

RC0256

THE BROUGH LAW FIRM

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MICHAEL B. BROUGH
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July 18, 2006

Mr. Ed. Mussler
Branch Head, Solid Waste Section
Division of Waste Management
1646 Mail Services Center
Raleigh, NC 27699-1646



Re: *Johnson v. Hyde County*, Hyde County # 04 CVS 64, 04 CVS 65

Dear Ed:

Per our conversation earlier this week, please find enclosed copies of the documents filed in the above-captioned lawsuit. Although the judge has yet to issue his formal ruling, these documents should at least provide you with the facts of the case. Please feel free to call me with any questions.

Sincerely,

THE BROUGH LAW FIRM

T.C. Morphis, Jr.

T.C. Morphis, Jr.

TCMjr:jop

Enclosure

cc: Mr. James Johnson (w/out enclosure)

STATE OF NORTH CAROLINA

File No.

04-005-05

HYDE County

In The General Court Of Justice

District Superior Court Division

Name Of Plaintiff
James E. Johnson
Address
City, State, Zip

CIVIL SUMMONS

ALIAS AND PLURIES SUMMONS

G.S. 1A-1, Rules 3, 4

VERSUS
Name Of Defendant(s)
Hyde County and the
Hyde County Board of Commissioners

Date Original Summons Issued
Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1
Hyde County
c/o Don Davenport
Hyde County Manager
P.O. Box 188
Swan Quarter, NC 27885-0188

Name And Address Of Defendant 2

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
- 2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)
Michael B. Brough
T.C. Morphis, Jr.
Brough Law Firm
1829 E. Franklin Street, Suite 800-A
Chapel Hill, NC 27514

Date Issued 8-31-04 Time 3:20 AM PM
Signature Judy B. Hardy
 Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement Time AM PM
Signature
 Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served 9/27/04	Time Served 1450	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Name Of Defendant Dw. Davenport, Hyde Co. Manager
------------------------	---------------------	--	--

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

Other manner of service (specify)

Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served	Time Served	<input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	-------------	---	-------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

Other manner of service (specify)

Defendant WAS NOT served for the following reason.

Service Fee Paid

\$

Date Received

9/17/04

Date Of Return

9/27/04

Signature Of Deputy Sheriff Making Return

Sgt. W. Lewis

Name Of Sheriff (Type Or Print)

L. B. Johnson

County Of Sheriff

Hyde

NORTH CAROLINA
HYDE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 64

JAMES E. JOHNSON,)
)
 Plaintiff.)
)
 v.)
)
 HYDE COUNTY)
)
 Defendant.)

COMPLAINT

FILED
04 AUG 31 PM 3:20
HYDE COUNTY, C.S.C.
BY _____

Plaintiff, complaining of Defendant, states as follows:

1. The Plaintiff, James E. Johnson, owns two adjacent tracts of land located along the Intracoastal Waterway in Hyde County, North Carolina. A true and accurate copy of the deed to Plaintiff's property, which gives the location and legal description of Plaintiff's property, has been attached as Exhibit A.

2. Defendant, Hyde County (the County), is a body politic and corporate organized pursuant to N.C.G.S. Chapter 153A, Article 2. The Hyde County Board of Commissioners (the Board) is the elected governing body of the County and is authorized pursuant to N.C.G.S. § 153A-12 to act on behalf of the County.

3. Jurisdiction over this cause is vested in this Court by virtue of N.C.G.S. § 1-253.

4. Venue is proper in this Court by virtue of N.C.G.S. § 1-82.

5. Although the County does not have countywide zoning, it has adopted a countywide Flood Damage Prevention Ordinance. Under Section E. of the Flood Damage Prevention Ordinance, the County may grant variances from the requirements of the ordinance if certain conditions are met.

6. On July 19, 2004, Mr. Simon Rich and Mr. Norbert Hector, speaking on behalf of Alligator River Recycling, LLC (Alligator), presented a proposal to the Board to build in Hyde County a construction and demolition debris solid waste disposal facility, consisting of a marine terminal, recycling operation, and construction and demolition debris landfill (the "recycling and landfill project"). The recycling and landfill project would be built on a tract of land identified on Hyde County map No. 03905-G5-1 and further identified as account No. 202447 05698. A significant portion of the proposed recycling and landfill project is proposed to be located within the area designated as the one hundred-year floodplain under the Flood Damage Prevention Ordinance. The Board voted unanimously to approve the proposal.

7. At the same July 19th meeting and immediately after its vote on the proposed recycling and landfill project, the Board voted to send a letter to the North Carolina Department of Crime and Public Safety stating that the County intended to grant Alligator a variance from the County Flood Damage Prevention Ordinance for the proposed recycling and landfill project. Specifically, the County intended to grant a variance that would allow the siting of the proposed recycling and landfill project within a one hundred-year floodplain. Without the variance, the recycling and landfill project could not be sited in the one hundred-year floodplain.

8. At its August 2, 2004 meeting, the Board opened a public hearing on Alligator's variance request and then listened to a presentation by Mr. Rich, Mr. Dan Moore, Mr. Tom Terrell and Mr. Chris Rouge regarding the request. After closing the public hearing, the Board unanimously voted 1) to adopt as its findings the evidence offered through both Alligator's oral presentation and the written materials submitted to the Board; 2) to find that the applicant had met its evidentiary burden regarding the issuance of the variance; and 3) to grant the variance

thirty days after the notice of intent had been given to the NC Department of Crime Control and Public Safety.

9. Flood Damage Prevention Ordinance Section E.(8)(c)(ii) requires that “[v]ariations shall only be issued upon . . . ii) a determination that failure to grant the variance would result in exceptional hardship.”

10. Upon information and belief, nowhere, either orally or in writing, has Alligator demonstrated that a denial of the variance from the Flood Damage Prevention Ordinance would result in an exceptional hardship to the owner of the property on which the recycling and landfill project is proposed to be located. Nor does any evidence exist that would demonstrate that the owner of the property in question would suffer exceptional hardship within the meaning of the ordinance if the requested variance is not granted. Accordingly, the Board’s issuance of the variance is inconsistent with the ordinance and is therefore legally erroneous and void.

11. Plaintiff’s property is located directly across the Intracoastal Waterway from the site of the proposed recycling and landfill project. Plaintiff has a vacation home located in his property, situated at such a point that the activities of the recycling and landfill project will interfere with Plaintiff’s peaceful enjoyment of his property and will lower the value of this property. Accordingly, Plaintiff has a specific personal and legal interest in the granting of this variance, and will suffer special damages as a result of the granting of this variance and the construction of the proposed recycling and landfill project. Therefore, Plaintiff has standing to bring this action.

WHEREFORE, Plaintiff respectfully pray that this Court

1. Declare void and of no effect the resolution purporting to grant the variance described above; and

2. Grant the Plaintiff such other and further relief as to the Court seems just and proper.

This the 30th day of August, 2004.

THE BROUGH LAW FIRM

Michael B. Brough to T.C.M.J.

Michael B. Brough
N.C. State Bar # 6053

T.C. Morphis, Jr.

T.C. Morphis, Jr.
N.C. State Bar # 28699
1829 E. Franklin Street, Suite 800-A
Chapel Hill, North Carolina 27514
(919) 929-3905
Attorneys for Plaintiff

THIS INSTRUMENT, made this 22nd day of March, 1990, between JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, a corporation duly organized under the laws of the Commonwealth of Massachusetts and having its principal place of business in Boston, in the County of Suffolk, and Commonwealth of Massachusetts, (Grantor), and JAMES E. JOHNSON, JR., whose address is P.O. Box 1917, Virginia Beach, Virginia 23481-1777, (Grantee),

WITNESSETH, That the Grantor, for the sum of Ten and 00/100 (\$10.00) Dollars, and other good and valuable consideration, to it paid by the Grantee, the receipt of which is hereby acknowledged, has GRANTED, ~~SELL~~ and CONVEYED, and by these presents does GRANT, ~~SELL~~ and CONVEY unto the said Grantee the following land and improvements thereon (Premises) situated in the County of Hyde, and State of North Carolina, and more particularly described as follows: This heirs and assigns.

(SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF).

The herein-described Premises are hereby conveyed ^{in a physical condition} as is by the tract and not by the acre, the acreage not being guaranteed by the Grantor, and are also conveyed subject to encumbrances of record, current and subsequent taxes, taxes of the rights of any tenants or lessees, ~~rights of any persons in possession~~, all outstanding mineral rights or reservations of oil, gas or mineral leases, restrictions or reservations, roadways, rights of way, easements and any matters which an accurate ~~survey~~ ^{survey} of said Premises would show applicable to ~~the~~ affecting said Premises and, subject to such of the foregoing matters as were created by Grantor, Grantor covenants that it has not placed or suffered to be placed any presently-existing lien or encumbrance upon the said Premises, notice of which has been given by Grantor to Grantee;

TO HAVE AND TO HOLD THE above-described Premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantee, ~~his~~ heirs and assigns, forever.

And Grantor does hereby warrant and forever defend all and singular the said Premises unto the Grantee, ~~his~~ heirs and assigns, against every person whomsoever lawfully claiming or to claim the same, on any part thereof, by, through or under it, except as aforesaid, but against none other.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed in its name and behalf by one of its Vice Presidents, attested to by one of its Assistant Secretaries, and its corporate seal to be hereunto affixed, all by proper corporate authority duly given.

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY

ATTEST:

Paula K. Johnson
Assistant Secretary

By *James E. Johnson, Jr.*
James E. Johnson, Jr., Second Vice President

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK

I, Marie C. O'Brien, Notary Public, in and for said Commonwealth, do hereby certify that James E. Johnson, Jr. personally came before me and acknowledged that he is an Assistant Secretary of JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, a Massachusetts corporation, and that by authority of its Board of Directors, the foregoing instrument was signed in its name and behalf by Paula K. Johnson, one of its Assistant Secretaries, sealed with its corporate seal, and attested to by himself as its Assistant Secretary.

