

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
22CVS008638-910

THE UMSTAED COALITION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
NC DEPARTMENT OF ENVIRON- )  
MENTAL QUALITY, DIVISION OF )  
ENERGY, MINERAL AND LAND )  
RESOURCES, WAKE STONE )  
CORPORATION and WAKE STONE )  
PROPERTY COMPANY, )  
 )  
Defendants. )

ORDER  
(Staying Proceedings in Superior Court)

THIS MATTER came before the Court upon Defendant NC Department of Environmental Quality (“DEQ”), Division of Energy, Mineral and Land Resources’ Motion to Dismiss Amended Complaint filed on January 3, 2023, and Defendants Wake Stone Corporation and Wake Stone Property Company’s Motion to Dismiss First Amended Complaint filed on January 18, 2023. The Amended Complaint filed by the Plaintiff concerns modifications of significant interest to the parties and the public-at-large made in March of 2018 by DEQ to Mining Permit 92-10 under which Wake Stone operates Triangle Quarry in Wake County. The parties agree that Plaintiff did not receive notice about the modifications from the DEQ (while not agreeing as to entitlement of notice) but learned of the modifications in November of 2018 through a public records review related to Triangle Quarry.

Plaintiff contends that since it did not learn of DEQ’s action until well after the 30 day time limit established in N.C.G.S. § 74-61 to commence a contested case pursuant to the Administrative Procedure Act (“APA”), the Court should conclude that Plaintiff’s ability to contest the action through the APA was never actually available, and Plaintiff should be

allowed to proceed directly with judicial review in Superior Court. Defendant DEQ contends Plaintiff must avail itself of the procedures set forth in the APA, while acknowledging that Plaintiff did not receive legal or actual notice about DEQ's modifications within the 30 day time limit established in N.C.G.S. § 74-61. Defendant Wake Stone lists the failure to exhaust administrative remedies as one of several reasons it contends the action should be dismissed.

The Superior Court Division of the NC General Court of Justice interacts with the contestation of agency decisions through the APA in several ways. These include *inter alia* intervention when a final decision is unreasonably delayed, see N.C.G.S. § 150B-44, remand to allow for new evidence, see N.C.G.S. § 150B-49, and remand for further proceedings, see N.C.G.S. § 150B-51(b). In this case, the Court, in its discretion, concludes that, in the interest of justice and to avoid speculation as to the opportunity available to the Plaintiff pursuant to the APA, the proceedings in the case *sub judice* should be stayed and the Plaintiff directed to commence a contested case pursuant to the APA. The Court shall consider any procedural or substantive rulings pertaining to the contested case in deciding the Defendants' Motions to Dismiss and the parties may incorporate any procedural or substantive rulings in revising and renewing their arguments for consideration by the judge regularly scheduled and commissioned to preside in Wake County Civil Superior Court for the review date session.

IT IS, THEREFORE, ORDERED that Plaintiff shall commence a contested case pertaining to the DEQ's modification of Mining Permit 92-10 in March of 2018 in the Office of Administrative Hearings within 30 days of the date of this Order and that the proceedings in the above-styled case are stayed for a period of 150 days with a review set on September 5, 2023 or another day during the September 5, 2023 session as mutually agreed upon by counsel.

ORDERED this the 11th day of April 2023.

*Paul A. Holcombe, III*

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PAUL A. HOLCOMBE, III  
Superior Court Judge Presiding

4/11/2023 11:30:19 AM

## Certificate of Service

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I HEREBY CERTIFY that the foregoing document was served on the parties listed below by:



☒ Transmitting a copy hereof to each said party via e-mail; and/or

☐ Depositing a copy hereof, first class postage pre-paid in the United States mail, properly addressed as follows:

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Attorney for Defendant Wake Stone Corp

13th  
This, the \_\_\_\_\_ day of April, 2023.

*Shanda Smallwood*

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Shanda Smallwood, Court Asst.  
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