

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
23 CV 024626-910 and  
23 CV 028002-910

NORTH CAROLINA DEPARTMENT OF  
ENVIRONMENTAL QUALITY,  
DIVISION OF ENERGY, MINERAL, AND LAND  
RESOURCES,

PETITIONER,

v.

WAKE STONE CORPORATION,

RESPONDENT.

**SETTLEMENT AGREEMENT**

Wake Stone Corporation (“Wake Stone”) and the North Carolina Department of Environmental Quality (“Department”), Division of Energy, Mineral, and Land Resources (“Division”) (collectively referred to as “the Parties”), hereby enter into this Settlement Agreement (“Agreement”) in order to resolve matters in controversy between them.

**BACKGROUND**

The underlying controversies arose out of the Division’s February 17, 2022 denial of the application submitted by Wake Stone to the Division for a modification to Mining Permit No. 92-10. Upon a petition for contested case hearing by Wake Stone, the matter was litigated before an administrative law judge (“ALJ”). *Wake Stone Corp. v. N.C. Dept. of Env. Quality, Div. of Energy, Mineral, & Land Resources*, 22 EHR 00952. The ALJ issued a final decision (“Final Decision”) on August 11, 2023. Following the Final Decision, on September 11, 2023 the ALJ ordered (“Fee Order”) the Division to pay attorney and witness fees and costs to Wake Stone in the amount of \$878,966.58.

The Division separately petitioned for judicial review by Wake County Superior Court of the Final Decision and the Fee Order. *N.C. Dept. of Env. Quality, Div. of Energy, Mineral, & Land Resources v. Wake Stone Corp.*, 23 CV 024626-910 (Final Decision); *N.C. Dept. of Env. Quality, Div. of Energy, Mineral, & Land Resources v. Wake Stone Corp.*, 23 CV 028002-910 (Fee Order). Those petitions are currently pending.

### **AGREEMENT**

In order to avoid the cost and delay of additional litigation, the Parties have entered into this Agreement in good faith and IT IS THEREFORE AGREED BY THE PARTIES AS FOLLOWS:

1. WITHDRAWAL OF PETITIONS: Within seven calendar days following the effective date of this Agreement, the Division shall withdraw with prejudice both petitions for judicial review currently pending before the Wake County Superior Court in the matters numbered 23 CV 024626-910 and 23 CV 028002-910.

2. SETTLEMENT OF FEES AND COSTS: In full settlement of the Fee Order, the Division shall pay the amount of five hundred thousand dollars (\$500,000.00) (“Settlement Amount”) to Wake Stone in accordance with the terms set forth below:

- a. TIMING OF PAYMENT(S): Full payment by the Division to Wake Stone shall be completed on or before the end of the current fiscal year (June 30, 2024).
- b. METHOD OF PAYMENT: Payment(s) shall be made by money order or check made payable to Wake Stone Corporation and delivered to the following address:

By hand delivery or courier:  
Wake Stone Corporation  
Attn: Thomas Oxholm  
6821 Knightdale Blvd.  
Knightdale, NC 27545

By US Mail:  
Wake Stone Corporation  
Attn: Thomas Oxholm  
PO Box 190  
Knightdale, NC 27545

c. OTHER FEES AND COSTS: Except as specified in this Agreement, each Party shall bear its own fees and costs with respect to the above-referenced litigation.

d. AVAILABILITY OF FUNDS: Any and all payments to Wake Stone shall be dependent upon and subject to the availability of funds appropriated or allocated to the Division that may be lawfully used for the purpose set forth in this Agreement.

3. RELEASE OF CLAIMS BY WAKE STONE: Wake Stone hereby fully releases and forever discharges any and all claims, damages, demands, actions or causes of action, or suits at law or in equity of whatever kind or nature, whether based upon any legal or equitable theory of recovery, known or unknown, past or present, suspected to exist or not suspected to exist, anticipated or not anticipated, which have arisen or are now arising against the Division in connection with the above-referenced litigation and above-referenced permit modification application process and decision, including without limitation: all claims by whatever name called arising under any federal, state, or local constitution, statute, enactment, common law, rule, regulation, or order; all issues that could be raised under the Administrative Procedure Act through a contested case or otherwise; all claims by whatever name called that are adjudicated by a federal or state court, administrative law judge, or administrative agency; all attorneys fees, witness fees, or costs pursuant to N.C. Gen. Stat. § 150B-33, N.C. Gen. Stat. § 6-19.1, or otherwise; and all claims which could be brought under the North Carolina Tort Claims Act. The release set forth in the previous sentence shall also cover any employee, agent, representative, or contractor of the

Division or Department in that person or entity's official and individual capacity. Nothing in this section shall release the Division or Wake Stone from any obligation under this Agreement and the release in this section shall not be asserted by the Division against any claim asserted by Wake Stone alleging breach of the Agreement by the Division.