WITNESS my hand and notarial stamp or seal, this 22nd day of March 1990

(SEAL)
My Commission Expires:
August 8, 1994

Marie C. O'Brien
Marie C. O'Brien, Notary Public

EXHIBIT A

EXHIBIT "A"

Those two (2) certain tracts or parcels of land, more particularly described as follows:

TRACT NO. ONE:

Beginning at a concrete marker in the South boundary line of the Intracoastal Waterway Canal right of way located at a point standing in the division line between lands now or formerly claimed by the J. C. Simmons heirs and others and the parcel of land being hereby conveyed; thence running from said beginning point (shown on map hereinafter referred to as "1"), South 02° 49' West 50.1 feet to an iron marker standing in said division line above mentioned; thence running South 85° 06' East 1684.5 feet to a point now or formerly marked by a black gum with an iron marker setting beside the gum, being the beginning point of the William Cahoon Grant; thence running South 04° 24' West 495.2 feet to a railroad iron marker; thence running South 67° 57' East 2012.9 feet to a railroad iron marker on the North bank of Alligator River; thence running South 09° 23' West 3213.3 feet to a point in the center line of the Dyke Line Canal and in the Northeast corner of "Tract No. One" shown on said map, which point is witnessed by iron pipes on the North and South banks of the canal; thence running North 89° 50' 50" West along the center of the Dyke Line Canal 4035.4 feet to a point in the Northwest corner of "Tract No. One" shown on said map, which point is witnessed by an iron pipe in the South bank of the canal; thence running South 09° 16' 10" West to and along the center of a drainage ditch, which is along the Northwest side of "Tract No. One" shown on said map, 6421 feet to a point witnessed by an iron pipe on the West bank of said drainage ditch; thence running South 71° 22' 10" West along the center line of another ditch, which is the northward line of "Tract No. Two" shown on said map, 4436.25 feet to an iron pipe located 2 feet West of the West bank of another ditch; thence running South 11° 14' 10" West along the northwestward line of "Tract No. Two" shown on said map, which runs parallel with and 2 feet West of a ditch, 3186.4 feet to an iron pipe in the North or Northwest line of the W. B. Nixon tract of land; thence running South 64° 20' West 151 feet to an iron pipe; thence running South 20° 07' East along the westward or southwestward line of said Nixon tract, which is also along the center of a canal, 1981.3 feet to a point in the northward edge of the 60 foot right of way of North Carolina State Road No. 1305; thence running along the northward and northwestward edge of the 60 foot right of way of said road, on the courses and for the distances as follows: South 64° 07' West 475 feet; South 58° 27' West 2040 feet; South 44° 37' West 670 feet; South 39° 02' West 2213 feet to an iron pipe in the eastward corner of that tract of land that was conveyed to Milborn E. Nixon and wife by J. Harwood Cochrane and wife by deed dated August 24, 1978, which is of record in the Office of the Register of Deeds of Hyde County, North Carolina, in Real Estate Book 107, page 251; thence running North 82° 03' West along the center of a canal, which is one of the northeastward lines of said Nixon tract, 3810.4 feet to a point; thence running South 16° 02' 40" West along another line of said Nixon tract, 1531.5 feet to an iron pipe; thence running South 89° 43' 40" West along another line of said Nixon tract, which is along the center of a ditch, 2718.9 feet to an iron pipe in the Southeast edge of the Dyke Line Canal;

thence running North 27° 49' 40" East along the Southeast edge of said canal, 1698.8 feet to an iron pipe; thence running North 45° 03' East 57.6 feet to an iron pipe, which is 8 feet Southwest from the Southwest edge of a canal, if extended, that runs along the northeastward side of the old New Holland, Higginsport & Mt. Vernon Railroad bed; thence running North 57° 58' West along the old New Holland, Higginsport & Mt. Vernon Railroad bed and parallel with and 8 feet Southwest from the Southwest edge of the last mentioned canal that runs along the northeastward side of the old New Holland, Higginsport & Mt. Vernon Railroad bed, 27,698.2 feet to an iron marker in the southward line of the right of way of the Atlantic Intracoastal Waterway Canal; thence running North 77° 34' 20" East (true meridian) or North 82° 01' 10" East, magnetic bearing 1912, 40,353.4 feet, more or less, to the point of beginning, same containing 10,810.96 acres.

TOGETHER WITH all of those certain rights of way, easements, rights, privileges and appurtenances, with the exception of the easement described in paragraph C, page 4, that are described in a Transfer from Arnold B. Chace and wife to J. Harwood Cochrane, dated February 10, 1965, and recorded in the Office of the Register of Deeds of Hyde County, North Carolina, in Registration of Land Titles Book 6, page 503, that are appurtenant to and run with that part of this "Tract No. One" that was thereby conveyed, including, but not limited to the "Perpetual rights of way and easements to be used for purposes of utility services of all kinds, including but not limited to, pipe, cable and pole lines, and for the purposes of ingress, egress and regress to and from said lands over and upon the following described strips of land:

"A. Beginning at a point in the southwestward line of the 11,301.15-acre tract above described where the southwestward line of said tract is intersected by the northwestward edge of the Dyke Line Canal referred to in the above description; thence running from said beginning point South 45° 03' West 20.8 feet to a point in the center line of the old New Holland-Higginsport-Mount Vernon Railroad Bed; thence running South 28° 30' West, continuing along the northwestward edge of the Dyke Canal 19.2 feet, more or less, to a point located 40 feet Southwest from the Southwest line of the above described 11,301.15-acre tract when measured perpendicular thereto; thence running North 57° 58' West, parallel with and 40 feet Southwest from the Southwest line of the last mentioned tract, 27,689.7 feet, more or less, to a point in the southward line of the right of way of the Atlantic Intracoastal Waterway Canal; thence running North 77° 34' 20" East (true meridian), to a point in the westernmost corner of the 11,301.15-acre tract above described; thence running South 57° 58' East along the southwestward line of the last mentioned tract 27,669.2 feet, more or less, to the point of beginning." (Unless otherwise indicated, all of the above courses are magnetic as of 1912.)

This right of way is forty feet wide and lies adjacent to and immediately Southwest of the Southwest line of the tract of land, containing 10,810.96 acres, described as the "Tract No. One."

Said tract is more particularly described according to map showing magnetic bearing 1912, entitled "Land of J. HARWOOD COCHRANE Tracts No. Three & Four...", prepared by David Ross Smith, R.L.S., under date of January 3, 1979, which map is of record in the Office of the Register of Deeds of Hyde County, North Carolina, in Plat Cabinet B, Slide No. 53-A.

THERE IS EXCEPTED AND RESERVED FROM THIS CONVEYANCE, HOWEVER, those two parcels thereof, together with the easement or right of way thereto, that are definitely described in a deed from J. Harwood Cochrane and wife to Hyde County, dated the 5th day of March, 1976, recorded in the Office of the Register of Deeds of Hyde County, North Carolina, in Real Estate Book 100, page 743, which reference is hereby made for a more particular description.

TRACT NO. TWO:

Beginning at an old concrete marker standing in the westward line of the grant to William Cahoon and Selby Harney, being Grant 1456, dated May 18, 1784, and which said concrete marker stands in the line dividing what is now or was formerly Registered Estate No. 61 and the lands that comprised the William Cahoon and Selby Harney Grant and marks the Southeast corner of the subdivided portion of Registered Estate No. 61 transferred to the United States of America, and which subdivided portion contains 37.9 acres, more or less; thence running from said beginning point, South 14° 45' West 1159.68 feet to the third corner of said grant; thence running South 25° 15' East 1142 feet to a railroad iron marker on the Northwest edge of the South Prong of Alligator River at the intersection of the third line of said grant to William Cahoon and Selby Harney with the South Prong of Alligator River; thence running up the northward side of the South Prong of Alligator River as it meanders, on the courses and for the distances as follows: South 12° 50' West 174.9 feet; North 55° 35' West 132 feet; South 02° 00' West 132.3 feet; South 67° 00' West 132 feet; North 19° 50' West 99 feet; South 54° 15' West 118.8 feet; North 71° 10' West 184.8 feet; North 35° 45' West 349.8 feet; South 58° 20' West 176.2 feet; North 06° 45' West 132 feet; North 86° 00' West 217.8 feet; South 60° 10' West 270.7 feet; South 02° 10' West 138.6 feet; South 55° 10' East 184.8 feet; South 25° 58' West 711 feet; North 86° 45' West 363 feet; South 45° 00' West 448.8 feet; South 77° 50' West 409.2 feet; North 46° 50' West 336.6 feet; South 69° 15' West 508.2 feet; South 10° 15' East 118.8 feet; South 66° 05' West 316.8 feet; North 42° 20' East 92.4 feet; South 41° 00' West 79.2 feet; North 66° 10' West 475.2 feet; South 41° 00' West 133.6 feet; South 57° 55' West 166.3 feet to a railroad iron in the northward edge of the South Prong of said River; thence running North 04° 45' East 1016 feet to a stake; thence running South 85° 15' East 1005 feet to a railroad iron; thence running North 49° 45' East 1303 feet to a railroad iron; thence running North 04° 45' East 810.3 feet to a concrete marker in the southward line of the right of way of the Atlantic Intracoastal Waterway Canal; thence running North 82° 01' 10" East along the southward line of said right of way 1494.2 feet to the point of beginning, containing 102.87 acres, more or less.

Said tract is more particularly described according to map entitled "Property of J. HARWOOD COCHRANE Tract No. Four 'Head of the River'," prepared by David Ross Smith, R.L.S., under date of January 25, 1979, showing magnetic bearing 1912, which map is of record in the Office of the Register of Deeds of Hyde County, North Carolina, in Plat Cabinet B, Slide No. 53-A.

BEING a portion of the premises conveyed to Grantor herein by Deed dated June 4, 1983, recorded in the Office of the Register of Deeds for the County of Hyde, North Carolina, in Real Estate Book 119, Page 229, on June 17, 1983.

NORTH CAROLINA
HYDE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

04 CVS 05

FILED
04 AUG 31 PM 3:20
HYDE COUNTY, N.C.

JAMES E. JOHNSON,)
)
Petitioner,)
)
v.)
)
HYDE COUNTY and the)
HYDE COUNTY BOARD)
OF COMMISSIONERS)
Respondents.)

