

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
22 CVS 443

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ENVIRONMENTAL JUSTICE COMMUNITY  
ACTION NETWORK and  
CAPE FEAR RIVER WATCH,  
Petitioners,

v.

NORTH CAROLINA DEPARTMENT OF  
ENVIRONMENTAL QUALITY – DIVISION OF  
WATER RESOURCES,  
Respondent,

and

MURPHY-BROWN, LLC,  
Respondent-Intervenor.

**PETITION FOR  
JUDICIAL REVIEW OF  
FINAL DECISION**

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Pursuant to N.C. Gen. Stat. §§ 150B-43, 150B-45, and 150B-46, Petitioners Environmental Justice Community Action Network and Cape Fear River Watch (“the Community Groups”), submit this petition for judicial review of and exceptions to the Final Decision issued on January 11, 2022 by Chief Administrative Law Judge Donald R. van der Vaart in the Office of Administrative Hearings in consolidated contested cases 21 EHR 02068, 02069, 02070, and 02071. The Final Decision is attached as Exhibit 1.

In this challenge to permits authorizing the construction and operation of animal waste management systems at four industrial hog operations in Eastern North Carolina, the Final Decision adopts Respondent-Intervenor Murphy-Brown, LLC’s radical position that North Carolina’s water pollution control permitting requirements do not apply to animal feeding

operations throughout the state. The Final Decision must be overturned because it is contrary to the statute, the applicable regulations, and the permits themselves.

### **INTRODUCTION**

The Community Groups seek to enforce two important pollution control requirements that protect North Carolina’s rivers, streams, and groundwater. The plain terms of these requirements apply to “all permits,” and “all permit decisions” authorizing Murphy-Brown to “construct or operate an animal waste management system” issued “under either this Part [Part 1] or Part 1A of this Article.” N.C. Gen. Stat. §§ 143-215.1(a)(12), (b)(2). The Final Decision erroneously held that animal feeding operations are exempt from these requirements—and every other requirement of Part 1<sup>1</sup> of the state’s permitting program—merely because such operations are subject to requirements contained in Part 1A<sup>2</sup>: “requirements unique to Part 1 do not apply to these facilities.” Exhibit 1, Final Decision at ¶ 12. This artificial distinction must be overturned. Part 1A is not an exclusive, self-contained, complete permitting program; it supplements Part 1. There is no basis for negating requirements in Part 1 whose plain terms apply to these permits.

On March 31, 2021, the N.C. Department of Environmental Quality (“DEQ”) issued three individual permits and one certificate of coverage under the 2019 Swine General Permit (collectively, “the Permits”) that authorize the construction and operation of animal waste management systems at four industrial hog operations known as the Benson, Goodson, Waters, and Kilpatrick Operations (“the Hog Operations”). The Hog Operations historically sluiced hog urine and feces into open-air lagoons and then sprayed the waste on nearby fields. The new permits authorize the construction and operation of animal waste management systems in which

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<sup>1</sup> N.C. Gen. Stat. §§ 143-211–215.9E.

<sup>2</sup> N.C. Gen. Stat. §§ 143-215.10A–10M.

the composition of the waste is changed through mixing and anaerobic digestion in covered digesters; methane and other gases (collectively, “biogas”) are removed from the digesters for use as fuel; the waste from the digesters is pumped into open lagoons; and then it is sprayed on fields. Ammonia released into the environment from hog waste stored in open lagoons is a well-documented source of water pollution and health problems for people living nearby. Hundreds of families live near these four Hog Operations. As a result of the changes to the composition of the waste and the use of open lagoons to store the digester waste authorized by the Permits, Murphy-Brown will release even larger quantities of ammonia into the environment.

In authorizing the construction and operation of these animal waste management systems, DEQ had an obligation under North Carolina’s water permitting statute and the Environmental Management Commission’s regulations to ensure Murphy-Brown uses “the practicable waste treatment and disposal alternative with the least adverse impact on the environment.” N.C. Gen. Stat. § 143-215.1(b)(2); 15A N.C. Admin. Code 2T.0105(f). Public comments during the permitting process pointed out that additional, more effective waste treatment options and less harmful waste management practices are in use elsewhere and that North Carolinians deserve at least the same protections, but DEQ failed to consider any alternatives. In other states, Murphy-Brown employs additional treatment to remove pollutants from the waste in connection with its biogas production.

The state water pollution control permitting statute, N.C. Gen. Stat. § 143-215.1(b)(2), also required DEQ to evaluate and prevent cumulative effects on water quality, a particularly serious issue because of the extremely high concentration of animal feeding operations in Eastern North Carolina and the Cape Fear River Basin specifically. Outside of its permitting process, DEQ has studied the issue and identified significantly higher levels of pollution in

streams near and downstream of these and other industrial animal operations, but DEQ failed to consider any of this information documenting water quality impacts or address the increased risk of water pollution from the waste management systems it authorized in the Permits.

By failing to comply with these permitting requirements, DEQ authorized systems that will add even more pollution to the Cape Fear River Basin and increase the risk of health impacts for people living nearby. DEQ's approach contravened the clear mandates of the state water permitting statute and regulations applicable to animal feeding operations, and failed to protect North Carolina's water resources and nearby communities.

The Final Decision, meanwhile, exempts Murphy-Brown from not only these important requirements, but all requirements of Part 1 of the water permitting program. If allowed to stand, this would upend longstanding protections DEQ has implemented for many years and interfere with the enforcement of important water pollution control requirements. The Final Decision is erroneous and contrary to North Carolina law, affected by errors of law and fact, and should be reversed by this Court on *de novo* review.

