

PLEASE PRINT CLEARLY OR TYPE

STATE OF NORTH CAROLINA

COUNTY OF (1) FORSYTH

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

(2) YADKIN RIVERKEEPER, INC.

(your name) PETITIONER,

v.

(3) N.C. Department of Environment and Natural Resources,
Division of Water Quality

RESPONDENT.

(The State agency or board about which you are complaining)

RECEIVED
OFFICE OF ENVIRONMENTAL COORDINATOR

MAY 19 2009

PETITION
FOR A
CONTESTED CASE HEARING
ENVIRONMENT &
NATURAL RESOURCES

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.)

See Attached Petition which is incorporated herein

(If more space is needed, attach additional pages.)

(4) Because of these facts, the State agency or board has: (check at least one from each column)

☒ X deprived me of property;
☐ ordered me to pay a fine or civil penalty; or
☒ X otherwise substantially prejudiced my rights;

AND

☒ X exceeded its authority or jurisdiction;
☒ X acted erroneously;
☒ X failed to use proper procedure;
☒ X acted arbitrarily or capriciously; or
☒ X failed to act as required by law or rule.

(5) Date: May 13, 2009

(6) Your phone number: (919) 613-7207

(7) Print your full address: Box 90360, Duke Env'l Law and Policy Clinic, Durham, N.C. 27708-0360
(street address/p.o. box) (city) (state) (zip)

(8) Print your name: James Patrick Longest, Jr.

(9) Your signature:

James Patrick Longest Jr.

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:

(10) Mary Penny Thompson
(name of person served)

(12) 1601 Mail Service Center
(street address/p.o. box)

(11) NC DENR-DWQ

(State agency or board listed on line 3)

Raleigh,
(city)

N.C.
(state)

27699-1601
(zip code)

(13) This the 13th day of May, 2009.

(14) *James P. Longest Jr.*
(your signature)

When you have completed this form, you MUST mail or deliver the ORIGINAL AND ONE COPY to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
09 EHR _____

YADKIN RIVERKEEPER, INC.)	
Petitioner,)	
v.)	PETITION FOR A
)	CONTESTED CASE
The North Carolina Department of)	
Natural Resources, Division of Water)	
Quality)	
Respondent.)	

SUMMARY:

Pursuant to N.C. Gen. Stat. § 150B- 23, Rule 26 NCAC § 03.0103 and the Constitution of the State of North Carolina, Yadkin Riverkeeper, Inc. requests a contested case hearing because the Respondent, NC DENR-Division of Water Quality (hereafter "DWQ"), has failed to meet its legal duties in considering the request by Alcoa Power Generating, Inc (hereafter "Applicant") for a Water Quality Certification pursuant to Section 401 of the Federal Clean Water Act. Applicant sought this Certification in its efforts to relicense the hydroelectric dams at High Rock, Tuckertown, Narrows and Falls Reservoirs in Davie, Davidson, Rowan, Montgomery and Stanly Counties (hereafter "Project"). DWQ assigned this request to tracking number DWQ 2007-0812 and issued its decision on May 7, 2009. The Certification Decision deprives members of the Petitioner's organization of their property rights as Citizens and Residents of North Carolina to use and enjoy Public Trust Resources; of their rights to faithful execution of the laws of this state, including the laws prohibiting exclusive emoluments and laws requiring the Respondent to act so as to protect water quality. In further support, the undersigned counsel submits the following analysis of Respondent's duties and Petitioner's rights.

I. NORTH CAROLINA'S LAW CREATES A PUBLIC TRUST TO PROTECT ITS WATERS, FISH AND RELATED RESOURCES FOR PUBLIC USE AND CHARGES THE RESPONDENT TO PROTECT THE SAME

The Constitution of the State of North Carolina declares in Article XIV, § 5 that, with respect to environmental protection and resource conservation, *inter alia*:

"It shall be the policy of this State to conserve and protect its lands and waters

for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty.”