**PETITION FOR REVIEW IN THE
NATURE OF CERTIORARI**

The Petitioner, James E. Johnson, by his undersigned attorneys, in support of his Petition for Review in the Nature of Certiorari, states as follows:

1. The Petitioner, James E. Johnson, owns two adjacent tracts of land in Hyde County, North Carolina located along the Intracoastal Waterway. A true and accurate copy of the deed to Petitioner's property, which gives the location and legal description of Petitioner's property, has been attached as Exhibit A.
2. Respondent Hyde County (the County), is a body politic and corporate organized pursuant to N.C.G.S. Chapter 153A, Article 2. Respondent Hyde County Board of Commissioners (the Board) is the elected governing body of the County, authorized pursuant to N.C.G.S. § 153A-12, to act on behalf of the County.
3. Jurisdiction over this cause is vested in this Court by virtue of N.C.R. Prac. 19, and *Hemphill-Nolan v. Town of Weddington*, 153 N.C. App. 144, 568 S.E.2d 887 (2002).
4. Venue is proper in this Court by virtue of N.C.G.S. § 1-82.
5. Although the County does not have countywide zoning, it has adopted a countywide Flood Damage Prevention Ordinance. Under Section E. of the Flood Damage

Prevention Ordinance, the County may grant variances from the requirements of the ordinance if certain conditions are met.

6. On July 19, 2004, Mr. Simon Rich and Mr. Norbert Hector, speaking on behalf of Alligator River Recycling, LLC (Alligator), presented a proposal to the Board to build in Hyde County a construction and demolition debris solid waste disposal facility, consisting of a marine terminal, recycling operation, and construction and demolition debris landfill (the "recycling and landfill project"). The recycling and landfill project would be built on a tract of land identified on Hyde County map No. 03905-G5-1 and further identified as account No. 202447 05698. A significant portion of the proposed recycling and landfill project is proposed to be located within the area designated as the one hundred-year floodplain under the Flood Damage Prevention Ordinance. The Board voted unanimously to approve the proposed project.

7. At the same July 19th meeting and immediately after its vote on the proposed recycling and landfill project, the Board voted to send a letter to the North Carolina Department of Crime and Public Safety stating that the County intended to grant Alligator a variance from the County Flood Damage Prevention Ordinance for the proposed recycling and landfill project. Specifically, the County intended to grant a variance that would allow the siting of the proposed recycling and landfill project within a one hundred-year floodplain. Without the variance, the recycling and landfill project could not be sited in the one hundred-year floodplain.

8. At its August 2, 2004 meeting, the Board opened a public hearing on Alligator's variance request and then listened to a presentation by Mr. Rich, Mr. Dan Moore, Mr. Tom Terrell and Mr. Chris Rouge regarding the request. After closing the public hearing, the Board unanimously voted 1) to adopt as its findings the evidence offered through both Alligator's oral presentation and the written materials submitted to the Board; 2) to find that the applicant had

met its evidentiary burden regarding the issuance of the variance; and 3) to grant the variance thirty days after the notice of intent had been given to the NC Department of Crime Control and Public Safety.

9. Flood Damage Prevention Ordinance Section E.(8)(c)(ii) requires that “[v]ariations shall only be issued upon . . . ii) a determination that failure to grant the variance would result in exceptional hardship.”

10. Upon information and belief, nowhere, either orally or in writing, has Alligator demonstrated that a denial of the variance from the Flood Damage Prevention Ordinance would result in an exceptional hardship to the owner of the property on which the recycling and landfill project is proposed to be located. Accordingly, the Board's issuance of the variance is not based upon substantial competent evidence in the record and is therefore legally erroneous and void.

11. Petitioner's property is located directly across the Intracoastal Waterway from the site of the proposed recycling and landfill project. Plaintiff has a vacation home located on his property, situated at such a point that the activities of the recycling and landfill project will interfere with Plaintiff's peaceful enjoyment of his property and will lower the value of his property. Accordingly, Plaintiff is an “aggrieved party” and will suffer special damages as a result of the granting of this variance and the construction of the proposed recycling and landfill project. Therefore, Plaintiff has standing to bring this action.

WHEREFORE, Petitioner respectfully requests that this Court:

1. Issue to the Hyde County Board of Commissioners a Writ of Certiorari, directing that the entire record of the proceedings surrounding the issuance by the Board to Alligator River Recycling, LLC of the variance from the Flood Damage Prevention Ordinance, as described above, be certified to the Court;

2. Upon review of the record, reverse the August 2, 2004 decision of the Hyde County Board of Commissioners granting the requested variance from the Hyde County Flood Damage Prevention Ordinance, on the basis that such decision was not based on substantial competent evidence and was otherwise legally erroneous; and

3. Grant the Petitioner such other and further relief as to the Court deems just and proper.

This the 30th day of August, 2004.

THE BROUGH LAW FIRM

Michael B. Brough by TCM Jr.
Michael B. Brough
N.C. State Bar # 6053

T.C. Morphis Jr.
T.C. Morphis, Jr.
N.C. State Bar # 28699
1829 E. Franklin Street, Suite 800-A
Chapel Hill, North Carolina 27514
(919) 929-3905

Attorneys for Petitioner

EXHIBIT "A"

Those two (2) certain tracts or parcels of land, more particularly described as follows:

TRACT NO. ONE:

Beginning at a concrete marker in the South boundary line of the Intracoastal Waterway Canal right of way located at a point standing in the division line between lands now or formerly claimed by the J. C. Simmons heirs and others and the parcel of land being hereby conveyed; thence running from said beginning point (shown on map hereinafter referred to as "1"), South 02° 49' West 50.1 feet to an iron marker standing in said division line above mentioned; thence running South 85° 06' East 1684.5 feet to a point now or formerly marked by a black gum with an iron marker setting beside the gum, being the beginning point of the William Cahoon Grant; thence running South 04° 24' West 495.2 feet to a railroad iron marker; thence running South 67° 57' East 2012.9 feet to a railroad iron marker on the North bank of Alligator River; thence running South 09° 23' West 3213.3 feet to a point in the center line of the Dyke Line Canal and in the Northeast corner of "Tract No. One" shown on said map, which point is witnessed by iron pipes on the North and South banks of the canal; thence running North 89° 50' 50" West along the center of the Dyke Line Canal 4035.4 feet to a point in the Northwest corner of "Tract No. One" shown on said map, which point is witnessed by an iron pipe in the South bank of the canal; thence running South 09° 16' 10" West to and along the center of a drainage ditch, which is along the Northwest side of "Tract No. One" shown on said map, 6421 feet to a point witnessed by an iron pipe on the West bank of said drainage ditch; thence running South 71° 22' 10" West along the center line of another ditch, which is the northward line of "Tract No. Two" shown on said map, 4436.25 feet to an iron pipe located 2 feet West of the West bank of another ditch; thence running South 11° 14' 10" West along the northwestward line of "Tract No. Two" shown on said map, which runs parallel with and 2 feet West of a ditch, 3186.4 feet to an iron pipe in the North or Northwest line of the W. B. Nixon tract of land; thence running South 64° 20' West 151 feet to an iron pipe; thence running South 20° 07' East along the westward or southwestward line of said Nixon tract, which is also along the center of a canal, 1981.3 feet to a point in the northward edge of the 60 foot right of way of North Carolina State Road No. 1305; thence running along the northward and northwestward edge of the 60 foot right of way of said road, on the courses and for the distances as follows: South 64° 07' West 475 feet; South 58° 27' West 2040 feet; South 44° 37' West 670 feet; South 39° 02' West 2213 feet to an iron pipe in the eastward corner of that tract of land that was conveyed to Milborn E. Nixon and wife by J. Harwood Cochran and wife by deed dated August 24, 1978, which is of record in the Office of the Register of Deeds of Hyde County, North Carolina, in Real Estate Book 107, page 253; thence running North 82° 03' West along the center of a canal, which is one of the northeastward lines of said Nixon tract, 3810.4 feet to a point; thence running South 16° 02' 40" West along another line of said Nixon tract, 1531.5 feet to an iron pipe; thence running South 89° 43' 40" West along another line of said Nixon tract, which is along the center of a ditch, 2718.9 feet to an iron pipe in the Southeast edge of the Dyke Line Canal;

thence running North 27° 49' 40" East along the Southeast edge of said canal, 1698.8 feet to an iron pipe; thence running North 45° 03' East 57.6 feet to an iron pipe, which is 8 feet Southwest from the Southwest edge of a canal, if extended, that runs along the northeastward side of the old New Holland, Higgsport & Mt. Vernon Railroad bed; thence running North 57° 58' West along the old New Holland, Higgsport & Mt. Vernon Railroad bed and parallel with and 8 feet Southwest from the Southwest edge of the last mentioned canal that runs along the northeastward side of the old New Holland, Higgsport & Mt. Vernon Railroad bed, 27,698.2 feet to an iron marker in the southward line of the right of way of the Atlantic Intracoastal Waterway Canal; thence running North 77° 34' 20" East (true meridian) or North 82° 01' 10" East, magnetic bearing 1912, 40,353.4 feet, more or less, to the point of beginning, same containing 10,810.96 acres.

TOGETHER WITH all of those certain rights of way, easements, rights, privileges and appurtenances, with the exception of the easement described in paragraph C, page 4, that are described in a Transfer from Arnold B. Chace and wife to J. Harwood Cochrane, dated February 10, 1965, and recorded in the Office of the Register of Deeds of Hyde County, North Carolina, in Registration of Land Titles Book 6, page 503, that are appurtenant to and run with that part of this "Tract No. One" that was thereby conveyed, including, but not limited to the "Perpetual rights of way and easements to be used for purposes of utility services of all kinds, including but not limited to, pipe, cable and pole lines, and for the purposes of ingress, egress and regress to and from said lands over and upon the following described strips of land:

"A. Beginning at a point in the southwestward line of the 11,301.15-acre tract above described where the southwestward line of said tract is intersected by the northwestward edge of the Dyke Line Canal referred to in the above description; thence running from said beginning point South 45° 03' West 20.8 feet to a point in the center line of the old New Holland-Higgsport-Mount Vernon Railroad Bed; thence running South 28° 30' West, continuing along the northwestward edge of the Dyke Canal 19.2 feet, more or less, to a point located 40 feet Southwest from the Southwest line of the above described 11,301.15-acre tract when measured perpendicular thereto; thence running North 57° 58' West, parallel with and 40 feet Southwest from the Southwest line of the last mentioned tract, 27,689.2 feet, more or less, to a point in the southward line of the right of way of the Atlantic Intracoastal Waterway Canal; thence running North 77° 34' 20" East (true meridian), to a point in the westernmost corner of the 11,301.15-acre tract above described; thence running South 57° 58' East along the southwestward line of the last mentioned tract 27,669.2 feet, more or less, to the point of beginning." (Unless otherwise indicated, all of the above courses are magnetic as of 1912.)