### **PARTIES AND JURISDICTION**

1. Petitioner Environmental Justice Community Action Network is a North Carolina-based 501(c)(3) nonprofit organization focused on, and dedicated to, achieving environmental justice. Environmental Justice Community Action Network provides resources to communities seeking assistance in improving the environment where they live, work, and play. The organization was founded in 2020, and serves communities by empowering them with technical, scientific, legal, educational, and funding resources to overcome the powerful interests that stand in the way of addressing the environmental injustices these communities face. Environmental Justice Community Action Network approaches this work with an intentional

focus on the intersections between the environment, social justice, economic justice, and civil rights. Its membership includes residents of Sampson and Duplin counties and is predominantly made up of people of color. Many members live near industrial hog operations. Environmental Justice Community Action Network works with community members to address pollution and public health impacts caused by industrial hog operations. Members of Environmental Justice Community Action Network live, work, and recreate near and downstream of the Hog Operations whose waste management systems are authorized by the challenged permits. They are concerned about contamination of surface and groundwater, as well as air pollution, from these operations, and are concerned that biogas production at these sites may increase these risks. In addition, they are concerned that the pollution from the Hog Operations will add to existing pollution from lagoons and sprayfields at other hog operations and from other sources of industrial pollution in the Cape Fear River Basin. DEQ's failure to require more protective technology in the permits and its failure to address cumulative impacts reduces these members' use and enjoyment of nearby waters.

2. Petitioner Cape Fear River Watch is a 501(c)(3) non-profit public interest organization based in Wilmington, N.C. and founded in 1993, whose mission is to protect and improve the water quality of the Lower Cape Fear River Basin through education, advocacy, and action ensuring environmental justice. Cape Fear River Watch advocates on behalf of the Lower Cape Fear River Basin at the local, state, and national levels. It monitors water quality throughout the Basin, holds monthly educational seminars for residents on issues related to the River and the environment, and leads monthly volunteer clean-ups in the watershed. Cape Fear River Watch staff and volunteers guide monthly paddles throughout the watershed, conduct summer camps for children, and work with local school systems to educate children about the

importance of protecting water quality. Members of Cape Fear River Watch live downstream from the Hog Operations and use waterways downstream from the operations for fishing and paddling, among other activities. They are concerned about water pollution from these operations and the cumulative effects of pollution on the waters they use in the Cape Fear River Basin. DEQ's failure to require more protective technology in the permits and its failure to address cumulative impacts reduces members' use and enjoyment of these waterways.

3. The Community Groups represent their members' interests in this action.

4. The Community Groups are persons aggrieved under the North Carolina Administrative Procedure Act, N.C. Gen. Stat. § 150B-23(a), whose interests have been substantially prejudiced by DEQ's issuance of the Permits.

5. The Community Groups are aggrieved by the Final Decision and have exhausted all available administrative remedies, and therefore are entitled to judicial review of the Final Decision pursuant to N.C. Gen. Stat. § 150B-43.

6. The Department of Environmental Quality is North Carolina's environmental agency. DEQ has a duty to protect the environment. N.C. Gen. Stat. §§ 143B-279.2, 143-211, 143-215.105. The Department's Division of Water Resources is responsible for regulating water pollution, and has a statutory obligation to "maintain, protect, and enhance water quality within North Carolina." *Id.* § 143-211(b).

7. Murphy-Brown, LLC, d/b/a Smithfield Hog Production, is the permittee in this matter.

8. "A petition for review of any . . . final decision [other than a contested tax case] under this Article must be filed in the superior court of the county where the person aggrieved by the administrative decision resides[.]" N.C. Gen. Stat. § 150B-45(a)(2). Because Cape Fear

River Watch is based in New Hanover County, this Court is the proper venue for this Petition for Judicial Review.

9. Petitions for judicial review must be initiated within 30 days. This Petition for Judicial Review has been initiated by timely filing this Petition and paying all related fees within 30 days of January 11, 2022, the date of the Final Decision.

### **BACKGROUND**

10. North Carolina's Constitution provides, "[i]t shall be the policy of this State . . . to control and limit the pollution of our air and water." N.C. Const. art. XIV § 5. The General Assembly has declared "the water and air resources of the State belong to the people." N.C. Gen. Stat. § 143-211(a). The state government is responsible for maintaining, protecting, and enhancing water quality within North Carolina and ensuring the preservation and development of water resources "in the best interest of all its citizens." *Id.* § 143-211(a).

11. To this end, the North Carolina General Assembly set out a policy to "conserv[e] . . . its water and air resources . . . [and] maintain, protect, and enhance water quality in North Carolina." *Id.* § 143-211(a)-(b). The General Assembly created DEQ to "administer a complete program of water and air conservation [and] pollution abatement and control." *Id.* § 143-211(c).

12. The General Assembly granted the Environmental Management Commission (the "Commission") certain powers as to these permits, which the Commission delegated to DEQ's Division of Water Resources. 15A N.C. Admin. Code 2A .0105(a). These powers include the authority to grant, modify, or revoke any permit as necessary to effectuate the State's policies. *Id.* § 143-215.1(b).

13. The General Assembly specifically "provid[ed] for the conservation of [the State's] water and air resources" and "achiev[ing] and [] maintain[ing] for the citizens of the

State a total environment of superior quality,” *id.* § 143-211, and authorized the Commission, and thus DEQ, to deny a permit or attach a condition to a permit when DEQ “finds such denial or such conditions are necessary to effectuate the purposes of this Article.” *Id.* § 143-215.1(b)(1).

#### **A. Permitting Requirements**

14. The Community Groups challenged the Permits to enforce two provisions of the state water pollution control statute. The first, referred to here as the Alternatives Requirement, requires that when DEQ authorizes the construction and operation of an animal waste management system, it must ensure that the practicable alternative with the least adverse impact on the environment is utilized. N.C. Gen. Stat. § 143-215.1(b)(2). The second, referred to here as the Cumulative Effects Requirement, requires that DEQ act on all permits to prevent the collective effects of permitted projects from causing violations of surface water or groundwater quality standards. *Id.*

#### ***Alternatives Requirement***

15. Under North Carolina’s water permitting statute, “all permit decisions shall require that the practicable waste treatment and disposal alternative with the least adverse impact on the environment be utilized.” N.C. Gen. Stat. § 143-215.1(b)(2). The relevant “permit decisions” are listed just above this provision: “Activities for Which Permits Required. . . . no person shall do any of the following things or carry out any of the following activities unless that person has received a permit: . . . (12) Construct or operate an animal waste management system, as defined in G.S. 143-215.10B, without obtaining a permit under either this Part or Part 1A of this Article.” N.C. Gen. Stat. § 143-215.1(a). An animal waste management system is “a combination of structures and nonstructural practices serving a feedlot that provide for the collection, treatment, storage, or land application of animal waste.” *Id.* at § 143-215.10B(3).