N.C. Const. Art. XIV, § 5 (emphasis added)

Milton Heath, Professor of Public Law and Government at UNC’s School of Government, refers to this provision as North Carolina’s Environmental Bill of Rights. The N.C. Supreme Court has noted that “Our state constitution mandates the conservation and protection of public lands and waters for the benefit of the public.” State ex rel. Rohrer v. Credle, 322 N.C. 522, 532, 369 S.E.2d 825, 831 (1988). This mandate entrusts the protection of the Yadkin River and its ecosystems to the Respondent. The State’s statutes, rules, regulations, and procedures must be read through the lens of this Constitutionally-declared policy. North Carolina’s Constitution is the source of all of Respondent’s powers and limits its exercise of them. Respondent is duty bound to protect the commonly owned natural resources of the State.

The General Assembly has advanced this Constitutional mission by enacting a comprehensive set of laws to protect the natural resources which belong to the people, including Chapters: 113, 113A, 113B, 130A, 130B, 132, 139, 143, 143B, 146, 150B, 156, 159, 159A, 159B, 159C, 159G and 162A. This comprehensive system of laws includes Article 21 of Chapter 143, captioned “Water and Air Resources,” wherein the General Assembly declares its intent for those laws: “to achieve and to maintain for the citizens of the State a total environment of superior quality. **Recognizing that the water and air resources of the State belong to the people**, the General Assembly affirms the State’s ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare.” N.C. Gen. Stat. § 143-211(a) (emphasis added).

Additionally, State power is limited by the duties inherent in the title to the Yadkin River held by the State. “Title to public trust waters is ‘held in trust for the people of the State, that they may enjoy the navigation of the waters, carry on commerce

accumulate in fish and aquatic life. Predatory bird species which may hunt around the Yadkin River, such as the bald eagle, are particularly vulnerable and have not been adequately studied.

However, the FERC FEIS discusses only three federally endangered species: the Carolina heelsplitter, shortnose sturgeon and the Schweinitz's sunflower. See FED. ENERGY REG. COMM'N, FINAL ENVIRONMENTAL IMPACT STATEMENT FOR HYDROPOWER LICENSES, FERC/FEIS-0215F (Apr. 2008), FERC FEIS at 167-72 (§ 3.3.5). There is no mention in the FERC FEIS of State endangered or threatened species.

The FERC FEIS is also inadequate in its analysis of alternatives. FERC limited its consideration of the project retirement alternative to a single paragraph. See FERC FEIS at 35 (§ 2.4.3). The environmental benefits of recapture by a public entity were not even considered.

FERC notes that denial or termination of the existing licenses, with appropriate conditions, would mean retirement of the project, with or without dam removal. The extent of the analysis is to note that hydropower is a "viable, safe, and clean renewable source[] of power to the region" and that "[n]o party has suggested project retirement." *Id.* This one paragraph is not an analysis of alternatives, but a rationalization for failing to analyze alternatives. This would not meet the standards of SEPA. First, dam removal has been considered and undertaken throughout the nation, and is often the most environmentally viable solution. See generally Michael T. Pyle, Beyond Fish Ladders: Dam Removal as a Strategy for Restoring America's Rivers, 14 STAN. ENVTL. L.J. 97 (1995).

Second, that no party to the FERC proceeding had suggested project retirement does not excuse Respondent's failure to prepare a SEPA analysis considering such an important alternative. Third, refusal to seriously consider dam removal undermines the § 401 certification process, limiting the State's review of alternatives to certification to what FERC considered. Fourth, analysis of a retirement or removal alternative brings the environmental concerns of the Project into clearer focus and allows for reasoned comparison between alternatives. Because consideration of dam removal would enhance the reasoned consideration of the environmental impact of all alternatives presented, the

Respondent had a duty to evaluate dam removal and retirement as alternatives to relicensing in accordance with the requirements of SEPA.

Since the FERC EIS did not consider removal, its no-action baseline is also wrong. FERC presents a "No-action Alternative" as allowing the Projects to continue under the terms and conditions of their existing licenses. FERC claims this would provide "no change to the existing environment." FERC FEIS at 240 (§ 3.4). Throughout the FERC FEIS, FERC "use[s] the No-action Alternative to establish baseline environmental conditions for comparison with other alternatives." FERC FEIS at 240 (§ 3.4).

Under North Carolina Administrative Rules, issuance of a document under NEPA is "deemed" to comply with the administrative rules for issuance of a SEPA document. See 01 NCAC 25 .0402. Nevertheless, even if the FERC EIS is deemed to be a SEPA document pursuant to the Rules of the N.C. Department of Administration, that does not mean that it complies with all of those rules, much less the statutes which provide the basis for those rules. At most, the rule creates a rebuttable presumption that the NEPA document was the functional equivalent of a SEPA document. As shown above, that presumption has been rebutted on the face of the document.

