or recreation area, including but not limited to Umstead State Park.

DEMLR acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, and/or failed to act as required by law in failing to offer mitigating factors for the alleged noise levels, visual impacts, and traffic impacts, and/or to adequately consider the substantial mitigation proposed by Wake Stone when it denied the Permit Modification Application. DEMLR also exceeded its authority or jurisdiction in denying the Permit Modification Application under N.C. Gen. Stat. § 74-51(d)(5) based on the alleged traffic impacts.

Petitioner Wake Stone asks that DEMLR be directed to grant the Permit Modification Application and issue the requested modification to the Mining Permit. Petitioner further requests that it be awarded its reasonable attorneys' fees, costs, and witness fees as allowed by law.