16. Accordingly, by the plain terms of Section 143-215.1(a)(12) and (b)(2), a “permit decision” authorizing the “[c]onstruct[ion] or operat[ion] of an animal waste management system . . . under either this Part [1] or Part 1A” “shall require that the practicable waste treatment and disposal alternative with the least adverse impact on the environment be utilized.”

17. In addition, state regulations specifically apply the Alternatives Requirement to the permitting of all “animal waste management systems” “that do not discharge to surface waters of the state,” which includes the Hog Operations at issue here. 15A N.C. Admin. Code 2T .0101(5). Recognizing that non-discharge permit provisions are insufficient to prevent pollution without protective waste treatment and disposal methods, the regulations expressly require these facilities to “use the practicable waste treatment and disposal alternative with the least adverse impact on the environment in accordance with G.S. 143-215.1(b)(2).” *Id.* at 2T .0105(f).

#### ***Cumulative Effects Requirement***

18. The water permitting statute, Section 143-215.1(b)(2), contains the separate obligation that DEQ must “act on all permits so as to prevent violation of water quality standards due to the cumulative effects of permit decisions.” Cumulative effects are defined in the statute as “impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity.” *Id.*

## **B. DEQ's Permitting Process**

19. On December 23, 2019, Murphy-Brown submitted applications for a “New Swine Digester Animal Waste Management System” at each Hog Operation.

20. DEQ issued draft permits and a notice of a public meeting and public comment period on December 22, 2020. A virtual public meeting was held on January 26, 2021, and the public comment period closed on January 29, 2021. Members of Petitioners Environmental Justice Community Action Network and Cape Fear River Watch delivered oral comments at the public meeting. Petitioner Cape Fear River Watch and several other community and environmental groups submitted joint written comments opposing issuance of the Permits as drafted. The Community Groups raised several concerns, including DEQ's failure to evaluate less environmentally adverse practicable alternatives to the animal waste management systems proposed by Murphy-Brown and DEQ's failure to evaluate cumulative effects on water quality as part of the permitting process.

21. During discovery in this case, DEQ staff testified that the engineer who prepared the Permits was the only person at DEQ who read the written comments from the public. The permit writer also drafted DEQ's Public Meeting Report, which contains DEQ's responses to various, but not all, concerns raised by community members.

22. The Public Meeting Report did not respond to comments regarding the “least environmentally adverse practicable alternative” requirement in N.C. Gen. Stat § 145-215.1(b)(2). Instead, the Report stated that separate performance standards developed for “new and expanding swine operation[s]” did not apply because the Hog Operations did not propose an increase in their permitted capacity. The Public Meeting Report made no mention of the Alternatives Requirement contained in N.C. Gen. Stat § 145-215.1(b)(2).

23. Regarding the requirement in N.C. Gen. Stat. § 145-215.1(b)(2) that DEQ “act on all permits so as to prevent violation of water quality standards due to the cumulative effects of permit decisions,” DEQ stated in the report that because the proposed permits were non-discharge permits at existing hog operations, “the proposed permit modifications does [*sic*] not increase the potential for water quality standard violations whether the effects are viewed individually or cumulatively.”

24. DEQ issued the Permits on March 31, 2021.<sup>3</sup> Each of the Permits authorizes Murphy-Brown to construct a new waste management system by adding new components and reconfiguring existing ones; the resulting systems allow Murphy-Brown to process hog waste in covered anaerobic digesters, pipe the chemically altered waste from these digesters into open lagoons, where the waste releases pollutants into the environment, and then spray the waste on surrounding fields without accounting for increased levels of harmful forms of nitrogen and other pollutants.

25. The individual permits state that they are issued under “Article 21 of Chapter 143, General Statutes of North Carolina as amended, and other applicable Laws, Rules, and Regulations.”<sup>4</sup> Article 21 contains both Part 1 and Part 1A of the permitting program. The state’s Swine General Permit, which covers the Kilpatrick operation, states on its face that it is

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<sup>3</sup> Permit No. AWI820466, Farm 2037 and 2038 Swine Waste Collection, Treatment, Storage and Application System, Sampson County (Mar. 31, 2021) (“Goodson Permit”); Permit No. AWI310035, Waters Farm 1-5 M&M Rivenbark Swine Waste Collection, Treatment, Storage and Application System, Duplin County (Mar. 31, 2021) (“Waters Permit”); Permit No. AWI310039, Benson Farm Swine Waste Collection, Treatment, Storage and Application System, Duplin County (Mar. 31, 2021) (“Benson Permit”); Certificate of Coverage No. AWS820005, Kilpatrick Farm 1, 2, 4, & 5 & Merritt Farm Swine Waste Collection, Treatment, Storage and Application System, Sampson County (Mar. 31, 2021) (“Kilpatrick COC”). The Permits will be included in the official record transmitted by OAH.

<sup>4</sup> Goodson, Waters, Benson Permits at 1.

issued “pursuant to North Carolina G.S. 143-215 [*i.e.*, Part 1] *et seq.*, and North Carolina Administrative Code Title 15A Subchapter 02T.”<sup>5</sup>

26. The Permits cite N.C. Gen. Stat. § 143-215.1, which contains the Alternatives Requirement and Cumulative Effects Requirement, as authority for multiple conditions in the Permits.<sup>6</sup> The Permits also cite the “General Requirements” section of the 2T regulations, which contains the Alternatives Requirement, as authority for numerous conditions.<sup>7</sup>

### **PROCEDURAL HISTORY**

27. On April 29, 2021, Petitioners timely filed four Petitions for Contested Case challenging the Permits.

28. On April 30, 2021, former Chief Administrative Law Judge Julian Mann III issued an order assigning the cases to Administrative Law Judge Michael C. Byrne. On June 2, 2021, the four cases were consolidated.

29. On September 9, 2021, Chief Administrative Law Judge Donald R. van der Vaart issued an order reassigning the consolidated cases to himself.

30. On October 22, 2021, following the close of discovery, all parties filed motions for summary judgment. On November 16, 2021, Chief ALJ van der Vaart heard arguments on the motions for summary judgment.