Because the Project's license has a fifty-year term, this relicensing process is its first serious environmental assessment ever. If the Project were undertaken today, the appropriate baseline would be the natural river as it would exist today without the dams and reservoirs. That continues to be the appropriate baseline environmental condition for impact analysis. Nothing in the Clean Water Act or North Carolina's environmental statutes suggest that the Applicant is permanently grandfathered from meeting water quality requirements. The § 401 certification process is a recognition that even existing projects must meet current standards during relicensing.

III. RESPONDENT'S DECISION DOES NOT PROTECT ALL PUBLIC TRUST USES OF THE YADKIN RIVER AND DOES NOT INSURE COMPLIANCE WITH WATER QUALITY STANDARDS

The Clean Water Act recognizes that States bear the primary responsibility and right to control and limit water pollution. See FWCPA § 101, *codified at* 33 U.S.C.A. § 1251 (b). Nevertheless, the Congress recognized that the states had largely failed to meet

these responsibilities and meaningfully exercise their rights. Accordingly, national goals were set for all waters with timetables for compliance and reporting obligations imposed upon states, and a permit system was enacted with a goal of eliminating discharges of wastes to the nation's waters.

Section 401 certification acts as the primary check on the power of a federal agency, FERC, to license hydropower projects. The Clean Water Act expressly requires States to apply their "water quality requirements" to a federal license applicant and impose all conditions necessary to "insure such compliance" and if it cannot do so, the state must not issue the certification. *See* FWCPA § 401(a)(2), *codified at* 33 U.S.C.A. § 1341 (a)(2); *see also* J.B. RUHL ET AL., THE PRACTICE AND POLICY OF ENVIRONMENTAL LAW 306 (2008).

Respondent limited its review to whether the discharge from the last dam in Applicant's project caused a violation of water quality standards in the Yadkin River. State water quality standards established under Clean Water Act § 303 provide an important "supplementary basis . . . so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels." EPA v. California ex rel. State Water Res. Control Bd., 426 U.S. 200, 205 n.12 (1976). States are expected to impose more stringent water quality controls, including maximum daily loads for entire bodies of water, as needed to correct problems in their state and to meet the congressionally mandated timetables. *See* FWCPA §§ 301-303, *codified at* 33 U.S.C. §§ 1311-1313. States are directed to report on their progress to the United States Environmental Protection Agency and that agency in turn is directed to report on the adequacy of state measures to the U.S. Congress. *See* FWCPA §§ 303 and 305, *codified at* 33 U.S.C. §§ 1313 and 1315.

Under the Clean Water Act, states are responsible for enforcing their water quality standards on intrastate waters. *See* FWCPA § 309(a) *codified at* 33 U.S.C. § 1319(a). A state may not grant § 401 certification unless it finds that the project and the applicant "will comply with" these intrastate water quality standards. *See* FWCPA § 401(a) *codified at* 33 U.S.C. § 1341(a). Section 401 further provides that "effluent limitations and other limitations" may be imposed as "necessary to assure that any applicant" will comply with the Clean Water Act and state requirements, including "any

other appropriate requirement of State law.” See FWCPA § 401(d) codified at 33 U.S.C. § 1341(d). The requirements set forth above in Sections I and II of this Petition are such appropriate requirements of State law and should have been used by the Respondent in making its decision. Respondent should also have considered other Water Quality Requirements.

IV. RESPONDENT IMPROPERLY REVIEWED THE PROJECT BY FAILING TO LOOK AT WATER QUALITY WITHIN THE PROJECT AREA

Limiting the analysis solely to discharge from the last dam is a *de facto* suspension of water quality standards within the system. The Yadkin Hydroelectric Project spans a 38-mile stretch of the Yadkin River and contains four reservoir and dam systems (High Rock, Tuckertown, Badin Lake, and Falls). The Applicant agrees that its Yadkin Hydroelectric Project involves a discharge requiring State § 401 certification, per the Clean Water Act § 401(a)(1). The FERC license at issue gives Applicant control of a complex system of lakes and dams, containing multiple discharge points within the system in addition to the final discharge at the downstream end. The FERC license thus requires an evaluation of all discharges and related activities with the system. Respondent has failed to conduct this evaluation.