This right of way is forty feet wide and lies adjacent to and immediately Southwest of the Southwest line of the tract of land, containing 10,810.96 acres, described as the "Tract No. One."

Said tract is more particularly described according to map showing magnetic bearing 1912, entitled "Land of J. HARWOOD COCHRANE Tracts No. Three & Four...", prepared by David Ross Smith, R.L.S., under date of January 3, 1979, which map is of record in the Office of the Registrar of Deeds of Hyde County, North Carolina, in Plat Cabinet B, Slide No. 53-A.

THERE IS EXCEPTED AND RESERVED FROM THIS CONVEYANCE, HOWEVER, those two parcels thereof, together with the easement or right of way thereto, that are definitely described in a deed from J. Harwood Cochrane and wife to Hyde County, dated the 5th day of March, 1976, recorded in the Office of the Register of Deeds of Hyde County, North Carolina, in Real Estate Book 100, page 743, which reference is hereby made for a more particular description.

TRACT NO. TWO:

Beginning at an old concrete marker standing in the westward line of the grant to William Cahoon and Selby Harney, being Grant #456, dated May 18, 1784, and which said concrete marker stands in the line dividing what is now or was formerly Registered Estate No. 61 and the lands that comprised the William Cahoon and Selby Harney Grant and marks the Southeast corner of the subdivided portion of Registered Estate No. 61 transferred to the United States of America, and which subdivided portion contains 37.9 acres, more or less; thence running from said beginning point, South 14° 45' West 1159.68 feet to the third corner of said grant; thence running South 85° 15' East 1142 feet to a railroad iron marker on the Northwest edge of the South Prong of Alligator River at the intersection of the third line of said grant to William Cahoon and Selby Harney with the South Prong of Alligator River; thence running up the northward side of the South Prong of Alligator River as it meanders, on the courses and for the distances as follows: South 12° 50' West 174.9 feet; North 55° 35' West 132 feet; South 02° 00' West 132.3 feet; South 67° 00' West 132 feet; North 19° 50' West 99 feet; South 54° 15' West 118.8 feet; North 71° 10' West 184.8 feet; North 35° 45' West 349.8 feet; South 58° 20' West 376.2 feet; North 06° 45' West 132 feet; North 86° 00' West 217.8 feet; South 60° 10' West 270.7 feet; South 02° 10' West 138.6 feet; South 55° 10' East 184.8 feet; South 25° 58' West 731 feet; North 86° 45' West 363 feet; South 45° 00' West 448.8 feet; South 77° 50' West 409.2 feet; North 46° 50' West 336.6 feet; South 69° 15' West 508.2 feet; South 10° 15' East 118.8 feet; South 66° 05' West 316.8 feet; North 42° 20' East 92.4 feet; South 41° 00' West 79.2 feet; North 66° 10' West 475.2 feet; South 41° 00' West 138.6 feet; South 57° 55' West 166.3 feet to a railroad iron in the northward edge of the South Prong of said River; thence running North 04° 45' East 1016 feet to a stake; thence running South 85° 15' East 1005 feet to a railroad iron; thence running North 49° 45' East 1303 feet to a railroad iron; thence running North 04° 45' East 810.3 feet to a concrete marker in the southward line of the right of way of the Atlantic Intracoastal Waterway Canal; thence running North 82° 01' 10" East along the southward line of said right of way 1494.2 feet to the point of beginning, containing 102.87 acres, more or less.

Said tract is more particularly described according to map entitled "Property of J. HARWOOD COCHRANE Tract No. Four 'Head of the River'," prepared by David Ross Smith, R.L.S., under date of January 25, 1979, showing magnetic bearing 1912, which map is of record in the Office of the Register of Deeds of Hyde County, North Carolina, in Plat Cabinet B, Slide No. 53-B.

BEING a portion of the premises conveyed to Grantor herein by Deed dated June 4, 1983, recorded in the Office of the Register of Deeds for the County of Hyde, North Carolina, in Real Estate Book 119, Page 229, on June 17, 1983.

EXHIBIT A

NORTH CAROLINA
HYDE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 64

JAMES E. JOHNSON,
Plaintiff,

v.

HYDE COUNTY and the
HYDE COUNTY BOARD OF
COMMISSIONERS,

Defendants.

and

ALLIGATOR RIVER RECYCLING,
LLC,
Additional Defendant.

ANSWER
(Alligator River Recycling, LLC)

Alligator River Recycling, LLC (hereinafter referred to as "Alligator River Recycling")

answers plaintiff's Complaint as follows:

1. Admitted, upon information and belief.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. It is admitted that Mr. Rich and Mr. Hector spoke on behalf of Alligator River

Recycling on July 19, 2004, requesting permission from Hyde County for local approval to construct a construction and demolition debris solid waste disposal facility that included a

recycling operation and landfill. It is further admitted that the tracts of land are accurately identified and that the Board voted unanimously to approve the proposal. It is denied that the marine terminal is part of the solid waste facility, although it is accurate that close proximity to the terminal is required because transport of debris will be an integrated operation from terminal to facility. It is denied that the portion of the proposed facility to be located within the 100-year floodplain is accurately described as "significant."

7. Admitted.

8. It is denied that the actions described in paragraph 8 as the actions of Hyde County constitute the entirety of the decision made by Hyde County. It is also denied that there was a participant named Chris "Rouge". It is admitted that Chris Roof was a participating member of Alligator River Recycling. The remaining allegations in paragraph 8 are admitted.

9. Admitted.

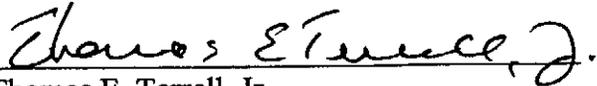
10. Denied.

11. Defendant Alligator River Recycling is without sufficient information to adequately admit or deny the allegations in paragraph 11, and therefore denies all allegations in this paragraph.

WHEREFORE, defendant Alligator River Recycling prays that this Court will:

1. Deny plaintiff's request that the variance be declared void and of no effect; and
2. Deny plaintiff any and all further relief.

This the 9th day of September, 2004.


Thomas E. Terrell, Jr.
NC State Bar No. 13133
Attorney for Alligator River Recycling, LLC

OF COUNSEL:

SMITH MOORE LLP
300 North Greene Street
Suite 1400
PO Box 21927 (27420)
Greensboro, NC 27401
Telephone: 336.378.5200
Facsimile: 336.378.5400

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Answer** was served upon plaintiff in this action by forwarding same by United States mail, first class, postage prepaid, addressed to counsel for plaintiff as follows:

Michael B. Brough
The Brough Law Firm
1829 E. Franklin Street
Suite 800-A
Chapel Hill, NC 27514

and

upon attorney for Hyde County, as follows:

Sidney J. Hassell, Jr.
Carter, Archie, Hassell & Singleton, LLP
P. O. Drawer 2187
112 S. Respass Street
Washington, NC 27889

This the 9th day of September, 2004.



Thomas E. Terrell, Jr.

EXHIBIT A

NORTH CAROLINA

HYDE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 65

JAMES E. JOHNSON,

Petitioner,

v.

HYDE COUNTY and the
HYDE COUNTY BOARD
OF COMMISSIONERS,

Respondents.

and

ALLIGATOR RIVER RECYCLING,
LLC,

Additional Respondent.

RESPONSE

(Alligator River Recycling, LLC)

Additional Respondent, Alligator River Recycling, LLC (hereinafter referred to as "Alligator River Recycling") responds to Petitioner's Petition for Review in the Nature of Certiorari as follows:

1. Admitted, upon information and belief.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. It is admitted that Mr. Rich and Mr. Hector spoke on behalf of Alligator River

Recycling on July 19, 2004, requesting permission from Hyde County for local approval to construct a construction and demolition debris solid waste disposal facility that included a

recycling operation and landfill. It is further admitted that the tracts of land are accurately identified and that the Board voted unanimously to approve the proposal. It is denied that the marine terminal is part of the solid waste facility, although it is accurate that close proximity to the terminal is required because transport of debris will be an integrated operation from terminal to facility. It is denied that the portion of the proposed facility to be located within the 100-year floodplain is accurately described as "significant."

7. Admitted.

8. It is denied that the actions described in paragraph 8 as the actions of Hyde County constitute the entirety of the decision made by Hyde County. It is also denied that there was a participant named Chris "Rouge." It is admitted that Chris Roof was a participating member of Alligator River Recycling. The remaining allegations in paragraph 8 are admitted.

9. Admitted.

10. Denied.

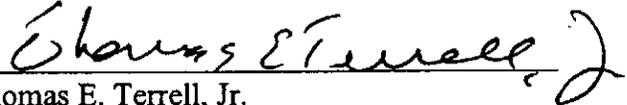
11. Additional Respondent Alligator River Recycling is without sufficient information to adequately admit or deny the allegations in paragraph 11, and therefore denies all allegations in this paragraph.

WHEREFORE, Additional Respondent Alligator River Recycling respectfully request that this Court:

1. Deny all relief requested by Petitioner Johnson;
2. Uphold the granting of the variance issued by Hyde County; and
3. Grant Respondents such other and further relief as the Court deems just and

proper.

This the 9th day of September, 2004.