31. On November 30, 2021, Chief ALJ van der Vaart held a recorded status conference at which he announced that he would grant Murphy-Brown’s motion for summary judgment based

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<sup>5</sup> Swine General Permit (Kilpatrick COC), at 1.

<sup>6</sup> *See, e.g.*, Benson Permit, Conditions V.10, V.11.

<sup>7</sup> For example, annual permit fees are required pursuant to 15A N.C. Admin. Code 2T .0105, which also contains the Alternatives Requirement. *E.g.*, Benson Permit, Condition V.4. And numerous provisions of the Permits cite additional portions of the 2T Regulations’ General Requirements (2T .0101–.0120) as their authority, such as requirements for the Certified Animal Waste Management Plan, *e.g.*, Benson Permit, Condition I.4 (citing 2T .0108(b)), and the prohibition against discharging to surface waters or contaminating groundwater, *e.g.*, *id.* Condition I.15 (same), among many others.

on the purportedly exclusive requirements of Part 1A of the state’s permitting program, and stated that the Permits should be revised to reflect this decision.

32. On January 11, 2022, Chief ALJ van der Vaart issued the Final Decision. The Final Decision holds “as a matter of law,” Exhibit 1 at 6 ¶ 19, that “[t]he facilities in this matter have been permitted under Part 1A by DEQ,” *id.* at 6, that “requirements unique to Part 1 do not apply to these facilities,” *id.* at 5 ¶ 12, and that “the provisions in Section 143-215.1(b)(2) do not apply to permits issued under Part 1A, as these provisions are applicable only to permits issued under Part 1.” *Id.* at 5 ¶ 14. The Final Decision denied Murphy-Brown’s motion for summary judgment challenging the Community Groups’ “standing,” *i.e.*, their status as persons aggrieved who have been substantially prejudiced under the Administrative Procedure Act. *Id.* at 7.

### **EXCEPTIONS TO FINAL DECISION**

The Community Groups are prejudiced by the Final Decision because it is affected by errors of law and also contains erroneous statements of fact. As described in more detail below, the Community Groups take exception to “Conclusions of Law” 9–19 and “Uncontested Facts” 11 and 13–15. The Community Groups seek reversal of the Final Decision and submit the following exceptions to the Final Decision pursuant to N.C. Gen. Stat. §§ 150B-43, -45, and -46:

33. The Final Decision erroneously holds that the Permits are issued exclusively under Part 1A of the permitting program and that “[r]equirements contained in the Permits . . . are authorized under Part 1A and not Part 1 of Chapter 143.” Ex. 1 at 5 ¶¶ 12–13. The Permits themselves contradict this holding in multiple ways, including:

- a. The Permits establish a groundwater compliance boundary for each Hog Operation,<sup>8</sup> and a groundwater compliance boundary “only applies to facilities

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<sup>8</sup> Goodson, Benson, Waters Permits at 18, Condition VI.17; Swine General Permit (Kilpatrick COC), at 15,

which have received a permit issued under the authority of G.S. 143-215.1,”<sup>9</sup> which is the section of Part 1 that contains the Alternatives Requirement and Cumulative Effects Requirement. 15A N.C. Admin. Code 2L .0102(3).

- b. Moreover, the Permits cite Section 143-215.1 of Part 1 and the General Requirements section of the 2T regulations—which contains the Alternatives and Cumulative Effects Requirements—as authority for multiple provisions. These provisions include the fundamental authority by which the Permits require compliance with their terms: citing Section 143-215.1, the Permits require that the subject facilities must be “constructed in accordance with the conditions of this Permit,”<sup>10</sup> and also require Murphy-Brown’s adherence to the approved plans submitted in its application materials: “This Permit is effective only with respect to the nature and volume of wastes described in the application and other supporting data” and any changes to any component of the animal waste management system authorized in the Permits must be approved by DEQ.<sup>11</sup>
- c. The individual Permits state on their face that they are issued under Article 21 of Chapter 143 of the General Statutes, which contains both Parts 1 and 1A.<sup>12</sup> And the Kilpatrick certificate authorizes coverage under the state’s Swine General Permit, which states on its face that it is issued “pursuant to North Carolina G.S.

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Condition V.11.

<sup>9</sup> A groundwater compliance boundary is also available for facilities permitted under Chapter 130A, which is not relevant here. 15A N.C. Admin. Code 2L .0102(3).

<sup>10</sup> Goodson, Waters, Benson Permits at 17, Condition V.10.

<sup>11</sup> Goodson, Waters, Benson Permits at 17, Condition V.11; Swine General Permit (Kilpatrick COC), at 15, Condition V.8.

<sup>12</sup> Goodson, Waters, Benson Permits at 1.

143-215 et seq. [*i.e.*, Part 1], and North Carolina Administrative Code Title 15A Subchapter 02T,”<sup>13</sup> both of which contain these requirements.

- d. At the recorded status conference announcing the decision, Chief ALJ van der Vaart acknowledged that the decision is contradicted by the Permits themselves, stating, “I believe that Part 1A does apply and Part 1 does not. I believe that *the permits should be amended to be consistent with that*” (emphasis added).<sup>14</sup> In other words, the Chief ALJ acknowledged that the decision is inconsistent with the Permits it purports to uphold. Regarding the provisions of the Permits that cite Part 1 as authority, Chief ALJ van der Vaart stated, “that is not a simple situation to ignore.”<sup>15</sup> Yet the Final Decision does exactly that.

34. The Final Decision erroneously holds that the Alternatives Requirement does not apply to the Permits. Ex. 1 at 5 ¶ 14. The Alternatives Requirement applies to “all permit decisions” authorizing an operation to “[c]onstruct or operate an animal waste management system . . . under either this Part [1] or Part 1A of this Article.” N.C. Gen. Stat. § 143-215.1(a)(12), (b)(2). The Permits authorize the “construction and operation” of an “animal waste management system” at the Kilpatrick Operation, and authorize the “construction and operation” of an “animal waste treatment system,” which is an animal waste management system, *see* N.C. Gen. Stat. § 143-215.10B(3), at Waters, Benson, and Goodson Operations. In addition, the North Carolina regulations “govern[ing] application for and issuance of permits for . . . animal waste management systems” expressly apply the Alternatives Requirement to such permits. 15A

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<sup>13</sup> Swine General Permit at 1.