In reviewing the § 401 certification application, the Respondent was required to ensure that (1) the Project as a whole will comply with water quality regulations and (2) the Applicant will comply with water quality regulations. Specifically in relation to Clean Water Act § 401 Water Quality Certifications, Respondent is the agency charged with scrutinizing activities that result in a discharge into navigable waters. 33 U.S.C. § 1341; see also 15A NCAC § 02H .0501-.0507 (DWQ rules for § 401 Water Quality Certifications). By limiting its scrutiny to the dam discharges instead of the whole system, Respondent has failed in this responsibility.

The United States Supreme Court has given a broad reading of the meaning of the “discharge” to be scrutinized in the § 401 certification process. In S.D. Warren Co. v. Maine Board of Environmental Protection, 547 U.S. 370 (2006), the Court rejected the notion that the dam operator had to add something to the water into which the discharge flows to be regulated subject to section § 401. Instead, they adopted a plain meaning of “discharge” supported by the intent of the Clean Water Act to deal with “pollution”

generally, defined by the Act as “the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.” Id. at 385-6. *See* FWCPA § 502(19) codified at 33 U.S.C. § 1362(19). The Court concluded that state § 401 certification is “essential in the scheme to preserve state authority to address the broad range of pollution.” *See S.D. Warren Co.*, 547 U.S. at 386. Operation of the dams and reservoirs alters the physical, chemical and biological quality of the Yadkin River, converting it from a free-flowing river to a series of artificial lakes.

The FERC license at issue here looks at the entire span of the Yadkin Hydroelectric Project; it is therefore erroneous as a matter of law under § 401 for Respondent to limit its consideration to water quality issues which occur only at the tail end of the system. Failure to consider water quality uses and protect Public Trust Resources within the system would be wholly inconsistent with the Respondent’s constitutional and statutory duties.

The U.S. Supreme Court, when reading the two subsections of § 401 together, has explicitly determined that the “activity as a whole” may be scrutinized by state water quality standards if it can be categorized as an activity that has a discharge. *See PUD No. 1 of Jefferson County v. Wash. Dep’t of Ecology*, 511 U.S. 700, 711–12, 727–28 (1994) (recognizing the broad scope of § 401). In other words, the Court’s view of the statute is that while the activity must have a discharge to fall into the § 401 subject matter box, applicable water quality standards may extend beyond the discharge itself if it is related to the activity producing the discharge. *See id.* EPA’s regulations implementing § 401 support the application of water quality standards to activity-related conditions, as opposed to discharge-related ones. *See* 40 CFR § 121.2(a)(3)(2009). Therefore, States may “condition certification upon any limitations necessary to ensure compliance with state water quality standards.” PUD No. 1, 511 U.S. at 713–14. This broad scope permits any state to assume § 401 jurisdiction over water quality issues downstream from a given dam, water levels behind a dam, and water quality issues contained within a dam system. N.C.’s Constitution mandates that the Respondent take as broad a scope as constitutionally permissible in order to promote the policy of preserving Public Trust Resources.

Section 401(d) also provides broad authority for the Respondent to ensure that the

Applicant meets all water quality requirements, not merely state numeric water quality standards or effluent limitations. Section 401(d) "expands the State's authority to impose conditions on the certification of a project." PUD No. 1, 511 U.S. at 711. Namely, the certification must ensure that the applicant will comply with the Clean Water Act and any State law requirements.

As the Supreme Court pointed out, this language "refers to the **compliance of the applicant, not the discharge.**" Id. Under the mandate of § 401(d), the Department must "impose 'other limitations' on the project in general to assure compliance with various provisions of the Clean Water Act and with 'any other appropriate requirement of State law.'" Id. at 727-28 (quoting § 401(d)). The focus of § 401(d) is on ensuring that the applicant and the activity as a whole comply with State and federal water quality regulations. According to the Supreme Court, "§ 401(d) is most reasonably read as authorizing additional conditions and limitations on the activity as a whole once the threshold condition, the existence of a discharge, is satisfied." Id. at 728. As such, § 401(d) provides broad authority for the Department to examine the Applicant's compliance in related activities. Given that the Project's license will have a fifty year life, the future compliance of the Applicant must be considered and Public Trust Resources must be shown to be protected for the life of the license.