Thomas E. Terrell, Jr.
NC State Bar No. 13133
Attorney for Respondent,
Alligator River Recycling, LLC

OF COUNSEL:

SMITH MOORE LLP
300 North Greene Street
Suite 1400
PO Box 21927 (27420)
Greensboro, NC 27401
Telephone: 336.378.5200
Facsimile: 336.378.5400

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Response** was served upon petitioner in this action by forwarding same by United States mail, first class, postage prepaid, addressed to counsel for petitioner as follows:

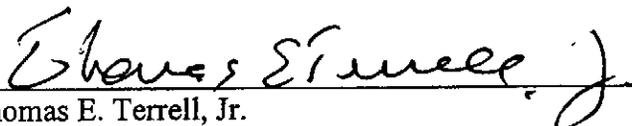
Michael B. Brough
The Brough Law Firm
1829 E. Franklin Street
Suite 800-A
Chapel Hill, NC 27514

and

upon attorney for Hyde County, as follows:

Sidney J. Hassell, Jr.
Carter, Archie, Hassell & Singleton, LLP
P. O. Drawer 2187
112 S. Respass Street
Washington, NC 27889

This the 9th day of September, 2004.


Thomas E. Terrell, Jr.

NORTH CAROLINA
HYDE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 64

JAMES E. JOHNSON,
Plaintiff,

v.

HYDE COUNTY and the
HYDE COUNTY BOARD OF
COMMISSIONERS,
Defendants.

**MOTION TO INTERVENE
AND ANSWER TO COMPLAINT**

Alligator River Recycling, LLC (hereinafter "Alligator River Recycling") moves the Court pursuant to Rule 24(a) of the North Carolina Rules of Civil Procedure, and alternatively, pursuant to Rule 24(b) of the North Carolina Rules of Civil Procedure, for an Order allowing it to intervene in this action and shows the Court the following:

1. Alligator River Recycling is a limited liability company organized and existing under the laws of the State of North Carolina.
2. Plaintiff James E. Johnson filed this action against Hyde County and the Hyde County Board of Commissioners pursuant to the Uniform Declaratory Judgment Act, N.C. Gen. Stat. §1-253 et. seq..
3. Plaintiff's action challenges Hyde County's decision to grant a variance to Alligator River Recycling pursuant to the Hyde County Flood Damage Prevention Ordinance.
4. Pursuant to N.C. Gen. Stat. §1-260 "all persons shall be made parties who have or claim any interest which would be affected by the Declaration, and no Declaration shall prejudice the rights of persons not parties to the proceedings."
5. Alligator River Recycling has a legal and proprietary interest in the variance it

received from Hyde County to construct a solid waste facility within a 100-year flood plain.

6. Alligator River Recycling is a party whose interests will necessarily be affected by a Declaratory Judgment regarding the validity of the variance it received from Hyde County.

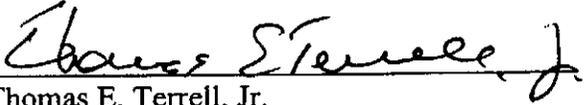
7. Inasmuch as Hyde County, acting through its Board of Commissioners, has interests in fact and imposed by law that are distinct from those interests of Alligator River Recycling, and inasmuch as Hyde County and Alligator River Recycling do not have interests that are fully aligned with each other, Alligator River Recycling will not be positioned to protect its interests unless it is joined as a party.

8. Hyde County's defense to this action will have common questions of law and facts to Alligator River Recycling's defense, and intervention will not unduly delay or prejudice the adjudication of the rights of the original plaintiff.

NOW, THEREFORE, Alligator River Recycling, LLC prays:

1. That this Court allow it to intervene in this action as a matter of right and, alternatively, by permission of the Court;
2. That the Answer attached to this Motion as "Exhibit A" be allowed as Alligator River Recycling's Answer to plaintiff's Complaint; and
3. That the caption in this action be changed to reflect that Alligator River Recycling, LLC has been added as an additional party defendant.

This the 9th day of September, 2004.


Thomas E. Terrell, Jr.
NC State Bar No. 13133
Attorney for Alligator River Recycling, LLC

OF COUNSEL:

**SMITH MOORE LLP
300 North Greene Street
Suite 1400
PO Box 21927 (27420)
Greensboro, NC 27401
Telephone: 336.378.5200
Facsimile: 336.378.5400**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Motion to Intervene and Answer to Complaint** was served upon plaintiff in this action by forwarding same by United States mail, first class, postage prepaid, addressed to counsel for plaintiff as follows:

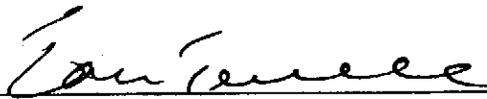
Michael B. Brough
The Brough Law Firm
1829 E. Franklin Street
Suite 800-A
Chapel Hill, NC 27514

and

upon attorney for Hyde County, as follows:

Sidney J. Hassell, Jr.
Carter, Archie, Hassell & Singleton, LLP
P. O. Drawer 2187
112 S. Respass Street
Washington, NC 27889

This the 9th day of September, 2004.



Thomas E. Terrell, Jr.

NORTH CAROLINA
HYDE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 65

JAMES E. JOHNSON,
Petitioner,

v.

HYDE COUNTY and the
HYDE COUNTY BOARD
OF COMMISSIONERS,
Respondents.

**MOTION TO INTERVENE
AND RESPONSE TO PETITION**

Alligator River Recycling, LLC (hereinafter referred to as "Alligator River Recycling") moves the Court pursuant to Rule 24(a) of the North Carolina Rules of Civil Procedure, and alternatively, pursuant to Rule 24(b) of the North Carolina Rules of Civil Procedure for an Order allowing it to intervene in this action, and shows the Court the following:

1. Alligator River Recycling is a limited liability company organized and existing under the laws of the State of North Carolina.
2. Petitioner James E. Johnson filed a Petition for Review in the Nature of Certiorari against Hyde County and the Hyde County Board of Commissioners asking this Court to review the record related to Hyde County's findings and conclusions that Alligator River Recycling had met the requirements of the Hyde County Flood Damage Prevention Ordinance precedent to receipt of a variance to construct a solid waste facility within a 100-year floodplain.
3. Alligator River Recycling has a legal and proprietary interest in the variance it received from Hyde County to construct a solid waste facility within a 100-year floodplain.
4. Alligator River Recycling was a party intimately involved in this action at the hearing stage and is a party whose interests will necessarily be affected by a judicial

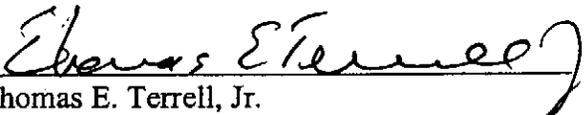
determination regarding the validity of the variance it received from Hyde County.

5. Inasmuch as Hyde County, acting through its Board of Commissioners, has interests in fact and imposed by law that are distinct from those interests of Alligator River Recycling, and inasmuch as Hyde County and Alligator River Recycling do not have interests that are fully aligned with each other, Alligator River Recycling will not be in a position to protect its interests unless it is joined as a party on appeal.

6. Hyde County's response to this petition will have common questions of law and fact and intervention will not unduly delay or prejudice the adjudication of the rights of the original plaintiff.

NOW, THEREFORE, Alligator River Recycling prays:

1. That this Court allow it to intervene in this action as a matter of right and alternatively, by permission of the Court;
2. That the Response attached to this Motion as "Exhibit A" be allowed as Alligator River Recycling's Response to plaintiff's Petition; and
3. That the caption in this action be changed to reflect that Alligator River Recycling, LLC has been added as an Additional Respondent.


Thomas E. Terrell, Jr.
NC State Bar No. 13133
Attorney for Additional Respondent,
Alligator River Recycling, LLC

OF COUNSEL:

**SMITH MOORE LLP
300 North Greene Street
Suite 1400
PO Box 21927 (27420)
Greensboro, NC 27401
Telephone: 336.378.5200
Facsimile: 336.378.5400**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Motion to Intervene and Response to Petition** was served upon petitioner in this action by forwarding same by United States mail, first class, postage prepaid, addressed to counsel for petitioner as follows:

Michael B. Brough
The Brough Law Firm
1829 E. Franklin Street
Suite 800-A
Chapel Hill, NC 27514

and

upon attorney for Hyde County, as follows:

Sidney J. Hassell, Jr.
Carter, Archie, Hassell & Singleton, LLP
P. O. Drawer 2187
112 S. Respass Street
Washington, NC 27889

This the 9th day of September, 2004.



Thomas E. Terrell, Jr.

NORTH CAROLINA
HYDE COUNTY

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

04 SEP 20 PM 2: 03 04 CVS 64

HYDE COUNTY, C.S.C.

BY [Signature]

JAMES E. JOHNSON,)
)
 Plaintiff)
)
 v.)
)
 HYDE COUNTY, and the)
 HYDE COUNTY BOARD)
 OF COMMISSIONERS,)
)
 Defendants.)

**AFFIDAVIT SHOWING
PROOF OF SERVICE**

The undersigned certifies that service of process was completed by mailing a copy of the *Summons and Complaint* and the *Petition for Review in the Nature of Certiorari* by certified mail, return receipt requested, addressed to and delivered to the following addressee:

Hyde County and the
Hyde County Board of Commissioners
c/o Don Davenport
Hyde County Manager
P.O. Box 188
Swan Quarter, NC 27885-0188

Process was in fact received by a person of suitable age and discretion on the 7th day of September, 2004, as evidenced by the attached genuine return receipt of delivery.

CERTIFICATE OF SERVICE

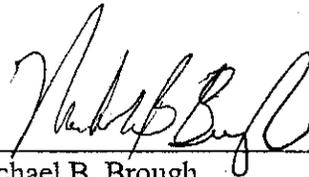
This is to certify that the undersigned has this date served the attached Affidavit Showing Proof of Service upon all parties to this cause by:

- Hand delivering a copy hereof to the attorney for each said party, or leaving a copy at the office of said attorney with a person in charge thereof.
- Depositing a copy hereof, postage pre-paid, in the United States mail, properly addressed to the attorney for each said party as follows:

Hyde County and the
Hyde County Board of Commissioners
c/o Don Davenport
Hyde County Manager
P.O. Box 188
Swan Quarter, NC 27885-0188

This the 17th day of September, 2004.