<sup>14</sup> Status Conference Recording (Nov. 30, 2021) at 07:29. The Community Groups have requested that this recording be included in the official record.

<sup>15</sup> *Id.* at 08:08.

N.C. Admin. Code .0101(5), .0105(f). The Final Decision's holding that this requirement does not apply to any animal feeding operations is contrary to the plain text of these requirements and the Permits themselves. It is also inconsistent with and more extreme than DEQ's stated position that the Alternatives Requirement applies to certain animal feeding operations (though not these four facilities).

35. The Final Decision erroneously holds that the Cumulative Effects Requirement does not apply to the Permits. Ex. 1 at 5 ¶ 14. The Cumulative Effects Requirement applies to "all permits." N.C. Gen. Stat. § 143-215.1(b)(2). DEQ's Director of Water Resources confirmed under oath that all permits issued by DEQ, including both new permits and modifications, are subject to this requirement. The Final Decision's holding that this requirement does not apply to any animal feeding operations is contrary to the plain text of the requirement and the Permits themselves. It is also inconsistent with and more extreme than DEQ's stated position that the Cumulative Effects Requirement applies to all permits, including the Permits for these four facilities.

36. The Final Decision erroneously holds that the Hog Operations, and by extension all animal feeding operations subject to requirements in Part 1A, are exempt from all requirements contained in Part 1. Ex. 1 at 5 ¶ 12. The Final Decision states that "requirements unique to Part 1 do not apply to these facilities" and "[a]s the Permits in question contain requirements authorized under Part 1A they must be permitted pursuant to Part 1A only." Exhibit 1 at 5 ¶¶ 12, 13. The Final Decision purports to justify this holding by stating that "the specific governs the general," *id.* at 6 ¶ 15, but ignores recent controlling decisions on this issue, *e.g.*, *Cabarrus Cty. Bd. of Educ. v. Dep't of State Treasurer, Ret. Sys. Div.*, 374 N.C. 3, 839 S.E.2d 814 (2020), and fails to acknowledge that all of the requirements apply when they are



compatible with each other, as is the case here. “[I]f possible, effect shall be given to every clause and part of a statute.” *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (cleaned up). The plain terms of the Alternatives Requirement and the Cumulative Effects Requirement apply to these Permits, and because these requirements do not contradict or replace the supplemental requirements of Part 1A, there is no basis for departing from their plain language and negating these statutory requirements. Moreover, the state’s 2T regulations and the Permits themselves make clear that the general requirements of the 2T regulations apply to these Permits, and those requirements include the Alternatives Requirement; there is no conflict or redundancy between the regulation’s general requirements, 15A N.C. Admin. Code 2T .0101–.0120, and the specific provisions for permitting animal waste management systems, 2T .1301–1310.

37. The Final Decision erroneously concludes that “[i]f the General Assembly intended for Section 143-215.1(b)(2) to apply to all animal waste management system permits, there would have been no need to specify that permits could be issued in [*sic*] under Part 1 *or* Part 1A of Article 21 of Chapter 143.” Ex. 1 at 6 ¶ 16 (emphasis in original). This conclusion is incompatible with the statutory text, which applies to “*all* permits” issued “under either this Part [Part 1] or Part 1A of this Article.” N.C. Gen. Stat. §§ 143-215.1(a)(12), (b)(2) (emphasis added). This conclusion is also contrary to the legislative history: the permitting requirement in Section 143-215.1(a)(12) originally referred solely to animal waste management system permits issued under Part 1A, *see* S.L. 1995-626, and only added a reference to Part 1 two years later. S.L. 1997-458. This history makes clear that the Alternatives Requirement’s application to “all permits” consistently has included permits issued under Part 1A.

38. The Final Decision’s erroneous holding that requirements in Part 1 do not apply to facilities subject to the requirements of Part 1A would also disrupt the state permitting program for animal feeding operations, which relies on provisions of Part 1. For example, Section 143-215.1(k) authorizes DEQ to require corrective action for groundwater contamination, while Part 1A contains no such provision. Likewise, Section 143-215.1(e) sets out the requirements for administrative review of permitting decisions; Part 1A lacks these requirements and addresses only administrative review of DEQ’s failure to act on an application for coverage under a biogas general permit. N.C. Gen. Stat. § 143-215.10C(c1). Section 143-215.9E in Part 1 allows DEQ to request additional information about an alleged violation from a complainant and further investigate complaints, while Section 143-215.10F in Part 1A does not authorize DEQ to request additional information. Section 143-215.9D of Part 1 requires that “[c]omplaints of violations of this Article relating to an agricultural operation” shall be considered confidential unless the Department determines that a violation has occurred; Part 1A does not contain any such requirement.

39. The Final Decision erroneously states that “the General Assembly has only expressly authorized DWR to limit ammonia emissions in permits for new or expanding animal waste management systems.” Ex. 1 at 6 ¶ 17. Both the Alternatives Requirement and the Cumulative Effects Requirement authorize DEQ to limit ammonia emissions, which DEQ does not dispute affect water quality. The Alternatives Requirement mandates that DEQ minimize “adverse impact[s] on the environment” without limitation, and the Cumulative Effects Requirement requires DEQ to “prevent violation of water quality standards” due to the “collective effects of a number of projects,” regardless of the source of such effects on water quality. *See also* 15A N.C. Admin. Code 2T.0108(b)(1)(A) (permits shall “contain[] such

conditions as are necessary to effectuate the purposes of Article 21, Chapter 143 of the General Statutes”). And the pollution control statute defines “water pollution” broadly to include any “man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of the waters of the State,” without exception. N.C. Gen. Stat. § 143-213(19).