The broader goals of the Clean Water Act are: "to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution." *See* FWCPA § 101(b), codified at 33 U.S.C.A. 1251(b). Similarly, the North Carolina Constitution article XIV, § 5 makes it "the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry." Relying on promises of future action by the Applicant is insufficient – the Respondent must ensure that the Project "will comply" with water quality standards. Respondent violated its legal obligations by refusing to look at the entire project and all of Applicant's activities therein.

V. RESPONDENT IMPROPERLY REVIEWED THE PROJECT BY FAILING TO CONSIDER CUMULATIVE EFFECTS ON THE AREA.

The Clean Water Act obliges Respondent to protect uses of navigable waters in part by enacting numeric water quality standards. In meeting this duty, the N.C.

Environmental Management Commission has enacted rules for reviewing permit decisions and water quality certifications, including the rules cited in the Respondent's Dec. 4, 2008 Notice: 15A NCAC § 02B .0101, 15A NCAC § 02B .0231 and 15A NCAC § 02H .0500. But those rules and this certification decision are not the only rules or permit decisions which must be reviewed by Respondent in its consideration of this application. Respondent has unlawfully telescoped its review to a narrow range of issues.

Within the General Statutes, the Commission and the Respondent are directed to act so as "to prevent violation of water quality standards due to the cumulative effects of permit decisions." See N.C. Gen. Stat. § 143-215.1 (b). The predecessor in interest and owner of Applicant, Alcoa, Inc., has been granted and currently holds an NPDES permit issued by the State for a treatment system issued by the Respondent in this basin. There are a number of other permits issued for other discharges in the Yadkin basin. In considering whether it can certify this Project as meeting water quality standards, the Department is required to look at the cumulative effects of all the other permit decisions in the project area. This it failed to do.

As long as ten years ago, Respondent recognized that it would have to demand corrective action on dissolved oxygen issues in the project area. Water quality in High Rock Lake has been so bad that the Respondent is developing a Total Maximum Daily Load allocation for discharges into the lake. High Rock Lake's condition is not new. An overload of nitrogen and phosphorus in the lake and its slow movement produce an adverse effect called "eutrophication," which was observed by U.S. EPA in a 1973 study and confirmed in follow up studies refining the information over the next three decades. Studies during the 1970's indicated that High Rock Lake was trapping phosphorus from upstream, but also acting as a net exporter of nitrogen downstream.

The project being licensed includes the operation of the dams and the impoundments behind them. The existence of these dams affects the physical characteristics of the Yadkin. The operation of these dams and impoundments affects the chemical, biological and physical characteristics of the waters entering the systems and leaving it. Respondent has a duty to review this decision in conjunction with all their other decisions on permits within the basin. This it refused to do. Rather, it focused on the discharges from the dams only and ignored the effects which the management of the

impoundments and dams have on those waters in the system.

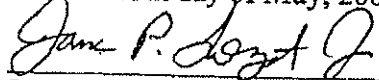
VI. NORTH CAROLINA'S LAW PROHIBITS GOVERNMENT FROM GRANTING EXCLUSIVE PRIVILEGES TO PRIVATE PARTIES

Article I, Section 32 of the North Carolina Constitution prohibits the Respondent from granting any set of exclusive privileges to any person except upon "consideration of public services." The North Carolina Supreme Court has held that this provision prevents governments from surrendering its power to another person or set of persons. The only exception to this restriction is where the grant of exclusive privileges is made "in consideration of public services." See Madison Cablevision, Inc. v. Morganton, 325 N.C. 634, 655, 386 S.E.2d 200, 212 (N.C. 1989). Respondent and the State of North Carolina has erred in ceding control over this Public Trust Resource to Applicant without evaluating the public services Applicant proposes to provide. As such, Respondent has failed in its duty and its decision therefore violates this provision of the North Carolina Constitution.

CONCLUSION

It is left to the courts to hold the executive branches to their responsibilities. Respondent erred in granting this certification because it failed to evaluate alternatives, investigate impacts and protect the Public Trust Resources. Respondent erred as a matter of law and its errors have prejudiced the rights of all North Carolinians to use and enjoyment of the Public Trust Resources of the Yadkin River.