BY:



Michael B. Brough

STATE OF NORTH CAROLINA
COUNTY OF HYDE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

JAMES E. JOHNSON,)
)
Plaintiff,)
)
v.)
)
HYDE COUNTY,)
)
Defendant.)

ANSWER

The Defendant, for answer to the complaint, pleads as follows:

1. Admit.
2. Admit.
3. Admit.
4. Admit.
5. Admit.
6. It is admitted that on July 19, 2004 Simon Rich and Norbert Hector on behalf of Alligator Recycling, LLC presented a proposal to the Board to build in Hyde County a construction and demolition debris solid waste disposal facility as part of a larger project to include a marine terminal and recycling operation. It is admitted that the recycling and landfill project would be built upon a portion of the land identified on Hyde County map no. 03905-G5-1 and further identified as account no. 202447 05698. It is admitted that a portion of the proposed landfill would be located in the area designated as the one

hundred year floodplain under the Flood Damage Prevention Ordinance and that the Board unanimously granted local approval for said landfill pursuant to 15 NCAC 13B.0504. Except as admitted, paragraph 6 is denied.

7. It is admitted that at its July 19, 2004 meeting the Board voted to send a letter to the North Carolina Department of Crime Control and Public Safety and that a copy of that letter is attached hereto and made a part hereof, and that without the variance no part of the landfill could be sited in the one hundred year floodplain. Except as admitted, paragraph 7 is denied.

8. It is admitted that at its August 2, 2004 meeting the Board conducted a public hearing on Alligator's request for a variance at which Simon Rich, Dan Moore, Tom Terrell and Chris Roof testified under oath and introduced certain other materials; that after giving all persons in attendance an opportunity to present evidence, the hearing was closed and the Board took the actions alleged in paragraph 8 and stated its intention to adopt formal findings at the time the variance was issued. Except as admitted paragraph 8 is denied.

9. Admit.

10. Denied.

11. It is admitted that the Plaintiff's property is located directly across the Intracoastal Waterway from the site of the proposed recycling and landfill project and that the Plaintiff has a vacation home located on that property. Except as admitted, paragraph 11 is denied.

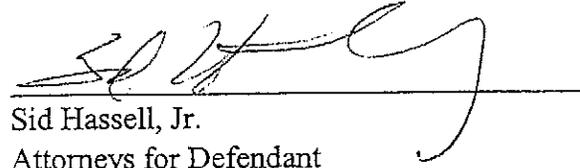
WHEREFORE the Defendant prays the Court as follows:

1. That the complaint of the Plaintiff be denied and dismissed;
2. That the costs of this action be taxed against the Plaintiff; and
3. That the Defendant have such other and further relief as to the Court seems proper.

This the 30 day of September, 2004.

CARTER, ARCHIE, HASSELL & HOLBROOK, L.L.P.

By:

A handwritten signature in black ink, appearing to read "S. Hassell, Jr.", is written over a horizontal line. The signature is stylized and cursive.

Sid Hassell, Jr.

Attorneys for Defendant

Post Office Drawer 2187

Washington, North Carolina 27889

Telephone: (252) 946-1941

CERTIFICATE OF SERVICE

This is to certify that true copies of the foregoing or attached document have been served upon counsel for the other parties in this action by depositing the same, enclosed in postpaid wrappers, in a postal depository under the control of the United States Postal Service and addressed to:

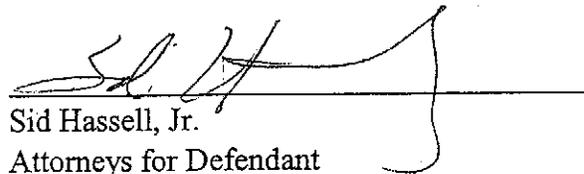
Michael B. Brough
T. C. Morphis, Jr.
Brough Law Firm
1829 E. Franklin St., Suite 800-A
Chapel Hill, NC 27514

Thomas E. Terrell, Jr.
Smith Moore LLP
P.O. Box 21927
Greensboro, NC 27401

This the 30 day of September, 2004.

CARTER, ARCHIE, HASSELL & HOLBROOK, L.L.P.

By:



Sid Hassell, Jr.
Attorneys for Defendant
Post Office Drawer 2187
Washington, North Carolina 27889
Telephone: (252) 946-1941

COUNTY OF HYDE

Board of Commissioners

Beatrice Emmert, Chair
Nathan Sears, Vice-chair
Leon Bryant
W. Mack Carawan Jr.
Jane Hodges

PO Box 188
SWAN QUARTER, NORTH CAROLINA 27885
252-926-4178
252-926-3701 Fax

Donald L. Davenport
County Manager

Connie Bureson
Clerk to the Board
Admin Assist County Manager



July 20, 2004

Mr. Bryan E. Beatty, Secretary
NC Dept. of Crime Control and Public Safety
4701 Mail Service Center
Raleigh, NC 27699-4701

RE: Notice of Intent to Grant Variance

Dear Secretary Beatty:

At the regularly scheduled meeting of the Hyde County Board of Commissioners on July 19, 2004, the Commission heard preliminary evidence from Alligator River Recycling, LLC regarding its request for a variance pursuant to NC General Statute 143-215.54A(b) for construction of a landfill for construction and demolition debris, a portion of which would encroach upon the 100-year flood plan. Based upon the evidence presented, the Hyde County Board of Commissioners voted to express its intent to grant a variance pursuant to NC General Statute 143-215A and the Hyde County Flood Damage Prevention Ordinance. A full evidentiary hearing will be scheduled for a future meeting, at which time Alligator River Recycling will be required to show that it meets all requirements for a variance under these ordinances.

Sincerely,

Beatrice O. Emmert
Beatrice O. Emmert, Chair

Hyde County Board of Commissioners

FILE NO. 00-CvS-65

FILM NO. _____

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF HYDE

SUPERIOR COURT DIVISION

JAMES E. JOHNSON,)

Petitioner,)

v.)

RESPONSE

HYDE COUNTY,)

Respondent.)

The Respondents, Hyde County and the Hyde County Board of Commissioners, respond to the Petition For Review In The Nature Of Certiorari as follows:

- 1. Admit.
- 2. Admit.
- 3. Admit.
- 4. Admit.
- 5. Admit.

6. It is admitted that on July 19, 2004 Simon Rich and Norbert Hector on behalf of Alligator Recycling, LLC presented a proposal to the Board to build in Hyde County a construction and demolition debris solid waste disposal facility as part of a larger project to include a marine terminal and recycling operation. It is admitted that the recycling and landfill project would be built upon a portion of the land identified on Hyde County map no. 03905-G5-1 and further identified as account no. 202447 05698. It

is admitted that a portion of the proposed landfill would be located in the area designated as the one hundred year floodplain under the Flood Damage Prevention Ordinance and that the Board unanimously granted local approval for said landfill pursuant to 15 NCAC 13B.0504. Except as admitted, paragraph 6 is denied.

7. It is admitted that at its July 19, 2004 meeting the Board voted to send a letter to the North Carolina Department of Crime Control and Public Safety and that a copy of that letter is attached hereto and made a part hereof, and that without the variance no part of the landfill could be sited in the one hundred year floodplain. Except as admitted, paragraph 7 is denied.

8. It is admitted that at its August 2, 2004 meeting the Board conducted a public hearing on Alligator's request for a variance at which Simon Rich, Dan Moore, Tom Terrell and Chris Roof testified under oath and introduced certain other materials; that after giving all persons in attendance an opportunity to present evidence, the hearing was closed and the Board took the actions alleged in paragraph 8 and stated its intention to adopt formal findings at the time the variance was issued. Except as admitted paragraph 8 is denied.

9. Admit.

10. Denied.

11. It is admitted that the Plaintiff's property is located directly across the Intracoastal Waterway from the site of the proposed recycling and landfill project and that the Plaintiff has a vacation home located on that property. Except as admitted, paragraph 11 is denied.

WHEREFORE the Defendant prays the Court as follows:

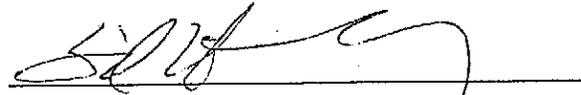
1. That the complaint of the Plaintiff be denied and dismissed;
2. That the costs of this action be taxed against the Plaintiff; and

3. That the Defendant have such other and further relief as to the Court seems proper.

This the 30 day of September, 2004.

CARTER, ARCHIE, HASSELL & HOLBROOK, L.L.P.

By:



Sid Hassell, Jr.

Attorneys for Respondents

Post Office Drawer 2187

Washington, North Carolina 27889

Telephone: (252) 946-1941

CERTIFICATE OF SERVICE

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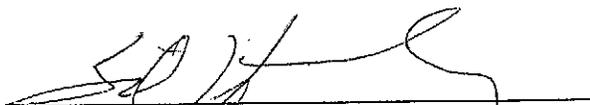
Michael B. Brough
T. C. Morphis, Jr.
Brough Law Firm
1829 E. Franklin St., Suite 800-A
Chapel Hill, NC 27514

Thomas E. Terrell, Jr.
Smith Moore LLP
P.O. Box 21927
Greensboro, NC 27401

This the 30 day of September, 2004.

CARTER, ARCHIE, HASSELL & HOLBROOK, L.L.P.

By:


Sid Hassell, Jr.
Attorneys for Respondents
Post Office Drawer 2187
Washington, North Carolina 27889
Telephone: (252) 946-1941

COUNTY OF HYDE

Board of Commissioners

Beatrice Emmert, Chair
Nathan Sears, Vice-chair
Leon Bryant
W. Mack Carawan Jr.
Jane Hodges

PO Box 188
SWAN QUARTER, NORTH CAROLINA 27885
252-926-4178
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Donald L. Davenport
County Manager

Connie Burleson
Clerk to the Board
Admin Assist County Manager



July 20, 2004

Mr. Bryan E. Beatty, Secretary
NC Dept. of Crime Control and Public Safety
4701 Mail Service Center
Raleigh, NC 27699-4701

RE: Notice of Intent to Grant Variance

Dear Secretary Beatty:

At the regularly scheduled meeting of the Hyde County Board of Commissioners on July 19, 2004, the Commission heard preliminary evidence from Alligator River Recycling, LLC regarding its request for a variance pursuant to NC General Statute 143-215.54A(b) for construction of a landfill for construction and demolition debris, a portion of which would encroach upon the 100-year flood plan. Based upon the evidence presented, the Hyde County Board of Commissioners voted to express its intent to grant a variance pursuant to NC General Statute 143-215A and the Hyde County Flood Damage Prevention Ordinance. A full evidentiary hearing will be scheduled for a future meeting, at which time Alligator River Recycling will be required to show that it meets all requirements for a variance under these ordinances.