40. In addition to granting summary judgment in favor of Murphy-Brown, the Final Decision states that it grants summary judgment to DEQ. Ex. 1 at 6. DEQ’s arguments are meritless for the reasons set out in detail in the Community Groups’ summary judgment briefing in OAH. For example:

- a. DEQ argued that Section 215.1(b)(2) contains an unwritten limitation that restricts the Alternatives Requirement to “new or expanding waste streams,” even though this phrase appears nowhere in the statute and a separate set of requirements applies to new or expanding hog operations. DEQ’s argument is contrary to the statutory text, which states that the Alternatives Requirement applies to “all” permits authorizing the construction or operation of animal waste management systems. Moreover, DEQ’s attempt to rely on legislative history for its argument fails because the General Assembly removed DEQ’s purported limitation from the relevant statutory section at the time the Alternatives and Cumulative Effects Requirements were added. Moreover, DEQ’s argument would equally limit the application of the Cumulative Effects Requirement, also contained in Section 215.1(b)(2), but DEQ admitted that requirement applies to all permits, undermining its argument against the Alternatives Requirement.
- b. DEQ admitted that the Cumulative Effects Requirement applies to the Permits but argued it did not need to consider the cumulative effects of water pollution at and

downstream of the Hog Operations because the Permits are “non-discharge” permits. However, this argument fails because the Permits do not actually prevent pollution; for example, they contain no limitation on the release of ammonia into the environment, which DEQ admitted is a source of water pollution. Moreover, DEQ’s own studies identified elevated levels of water pollution in areas of animal feeding operations subject to “non-discharge” permits, confirming that DEQ’s reliance on “non-discharge” provisions rather than evaluating actual water quality impacts was unreasonable.

41. The Final Decision erroneously states that “it is unnecessary for the undersigned to resolve” the issue of the Community Groups’ status as “persons aggrieved” who are “substantially prejudiced” by DWR’s permitting decisions under the Administrative Procedure Act. Ex. 1 at 6 ¶¶ 18–19. To the contrary, the Final Decision does resolve this issue by denying Murphy-Brown’s motion for summary judgment “on the issue of Petitioner[s]’ standing,” *i.e.*, their status as persons aggrieved who are substantially prejudiced. Ex. 1 at 7.

42. The Final Decision erroneously states under “Uncontested Facts” that “[t]he permit applications requested permission to modify the Farms’ existing animal waste management systems.” Ex. 1 at 3 ¶ 11. Murphy-Brown submitted applications for a “New Swine Digester Animal Waste Management System” at each Hog Operation.

43. The Final Decision erroneously states under “Uncontested Facts” that the Permits “authorize Murphy-Brown to construct and operate a synthetically-lined and -covered anaerobic digester at the Farms as a component of the farms’ existing animal waste management systems” at Goodson, Benson, and Waters Operations, and to “convert the Kilpatrick Farm’s existing synthetically-lined lagoon to a covered anaerobic digester as a component of the farm’s existing

animal waste management system.” Exhibit 1 at 3 ¶¶ 13–14. But the Permits do more. Each of the individual permits authorizes “the construction and operation” of an “animal waste treatment system” that is defined in the Permits to consist of both the covered digesters and the open lagoons, as well as the new piping and pumps that reconfigure the prior animal waste management system. Likewise, the Kilpatrick certificate of coverage “authoriz[es] the construction and operation” of an “animal waste management system” and specifies that “[t]his approval shall consist of the operation of this system including, but not limited to, the management and land application of animal waste[.]”

44. The Final Decision erroneously states under “Uncontested Facts” that “Part 1A, N.C. Gen. Stat. § 143-215.1C titled, ‘Applications and Permits,’ contains the application and permitting requirements for animal waste management systems.” Ex. 1 at 3 ¶ 15. As discussed above, this statement is erroneous to the extent it implies the requirements of Part 1A are exclusive.

45. The Community Groups reserve the right to raise additional exceptions to the Final Decision.

### **PRAYER FOR RELIEF**

Wherefore, the Community Groups request that this Court:

1. Issue a declaratory ruling reversing the Final Decision’s grant of summary judgment to Murphy-Brown and DEQ, and holding that the Alternatives Requirement and Cumulative Effects Requirement apply to the Permits and that DEQ violated the Alternatives Requirement and Cumulative Effects Requirement in issuing the Permits;
2. Vacate the four Permits; and
3. Such further relief as the Court deems proper.

Respectfully submitted, this 7th day of February, 2022.

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*Counsel for Petitioners Environmental  
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## CERTIFICATE OF SERVICE

The undersigned certifies the foregoing **PETITION FOR JUDICIAL REVIEW OF FINAL DECISION** has been served on Respondent and Respondent-Intervenor and their counsel in this action via certified U.S. Mail, return receipt requested, at the addresses shown below:

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This 7th day of February, 2022.

/s/ Nicholas S. Torrey  
Nicholas S. Torrey  
*Counsel for Petitioners*

# Exhibit 1



STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
21 EHR 02068, 21 EHR 02069,  
21 EHR 02070, 21 EHR 02071

<p>Environmental Justice Community Action Network and Cape Fear River Watch Petitioner,</p> <p>v.</p> <p>North Carolina Department of Environmental Quality Division of Water Resources Respondent</p> <p>and</p> <p>Murphy-Brown, LLC Respondent-Intervenor.</p>	<p><b>FINAL DECISION</b></p>
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**BACKGROUND**

This matter was heard on November 16, 2021 before Chief Administrative Law Judge Donald van der Vaart, pursuant to Motions for Summary Judgment filed by the Petitioners, Respondent, and Respondent-Intervenor on October 22, 2021.

**APPEARANCES**

For Petitioners: Nicholas S. Torrey,  
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Maia D. Hutt, and  
Jasmine Washington

For Respondent: Asher Spiller

For Respondent-  
Intervenor: Harry M. Johnson, III, and  
W. Dixon Snukals

## ISSUES

1. Whether the provisions in N.C. Gen. Stat. § 143-215.1(b)(2) apply to the subject permitting decisions, specifically the provisions that the permitting authority:

- i. “shall act on all permits so as to prevent violation of water quality standards due to the cumulative effects of permit decisions”; and
- ii. “shall require that the practicable waste treatment and disposal alternative with the least adverse impact on the environment be utilized.”

2. Whether Petitioners are “persons aggrieved” under the North Carolina Administrative Procedure Act (“APA”) and have established that they are substantially prejudiced by Respondent’s issuance of four animal waste management system permits (the “Permits”) to Respondent-Intervenor.

## UNCONTESTED FACTS

### Parties

1. Petitioner Environmental Justice Community Action Network (“EJCAN”) is a non-profit corporation organized and existing under the laws of the State of North Carolina.

2. Petitioner Cape Fear River Watch (“CFRW”) is a non-profit corporation organized and existing under the laws of the State of North Carolina.