4. NO ADMISSION OF LIABILITY: This Agreement is not to be construed as an admission of any liability under, or violation of, any federal, state, or local constitution, statute, enactment, rule, regulation, or common law, or any duty owed by the Division or Wake Stone.

5. CONSIDERATION: The promises and obligations made by Wake Stone in this Agreement, including but not limited to those set forth in Paragraphs 2 and 3, are made in consideration for the promises and obligations of the Division in this Agreement, including but not limited to those set forth in Paragraphs 1 and 2.

6. RULE 408: The Parties specifically intend that this Agreement is a mutually accepted offer of valuable consideration in compromise of pending claims as contemplated in Rule 408 of the North Carolina Rules of Evidence.

7. NO LIMITATION OF ENFORCEMENT: Nothing in this Agreement shall restrict the right of the Division to inspect or take enforcement action against Wake Stone for any new or existing violations of the Mining Act of 1971, N.C. Gen. Stat. § 74-46 *et seq.*, permit conditions, statutes, enactments, or rules promulgated thereunder. Similarly, nothing in this Agreement shall restrict Wake Stone's right to contest any new or subsequent enforcement or permitting action taken by the Division under the Mining Act.

8. SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon the Parties and their successors and assigns.

9. REPRESENTATION OF AUTHORITY: The undersigned represent and warrant that they are authorized to enter into this Agreement on behalf of the Parties hereto.

10. NO DETERMINATION: This Agreement shall not be construed to be a determination on the merits of any factual allegations or legal claims advanced by any party to the above-referenced litigation.

11. MUTUALITY OF DRAFTING: The Parties acknowledge that this Agreement was jointly drafted and that there should be no presumptions against any Party as the drafter of the Agreement.

12. AGREEMENT CONTINGENT ON APPROVAL: This Agreement shall not be final and effective until the date upon which it is approved by the North Carolina Attorney General's Office. In the event this approval is not obtained within sixty days of the execution of this Agreement, the obligations of all Parties shall be dissolved.

13. EFFECTIVE DATE: Except as provided in paragraph 12, this Agreement shall become effective upon execution by both Parties. In the interests of time and efficiency, the signature pages may be delivered separately to the Parties. Scanned and e-mailed execution are as valid as original execution. Thereafter, all copies of the Agreement and executed signature pages shall constitute an original. However, in making proof with respect to this Agreement it will be necessary to produce only one copy hereof signed by the Party to be charged.

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FOR WAKE STONE CORPORATION

FOR THE NORTH CAROLINA  
DEPARTMENT OF ENVIRONMENTAL  
QUALITY, DIVISION OF ENERGY,  
MINERAL, AND LAND RESOURCES

\_\_\_\_\_  
Thomas B. Oxholm  
Title: Executive Vice President

Date: \_\_\_\_\_

\_\_\_\_\_  
*William E. Vinson, Jr.*  
Title: *Interim Director*  
*October 31, 2023*

Date: \_\_\_\_\_

FOR WAKE STONE CORPORATION

FOR THE NORTH CAROLINA  
DEPARTMENT OF ENVIRONMENTAL  
QUALITY, DIVISION OF ENERGY,  
MINERAL, AND LAND RESOURCES

DocuSigned by:  
*Thomas B. Oxholm*  
1293542B29E743D...

Thomas B. Oxholm

Title: Executive Vice President

10/26/2023 | 17:06:22 EDT  
Date: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_


JOSH STEIN  
ATTORNEY GENERAL



REPLY TO: CAROLYN McLAIN  
ENVIRONMENTAL DIVISION  
TEL: (919)716-6600  
FAX: (919)716-6767

## **MEMORANDUM**

To: Wake Stone file

From: Carolyn McLain   
Assistant Attorney General

Re: *N.C. Dept. of Env'tl. Quality, Div. of Energy, Mineral, & Land Resources v. Wake Stone Corp.*, 23 CV 024626 and 028002 (Wake Super. Ct.)

Date: November 7, 2023

This memorandum regards the effective date of the Settlement Agreement in the above-referenced matter.

The Division of Energy, Mineral, and Land Resources executed the Agreement on October 31, 2023. Wake Stone Corporation's signature on the Agreement is dated October 26, 2023. Despite that signature date, Wake Stone represented that it was not authorized to release the signature until November 6, 2023. Wake Stone did not communicate to the Division until November 6, 2023, that it had signed the Agreement, and did not transmit its signature until that date. Wake Stone has represented that the effective date of the Agreement is November 6, 2023. *See* Email from H. Wells, Ward & Smith, P.A., to C. McLain, N.C. Dept. of Justice (Nov. 7, 2023) (attached).

Accordingly, the Division may treat the Agreement as having an effective date of November 6, 2023.