Sincerely,

Beatrice O. Emmert
Beatrice O. Emmert, Chair

Hyde County Board of Commissioners

NORTH CAROLINA
HYDE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 64

JAMES E. JOHNSON,
Plaintiff,

v.

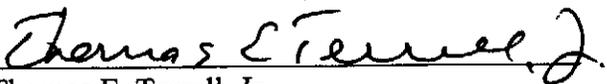
HYDE COUNTY and the
HYDE COUNTY BOARD OF
COMMISSIONERS,

Defendants.

NOTICE OF HEARING

The undersigned hereby gives notice that Alligator River Recycling, LLC's Motion to Intervene in this action, which was filed September 13, 2004, will be placed for hearing on the November 8, 2004 Administrative calendar at the Swan Quarter Fire Department in Hyde County at 9:30 a.m.

This the 26th day of October, 2004.


Thomas E. Terrell, Jr.
NC State Bar No. 13133
Attorney for Alligator River Recycling, LLC

OF COUNSEL:

SMITH MOORE LLP
300 North Greene Street
Suite 1400
PO Box 21927 (27420)
Greensboro, NC 27401
Telephone: 336.378.5200
Facsimile: 336.378.5400

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Notice of Hearing** was served upon plaintiff in this action by forwarding same by Facsimile (919-942-5742) and by United States mail, first class, postage prepaid, addressed to counsel for plaintiff as follows:

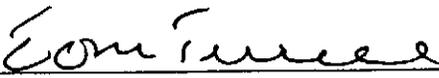
Michael B. Brough
The Brough Law Firm
1829 E. Franklin Street
Suite 800-A
Chapel Hill, NC 27514

and

upon attorney for Hyde County, as follows:

Sidney J. Hassell, Jr.
Carter, Archie, Hassell & Singleton, LLP
P. O. Drawer 2187
112 S. Respass Street
Washington, NC 27889

This the 26th day of October, 2004.



Thomas E. Terrell, Jr.

NORTH CAROLINA

HYDE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 65

JAMES E. JOHNSON,

Plaintiff,

v.

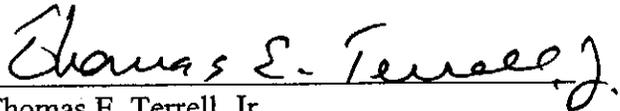
HYDE COUNTY and the
HYDE COUNTY BOARD OF
COMMISSIONERS,

Defendants.

NOTICE OF HEARING

The undersigned hereby gives notice that Alligator River Recycling, LLC's Motion to Intervene in this action, which was filed September 13, 2004, will be placed for hearing on the November 8, 2004 Administrative calendar at the Swan Quarter Fire Department in Hyde County at 9:30 a.m.

This the 26th day of October, 2004.



Thomas E. Terrell, Jr.

NC State Bar No. 13133

Attorney for Alligator River Recycling, LLC

OF COUNSEL:

SMITH MOORE LLP
300 North Greene Street
Suite 1400
PO Box 21927 (27420)
Greensboro, NC 27401
Telephone: 336.378.5200
Facsimile: 336.378.5400

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Notice of Hearing** was served upon plaintiff in this action by forwarding same by Facsimile (919-942-5742) and by United States mail, first class, postage prepaid, addressed to counsel for plaintiff as follows:

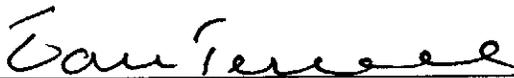
Michael B. Brough
The Brough Law Firm
1829 E. Franklin Street
Suite 800-A
Chapel Hill, NC 27514

and

upon attorney for Hyde County, as follows:

Sidney J. Hassell, Jr.
Carter, Archie, Hassell & Singleton, LLP
P. O. Drawer 2187
112 S. Respass Street
Washington, NC 27889

This the 26th day of October, 2004.



Thomas E. Terrell, Jr.

FILE NO. 04-CvS-64

FILM NO. _____

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF HYDE

SUPERIOR COURT DIVISION

JAMES E. JOHNSON,

Plaintiff,

v.

HYDE COUNTY,

Defendant.

CERTIFICATE OF SERVICE

This is to certify that true copies of the foregoing or attached document have been served upon counsel for the other parties in this action by depositing the same, enclosed in postpaid wrappers, in a postal depository under the control of the United States Postal Service and addressed to:

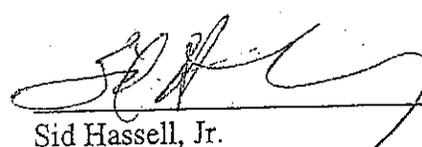
Michael B. Brough
T. C. Morphis, Jr.
Brough Law Firm
1829 E. Franklin St., Suite 800-A
Chapel Hill, NC 27514

Thomas E. Terrell, Jr.
Smith Moore LLP
P.O. Box 21927
Greensboro, NC 27401

This the 10 day of November, 2004.

CARTER, ARCHIE, HASSELL & HOLBROOK, L.L.P.

By:



Sid Hassell, Jr.
Attorneys for Defendant
Post Office Drawer 2187
Washington, North Carolina 27889
Telephone: (252) 946-1941

NORTH CAROLINA
HYDE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 64

JAMES E. JOHNSON,
Plaintiff,

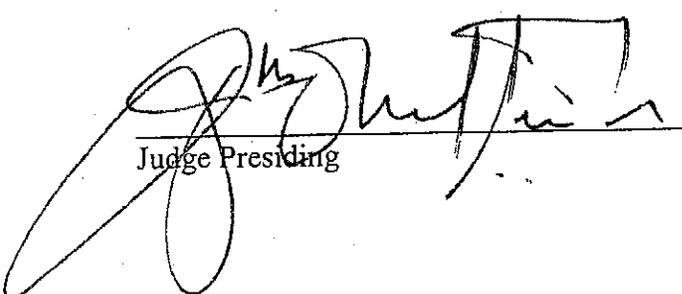
v.

HYDE COUNTY and the
HYDE COUNTY BOARD OF
COMMISSIONERS,
Defendants.

CONSENT ORDER

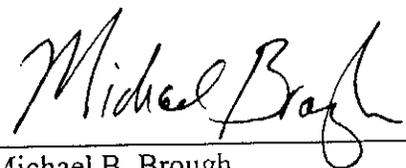
Upon motion of Alligator River Recycling, LLC to intervene in this action, and upon consent of plaintiff James E. Johnson, through his counsel, Michael B. Brough, and Hyde County, through its counsel, Sidney J. Hassell, Jr., and in this Court's discretion, it is hereby ORDERED that Alligator River Recycling, LLC be added as an additional party defendant to this action. The case caption shall be changed to reflect that Alligator River Recycling, LLC is an additional party defendant, and Alligator River Recycling's Answer is hereby accepted as its Answer to plaintiff's Complaint.

This the 2^d day of November, 2004.

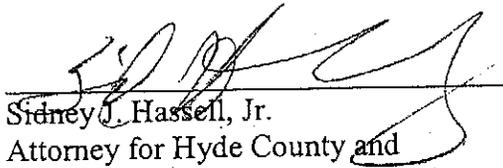


Judge Presiding

CONSENTED TO:



Michael B. Brough
Attorney for James E. Johnson



Sidney J. Hassell, Jr.
Attorney for Hyde County and
Hyde County Board of Commissioners

Filed 11/8/04
10:30AM

FILE NO. 04-CvS-65

FILMNO. _____

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF HYDE

SUPERIOR COURT DIVISION

JAMES E. JOHNSON,

Petitioner,

v.

HYDE COUNTY,

Respondent.

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CERTIFICATE OF SERVICE

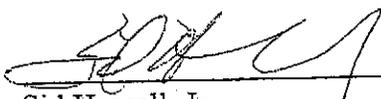
This is to certify that true copies of the foregoing or attached document have been served upon counsel for the other parties in this action by depositing the same, enclosed in postpaid wrappers, in a postal depository under the control of the United States Postal Service and addressed to:

Michael B. Brough
T. C. Morphis, Jr.
Brough Law Firm
1829 E. Franklin St., Suite 800-A
Chapel Hill, NC 27514

Thomas E. Terrell, Jr.
Smith Moore LLP
P.O. Box 21927
Greensboro, NC 27401

This the 10 day of November, 2004.

CARTER, ARCHIE, HASSELL & HOLBROOK, L.L.P.

By: 
Sid Hassell, Jr.
Attorneys for Respondent
Post Office Drawer 2187
Washington, North Carolina 27889
Telephone: (252) 946-1941

NORTH CAROLINA
HYDE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 65

JAMES E. JOHNSON,
Petitioner,

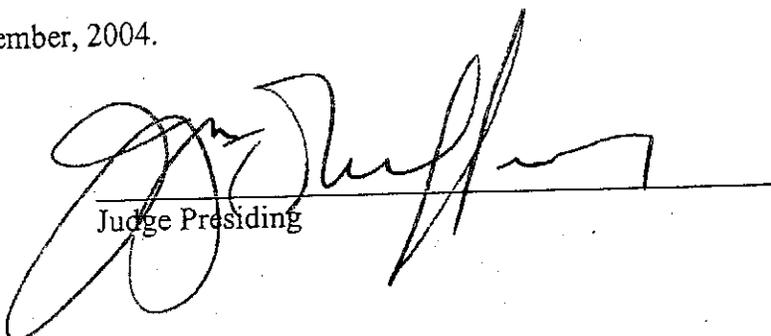
v.

HYDE COUNTY and the
HYDE COUNTY BOARD OF
COMMISSIONERS,
Respondents.