3. Respondent North Carolina Department of Environmental Quality (“DEQ”), Division of Water Resources (“DWR”) is a state agency that is authorized to administer and implement North Carolina laws and rules for the protection of water quality in North Carolina, including permitting, monitoring, and regulating discharges into waters of the State.

4. Respondent-Intervenor Murphy-Brown LLC (“Murphy-Brown” or the “Company”) is a limited liability company authorized to conduct business in North Carolina. Murphy-Brown owns and operates swine animal operations and utilizes animal waste management systems to treat and manage swine waste at these operations.

### Background

5. The General Assembly created a broad permitting program to control sources of water pollution in the State. *See* Part 1, Article 21 of Chapter 143 of the General Statutes. This program requires permits for facilities that operate “sewer system[s], treatment works, or disposal system[s] within the State,” regardless of whether such facilities discharge to surface waters. *See* N.C. Gen. Stat. §§ 143-215.1(a)-(d).

6. In 1995, the General Assembly amended Article 21 of Chapter 143 to add Part 1A for animal waste management systems via S.B. 1217, “An Act to Implement Recommendations of the Blue Ribbon Study Commission on Agricultural Waste.” S.L. 1995-626 (June 21, 1996).

7. The permitting program (the “AFO Program”) under Part 1A was established for animal waste management systems, recognizing these operations “provide significant economic and other benefits to this State.” N.C. Gen. Stat. § 143-215.10A. The AFO Program was created to “protect water quality and promote innovative systems and practices while minimizing the regulatory burden.” N.C. Gen. Stat. § 143-215.10A.

8. The construction or operation of an animal waste management system, as defined in N.C. Gen. Stat. § 143-215.10B is prohibited “without obtaining a permit under either Part 1 or Part 1A” of Article 21 of Chapter 143. N.C. Gen. Stat. § 143-215.1(a)(12).

9. On December 23, 2019, DWR’s Animal Feeding Operations Branch received four permit applications to modify existing animal waste management systems at four swine animal operations (collectively, the “Farms”) owned and operated by Murphy-Brown:

- i. Farm 2037 and 2038 (“Goodson Farm”), Sampson County, NC;
- ii. Benson Farm, Duplin County, NC;
- iii. Waters Farm, Duplin County, NC;
- iv. Kilpatrick Farm 1-5 and Merritt Farm (“Kilpatrick Farm”), Sampson County, NC.

10. These permits are the subject of this hearing and are for animal waste management systems.

11. The permit applications requested permission to modify the Farms’ existing animal waste management systems by installing synthetically-lined and -covered anaerobic digesters and related infrastructure. The anaerobic digesters are designed to capture biogas that is generated from the anaerobic treatment of swine waste. The biogas will be transported through a pipeline system to an offsite facility where it will be conditioned and upgraded for use as renewable natural gas (“RNG”).

12. On March 31, 2021, DWR issued permits to the Goodson Farm (Permit No. AWI820466), Benson Farm (Permit No. AWI310039), and Waters Farm (Permit No. AWI310035). DWR also issued a Certificate of Coverage (“COC”) under a Swine General Permit to the Kilpatrick Farm (COC No. AWS8250005) (collectively, the “Permits”).

13. The three individual permits for the Goodson, Benson, and Waters Farms authorize Murphy-Brown to construct and operate a synthetically-lined and -covered anaerobic digester at the Farms as a component of the farms’ existing animal waste management systems.

14. The COC authorizes Murphy-Brown to convert the Kilpatrick Farm’s existing synthetically-lined lagoon to a covered anaerobic digester as a component of the farm’s existing animal waste management system.

15. Part 1A, N.C. Gen. Stat. § 143-215.10C titled, “Applications and Permits,” contains the application and permitting requirements for animal waste management systems. N.C. Gen. Stat. § 143-215.10C. To obtain the necessary permit, animal operation owners must submit to the DWR a certified animal waste management system plan (“CAWMP”) that has been approved by a technical specialist. N.C. Gen. Stat. § 143-215.10C(d). Section 143-215.10C provides that each

farm's animal waste management system shall be designed, constructed, and operated so as to prevent pollution. Further, Section 143-215.10C provides an extensive list of necessary parts for all CAWMPs, such as provisions regarding best management practices for riparian buffers, periodic testing of waste products used on the farm as nutrient sources, and waste utilization planning to ensure that nutrients are not overapplied to crops. *Id.* § 143–215.10C(e). CAWMPs also require that farms conduct testing of the soil at crop sites where the waste has been applied to the land at least once every three years. *Id.* § 143–215.10C(e)(6).

16. Reference to the animal waste management plan is included in the Permits.

17. On May 3, 2021, Petitioners filed four petitions for contested case hearing (“Petitions”) challenging DWR’s issuance of the Permits. On June 2, 2021, Chief Administrative Law Judge Julian Mann III issued an order consolidating the four contested cases.

18. The Petitioners allege that DWR violated requirements that are under Part 1 of Chapter 143. Specifically, the Petitioners allege that DWR did not subject the permit applications to N.C. Gen. Stat. § 143-215.1(b)(2) and implementing rules by failing: (1) to prevent the violation of water quality standards due to the cumulative effects of permit decisions (“Cumulative Effects Claim”), and (2) to require the practicable waste treatment and disposal alternative with the least adverse impact on the environment (“Alternatives Claim”).

19. Petitioners also claim that Section 143-215.1(b)(2) required DWR to consider the impacts of ammonia emissions from the secondary lagoons and spray-fields on local air quality, particulate matter formation, and nitrogen to deposition in surface waters.

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapters 143 and 150B of the North Carolina General Statutes.

2. All parties have been designated correctly, and there is no question as to misjoinder or nonjoinder.

3. Notice of Hearing was provided to all parties in accordance with N.C. Gen. Stat. § 150B-23(b).

4. In a contested case, Petitioners bear the burden of proving by a preponderance of the evidence that (1) DWR substantially prejudiced its rights; and (2) DWR acted erroneously, arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule. N.C. Gen. Stat. §§ 150B-23(a), 150B-25.1(a) and 150B-29(a); *Sound Rivers, Inc. v. N.C. Dep’t of Env’tl. Quality, Div. of Water Res.*, 271 N.C. App. 674, 686-87, 845 S.E.2d 802, 811-12 (2020).