**From:** [Hayley R. Wells](#)  
**Sent:** Tuesday, November 7, 2023 10:06 AM  
**To:** [McLain, Carolyn](#); [Charles Ellis](#)  
**Cc:** [Peterson, Kyle](#); [Bernstein, Marc](#)  
**Subject:** RE: Wake Stone

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Carolyn,

Effective date is yesterday. He signed before going out of town, but we had to receive authorization before we could release the signature.

Thanks for checking.

Hayley



**Hayley R. Wells**  
Attorney

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**Ward and Smith, P.A.**  
82 Patton Avenue, Suite 300 (28801)  
Post Office Box 2020  
Asheville, NC 28802-2020  
P: [828.348.6018](tel:828.348.6018) | F: [828.348.6077](tel:828.348.6077) | M: [828.450.3489](tel:828.450.3489)  
[www.wardandsmith.com](http://www.wardandsmith.com)  
[Camp Lejeune Water Contamination Lawsuit Information](#)



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**From:** McLain, Carolyn <[CMcLain@ncdoj.gov](mailto:CMcLain@ncdoj.gov)>  
**Sent:** Tuesday, November 7, 2023 10:04 AM  
**To:** Charles Ellis <[ACE@wardandsmith.com](mailto:ACE@wardandsmith.com)>; Hayley R. Wells <[HRW@wardandsmith.com](mailto:HRW@wardandsmith.com)>  
**Cc:** Peterson, Kyle <[kpeterson@ncdoj.gov](mailto:kpeterson@ncdoj.gov)>; Bernstein, Marc <[Mbernstein@ncdoj.gov](mailto:Mbernstein@ncdoj.gov)>  
**Subject:** Re: Wake Stone

Hayley and Charles,

I was looking at the agreement this morning and it appears that Tom Oxholm's electronic signature is dated 10/26. Is that correct or was that date in error? Because we were not informed of your signature until yesterday, we believe that the effective date of the agreement should be yesterday. Can you please confirm that the effective date of the agreement is yesterday, 11/6?

Thanks,  
Carolyn

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**From:** McLain, Carolyn <CMcLain@ncdoj.gov>  
**Sent:** Monday, November 6, 2023 6:01 PM  
**To:** Charles Ellis <ACE@wardandsmith.com>; Hayley R. Wells <HRW@wardandsmith.com>  
**Cc:** Peterson, Kyle <kpeterson@ncdoj.gov>; Bernstein, Marc <Mbernstein@ncdoj.gov>  
**Subject:** Re: Wake Stone

Thank you!  
Best,  
Carolyn

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**From:** Charles Ellis <ACE@wardandsmith.com>  
**Sent:** Monday, November 6, 2023 5:51 PM  
**To:** Hayley R. Wells <HRW@wardandsmith.com>  
**Cc:** McLain, Carolyn <CMcLain@ncdoj.gov>; Peterson, Kyle <kpeterson@ncdoj.gov>; Bernstein, Marc <Mbernstein@ncdoj.gov>  
**Subject:** Re: Wake Stone

I echo that. Thanks to all of you.

Sent from my iPhone



**Charles Ellis**  
Attorney

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**Ward and Smith, P.A.**

Post Office Box 8088 | Greenville, NC 27835-8088  
Overnight Delivery:  
120 West Fire Tower Road | Winterville, NC 28590  
P: 252.215.4007 | F: 252.215.4077 | M: 252.714.1839  
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On Nov 6, 2023, at 5:44 PM, Hayley R. Wells <HRW@wardandsmith.com> wrote:

Thanks Carolyn. Attached is the fully executed agreement. Thanks to each of you for your help in bringing this matter to a resolution.

Sincerely,  
Hayley

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**From:** McLain, Carolyn <[CMcLain@ncdoj.gov](mailto:CMcLain@ncdoj.gov)>  
**Sent:** Wednesday, November 1, 2023 12:08 PM  
**To:** Hayley R. Wells <[HRW@wardandsmith.com](mailto:HRW@wardandsmith.com)>; Charles Ellis  
<[ACE@wardandsmith.com](mailto:ACE@wardandsmith.com)>  
**Cc:** Peterson, Kyle <[kpeterson@ncdoj.gov](mailto:kpeterson@ncdoj.gov)>; Bernstein, Marc  
<[Mbernstein@ncdoj.gov](mailto:Mbernstein@ncdoj.gov)>  
**Subject:** Wake Stone

Hayley and Charles,  
Please see attached the signature page with DEMLR's execution completed.  
Thanks,  
Carolyn

<image001.png> Carolyn McLain (she/her)  
Assistant Attorney General  
Environmental Division  
Phone: 919-716-6600  
Email: [cmclain@ncdoj.gov](mailto:cmclain@ncdoj.gov)  
114 W. Edenton St., Raleigh, NC 27603  
[ncdoj.gov](http://ncdoj.gov)

Please note messages to or from this address may be public records.

<2023.10.31 - Settlement Agreement - fully executed, 4869-2553-7677.pdf>