CONSENT ORDER

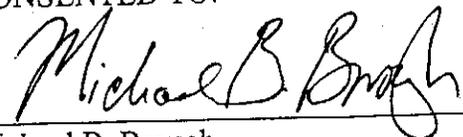
Upon motion of Alligator River Recycling, LLC to intervene in this action, and upon consent of plaintiff James E. Johnson, through his counsel, Michael B. Brough, and Hyde County, through its counsel, Sidney J. Hassell, Jr., and in this Court's discretion, it is hereby ORDERED that Alligator River Recycling, LLC be added as an additional party Respondent to this action. The case caption shall be changed to reflect that Alligator River Recycling, LLC is an additional party Respondent, and Alligator River Recycling's Response is hereby accepted as its Response to Petitioner's Petition for Review in the Nature of Certiorari.

This the 2^d day of November, 2004.

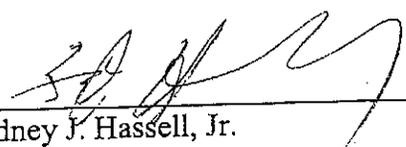


Judge Presiding

CONSENTED TO:



Michael B. Brough
Attorney for James Johnson



Sidney J. Hassell, Jr.
Attorney for Hyde County
and Hyde County Board of Commissioners

Filed 11/8/04
S. Sadler CSC, Hyde Co.

NORTH CAROLINA

HYDE COUNTY

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

04 CVS 64

JAMES E. JOHNSON,

Plaintiff,

v.

HYDE COUNTY and the
HYDE COUNTY BOARD OF
COMMISSIONERS,

Defendant,

and

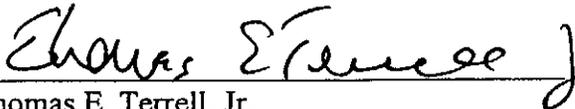
ALLIGATOR RIVER RECYCLING, LLC,

Additional Defendant.

NOTICE OF HEARING

PLEASE TAKE NOTICE that the undersigned hereby gives notice that Alligator River Recycling, LLC's Motion for Summary Judgment in this action will be heard during the Hyde County December 13, 2004 Civil Session of Superior Court at 9:00 a.m. or as soon thereafter as it may be heard, at the Swan Quarter Fire Department, or other temporary location as announced or determined by the Administrative Office of the Court or by the Senior Resident Judge Presiding.

This the 28th day of November, 2004.



Thomas E. Terrell, Jr.

NC State Bar No. 13133

Attorney for Alligator River Recycling, LLC

OF COUNSEL:

SMITH MOORE LLP
300 North Greene Street
Suite 1400
PO Box 21927 (27420)
Greensboro, NC 27401
Telephone: 336.378.5200
Facsimile: 336.378.5400

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Notice of Hearing** was served upon plaintiff in this action by forwarding same by Facsimile (919-942-5742) and by United States mail, first class, postage prepaid, addressed to counsel for plaintiff as follows:

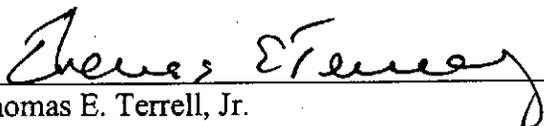
Michael B. Brough
The Brough Law Firm
1829 E. Franklin Street
Suite 800-A
Chapel Hill, NC 27514

and

upon attorney for Hyde County, as follows:

Sidney J. Hassell, Jr.
Carter, Archie, Hassell & Singleton, LLP
P. O. Drawer 2187
112 S. Respass Street
Washington, NC 27889

This the 28th day of November, 2004.



Thomas E. Terrell, Jr.

NORTH CAROLINA

HYDE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 65

JAMES E. JOHNSON,

Petitioner,

v.

HYDE COUNTY and the
HYDE COUNTY BOARD OF
COMMISSIONERS,

Respondents,

and

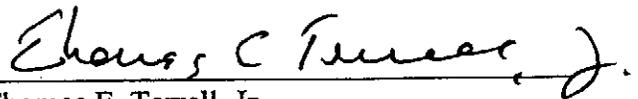
ALLIGATOR RIVER RECYCLING, LLC,

Additional Respondent.

NOTICE OF HEARING

PLEASE TAKE NOTICE that the undersigned hereby gives notice that Alligator River Recycling, LLC's Motion for Summary Judgment in this action will be heard during the Hyde County December 13, 2004 Civil Session of Superior Court at 9:00 a.m. or as soon thereafter as it may be heard, at the Swan Quarter Fire Department, or other temporary location as announced or determined by the Administrative Office of the Court or by the Senior Resident Judge Presiding.

This the 28th day of November, 2004.



Thomas E. Terrell, Jr.
NC State Bar No. 13133
Attorney for Alligator River Recycling, LLC

OF COUNSEL:

**SMITH MOORE LLP
300 North Greene Street
Suite 1400
PO Box 21927 (27420)
Greensboro, NC 27401
Telephone: 336.378.5200
Facsimile: 336.378.5400**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Notice of Hearing** was served upon Petitioner in this action by forwarding same by Facsimile (919-942-5742) and by United States mail, first class, postage prepaid, addressed to counsel for Petitioner as follows:

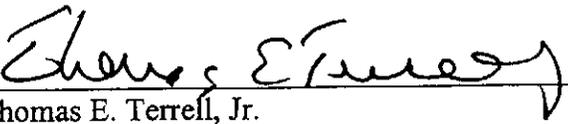
Michael B. Brough
The Brough Law Firm
1829 E. Franklin Street
Suite 800-A
Chapel Hill, NC 27514

and

upon attorney for Hyde County, as follows:

Sidney J. Hassell, Jr.
Carter, Archie, Hassell & Singleton, LLP
P. O. Drawer 2187
112 S. Respass Street
Washington, NC 27889

This the 28th day of November, 2004.



Thomas E. Terrell, Jr.

NORTH CAROLINA
HYDE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 64

JAMES E. JOHNSON,
Plaintiff,

v.

HYDE COUNTY and the
HYDE COUNTY BOARD OF
COMMISSIONERS,

Defendant,

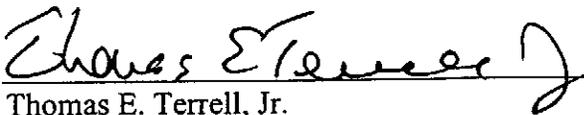
and

ALLIGATOR RIVER RECYCLING, LLC,
Additional Defendant.

MOTION FOR SUMMARY JUDGMENT

Alligator River Recycling, LLC, Additional Defendant, by and through counsel, and pursuant to Rule 56 of the North Carolina Rules of Civil Procedure, moves the Court for Summary Judgment on the grounds that there is no genuine issue of a material fact and that it is entitled to judgment as a matter of law. In support of this Motion, Additional Defendant relies on the pleadings, answers, affidavits and documents of public record in this case.

This the 26th day of November, 2004.


Thomas E. Terrell, Jr.
NC State Bar No. 13133
Attorney for Alligator River Recycling, LLC

OF COUNSEL:

SMITH MOORE LLP
300 North Greene Street
Suite 1400
PO Box 21927 (27420)
Greensboro, NC 27401
Telephone: 336.378.5200
Facsimile: 336.378.5400

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Motion for Summary Judgment** was served upon plaintiff in this action by forwarding same by Facsimile (919-942-5742) and by United States mail, first class, postage prepaid, addressed to counsel for plaintiff as follows:

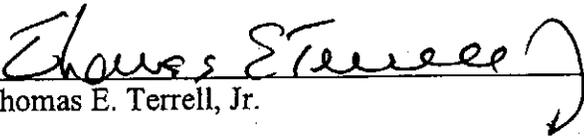
Michael B. Brough
The Brough Law Firm
1829 E. Franklin Street
Suite 800-A
Chapel Hill, NC 27514

and

upon attorney for Hyde County, as follows:

Sidney J. Hassell, Jr.
Carter, Archie, Hassell & Singleton, LLP
P. O. Drawer 2187
112 S. Respass Street
Washington, NC 27889

This the 28th day of November, 2004.



Thomas E. Terrell, Jr.

NORTH CAROLINA
HYDE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 65

JAMES E. JOHNSON,
Petitioner,

v.

HYDE COUNTY and the
HYDE COUNTY BOARD OF
COMMISSIONERS,

Respondent,

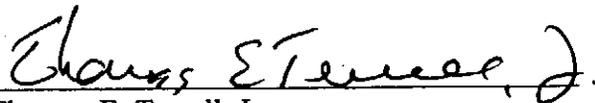
and

ALLIGATOR RIVER RECYCLING, LLC,
Additional Respondent.

MOTION FOR SUMMARY JUDGMENT

Alligator River Recycling, LLC, Additional Respondent, by and through counsel, and pursuant to Rule 56 of the North Carolina Rules of Civil Procedure, moves the Court for Summary Judgment on the grounds that there is no genuine issue of a material fact and that it is entitled to judgment as a matter of law. In support of this Motion, Additional Respondent relies on the pleadings, answers, affidavits and documents that comprise the public record in this case, which is being prepared for service on plaintiff.

This the 28th day of November, 2004.



Thomas E. Terrell, Jr.
NC State Bar No. 13133
Attorney for Alligator River Recycling, LLC

OF COUNSEL:

SMITH MOORE LLP
300 North Greene Street
Suite 1400
PO Box 21927 (27420)
Greensboro, NC 27401
Telephone: 336.378.5200
Facsimile: 336.378.5400

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Motion for Summary Judgment** was served upon plaintiff in this action by forwarding same by Facsimile (919-942-5742) and by United States mail, first class, postage prepaid, addressed to counsel for Petitioner as follows:

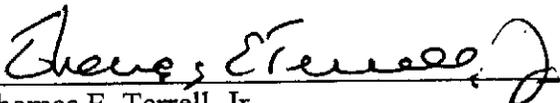
Michael B. Brough
The Brough Law Firm
1829 E. Franklin Street
Suite 800-A
Chapel Hill, NC 27514

and

upon attorney for Hyde County, as follows:

Sidney J. Hassell, Jr.
Carter, Archie, Hassell & Singleton, LLP
P. O. Drawer 2187
112 S. Respass Street
Washington, NC 27889

This the 28th day of November, 2004.



Thomas E. Terrell, Jr.