5. To the extent that the Findings of Fact contain Conclusions of Law and vice versa, they should be so considered without regard to their given labels. *See Westmoreland v. High Point Healthcare, Inc.*, 218 N.C. App. 76, 79, 721 S.E.2d 712, 716 (2012) (citation omitted); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011) (citations omitted).

6. This contested case is subject to disposition on summary judgment pursuant to N.C. Gen. Stat. § 1A-1, Rule 56 of the Rules of Civil Procedure; N.C. Gen. Stat. § 150B-33(b)(3a); and 26 N.C. Admin. Code 3.0105 and .0115.

7. Summary judgment is proper when the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that [the moving party] is entitled to judgment as a matter of law.” N.C. Gen. Stat. § 1A-1, Rule 56(c); *Brinkman v. Barret Kays & Assocs., P.A.*, 155 N.C. App. 738, 739, 575 S.E.2d 40, 42 (2003) (citation omitted).

8. On a motion for summary judgment, the moving party has the burden of “establishing the lack of any triable issue.” *Brinkman*, 155 N.C. App. at 739-40, 575 S.E.2d at 42 (citation omitted). “Once the moving party meets its burden, then the non-moving party must ‘produce a forecast of evidence demonstrating that the plaintiff will be able to make out at least a prima facie case at trial.’” *Waste Industries USA, Inc. v. State*, 220 N.C. App. 163, 168-69, 725 S.E.2d 875, 881 (2012) (citation omitted).

#### **Petitioners’ Claims Relating to N.C. Gen. Stat. § 143-215.1(b)(2)**

9. The General Assembly has provided for extensive regulation of animal waste management systems by creating a permitting program for “Animal Waste Management Systems,” which is in Part 1A of Chapter 143, Article 21 of the General Statutes. N.C. Gen. Stat. §§ 143-215.10A - 143-215.10M.

10. N.C. Gen. Stat. § 143-215.1(a)(12) states that no person may “[c]onstruct or operate an animal waste management system, as defined in G.S. 143-215.10B, without obtaining a permit under either this Part or Part 1A of this Article.”

11. As used in Section 143-215.1(a)(12), “*this Part*” means Part 1 of Chapter 143, Article 21 of the General Statutes, which contains Sections 143-211 through 143-215.10. *Id.* (emphasis added). Part 1 authorizes the Environmental Management Commission and DEQ to administer the federal National Pollutant Discharge Elimination System permitting program under the Clean Water Act and other water quality permitting programs. *Smith Chapel Baptist Church v. City of Durham*, 350 N.C. 805, 808, 517 S.E.2d 874, 876 (1999).

12. Requirements contained in the Permits at issue, including adherence to the Animal Waste Management Plan, are authorized under Part 1A and not Part 1 of Chapter 143. Accordingly, requirements unique to Part 1 do not apply to these facilities.

13. As the Permits in question contain requirements authorized under Part 1A they must be permitted pursuant to Part 1A only.

14. The undersigned concludes that the provisions in Section 143-215.1(b)(2) do not apply to permits issued under Part 1A, as these provisions are applicable only to permits issued under Part 1.

15. “[I]t is a commonplace of statutory construction that the specific governs the general. . . . That is particularly true where . . . [the legislature] has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions.” *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012). “Where, as here, one statute deals with a particular situation in detail, while another statute deals with it in general and comprehensive terms, the particular statute will be construed as controlling absent a clear legislative intent to the contrary.” *Merritt v. Ridge*, 323 N.C. 330, 337, 372 S.E.2d 559, 563 (1988) (citation omitted).

16. If the General Assembly intended for Section 143-215.1(b)(2) to apply to all animal waste management system permits, there would have been no need to specify that permits could be issued in under Part 1 *or* Part 1A of Article 21 of Chapter 143.

### **Other Disputed Issues**

17. Murphy-Brown and DWR argued in their Motions for Summary Judgment that DWR lacked the authority under North Carolina law to regulate or limit ammonia emissions through these permitting decisions. As Murphy-Brown and DWR note, Petitioners’ claims and requested relief are premised, in large part, on the purported environmental impacts of ammonia emissions from the Farms. The General Assembly has only expressly authorized DWR to limit ammonia emissions in permits for new or expanding animal waste management systems pursuant to Section 143-215.10I. The permitting decisions at issue here did not involve new or expanded animal waste management systems as defined in Section 143-215.10I.

18. Murphy-Brown also moved for summary judgment on the grounds that Petitioners were not “persons aggrieved” and had not established that they were “substantially prejudiced” by DWR’s permitting decisions. N.C. Gen. Stat. § 150B-23(a).

19. Since the undersigned has determined that Petitioners’ claims for relief fail as a matter of law because Section 143-215.1(b)(2) does not apply to these Permits, it is unnecessary for the undersigned to resolve this issue at this time.

### **DECISION**

In 1995, the General Assembly amended Chapter 143 to add an industry-specific permitting program to the State’s water quality statutes. The program was specifically intended for animal waste management systems, such as the facilities involved in this matter, and proscribed requirements for permits issued to such facilities. The amendment also included an exclusionary statement: these facilities must be permitted under the then-existing statutory permitting scheme (Part 1) or under the newly developed scheme (Part 1A). The facilities in this matter have been permitted under Part 1A by DEQ. Nonetheless, Petitioners argue that the provisions of Part 1 apply to these facilities. This Tribunal cannot agree.

After careful review of the pleadings, depositions, answers to interrogatories, admissions on file, affidavits, and extensive briefing of the parties, the undersigned hereby GRANTS Summary Judgment in favor of Respondent and Respondent-Intervenor as to Petitioners’ claims.

The undersigned further DENIES Respondent-Intervenor's Motion for Summary Judgment on the issue of Petitioner's standing and DENIES Petitioner's Motion for Summary Judgment.

**NOTICE OF APPEAL**

**This is a Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties as indicated by the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

**IT IS SO ORDERED.**

This the 11th day of January, 2022.

A handwritten signature in blue ink, reading "Donald R van der Vaart", is written over a horizontal blue line.

Donald R van der Vaart  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service.

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This the 11th day of January, 2022.



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