This the 13th day of May, 2009.



James P. Longest, Jr. "Ryke"

State Bar No. 18297

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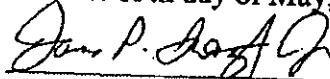
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that electronic versions of the foregoing Petition, Cover Sheet and Affidavit were filed pursuant to the Office of Administrative Hearings rules by e-mail to: oah.clerks@oah.nc.gov, on May 13, 2009. This also certifies that hard copies of these documents were mailed via U.S.P.S. to the following addressees:

Kim Hausen, Chief Hearings Clerk Office of Administrative Hearings 6714 Mail Service Center Raleigh, NC 27699-6714	Mary Penny Thompson NCDENR-DWQ Office of General Counsel 1601 Mail Service Center Raleigh, N.C. 27699-1601
Don Laton Assistant Attorney General, NCDOS Environmental Division 9001 Mail Service Center Raleigh, N.C. 27699-9001	Craig Bromby Hunton & Williams LLP One Bank of America Plaza, Ste. 1400 421 Fayetteville Street Raleigh, N.C. 27601
William Bunker Alcoa Power Generating, Inc. V.P. Hydro Operations-Yadkin Div. P.O. Box 576 Badin, N.C. 28009-0576	Alcoa Power Generating, Inc. and Alcoa, Inc. CT Corporation System 150 Fayetteville Street, Box 1011 Raleigh, N.C. 27601

This the 15th day of May, 2009.



James P. Longest, Jr. "Ryke"
State Bar No. 18297

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
09 EHR _____

YADKIN RIVERKEEPER, INC.)	
Petitioner,)	
v.)	AFFIDAVIT OF
)	DEAN NAUJOKS
The North Carolina Department of)	
Natural Resources, Division of Water)	
Quality)	
Respondent.)	

COMES NOW THE AFFIANT, DEAN NAUJOKS, being first duly sworn and deposes and says as follows:


- 1) Yadkin Riverkeeper, Inc. is a non-profit 501 C3 organization operating in the State of North Carolina. Yadkin Riverkeeper, Inc. hired me in November of 2008.
- 2) I patrol the Yadkin River by boat and on foot as the Yadkin Riverkeeper. I meet with citizens throughout the Yadkin River basin to learn from them about problems they find in the river and to educate them about these problems and their rights to correct them. Members of our organization and other citizens use the Yadkin River for swimming, fishing, boating and wildlife observation. In my job, I work to educate the public about dangers to the River's health and threats to these uses. I also work to inform them of their rights and their responsibilities to protect the river.
- 3) In exercising those duties, I have worked to request public hearings from the N.C. Division of Water Quality (DWQ) regarding National Pollutant Discharge Elimination System (NPDES) permits as they come up for renewal. DWQ has not met the deadlines set forth in the Clean Water Act for eliminating those discharges in the Yadkin. As a result, the Yadkin River's uses for swimming, boating, fishing and water supply has been impaired in many places.
- 4) An example of a recent request for a public hearing is attached to this affidavit as Exhibit A. Public hearings give citizens their rights to insist that DWQ meet the goals of the Clean Water Act in eliminating pollution discharges wherever possible. DWQ has refused to hold public hearings pursuant to past requests I have filed, even in cases where the discharger had violated their existing permits.

5) I attended the public hearing held for the 401 Certification Request for Number DWQ 2007-0812 and presented information about the project. I observed many citizens step forward to express their concerns about the proposed certification and to ask that DWQ consider fully the issues surrounding the entire project. We submitted written comments by the deadlines posted by DWQ. A copy of these are attached as Exhibit B. DWQ told us that written comments had to be submitted by February 16, 2009.

6) Under the Clean Water Act, it is the public which is given the right to hold the state and federal governments accountable for any failure to clean up the nation's waters. The public has a right to hold DWQ accountable for their decisions.

Further, the affiant sayeth naught.

This the 12th day of May, 2009.


Dean Naujoks
Yadkin Riverkeeper

Sworn to and subscribed before me
This the 12 day of May, 2009.

Notary Public

Wake County

Sarah E. Wilson

Notary

Sarah E. Wilson

My commission expires: 11/30/2013

