

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
15 CVS 13685

JOHN J. WOODARD JR.,)
)
Plaintiff,)
)
v.)
)
NORTH CAROLINA DEPARTMENT OF)
ENVIRONMENT AND NATURAL)
RESOURCES, DIVISION OF ENERGY,)
MINERAL AND LAND RESOURCES)
)
Defendant.)

MOTION TO DISMISS

Pursuant to Rules 12(b)(1) and Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, Defendant, North Carolina Department of Environmental Quality (“NCDEQ”), Division of Energy, Mineral and Land Resources, Energy Section (“DEMLR”), respectfully moves this Court to dismiss with prejudice the Complaint filed in the above captioned matter by Plaintiff John J. Woodard (“Plaintiff”).

LACK OF SUBJECT MATTER JURISDICTION

DEMLR moves the Court to dismiss the Complaint pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction because Plaintiff lacks standing to bring the claims asserted in the Complaint and has failed to exhaust administrative remedies.

FAILURE TO STATE A CLAIM

DEMLR moves the Court to dismiss the Complaint pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted because Plaintiff has failed to plead an essential

element of his claims, the Complaint reveals on its face that no law supports Plaintiff's claims, and the facts disclosed in the Complaint necessarily defeat Plaintiff's claims.

WHEREFORE, Defendant prays the Court as follows:

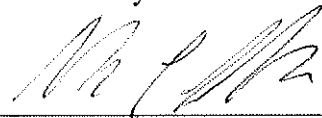
1. That the Complaint be dismissed with prejudice pursuant to Rule 12(b)(1) and Rule 12(b)(6).

2. That this Court grant Defendant such additional and further relief as the Court may deem just and proper.

Respectfully submitted this is the 18th day of November, 2015.

ROY COOPER
Attorney General

By: _____



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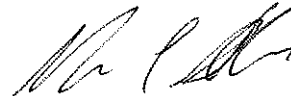
NC Department of Justice
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(919) 716-6600 - telephone
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Counsel for Defendant

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **MOTION TO DISMISS** has been served on the Petitioner by depositing a copy of the same in an official depository of the United States Mail, first class, postage prepaid, and addressed to Petitioner's counsel of record as follows:

Elliot Engstrom
Civitas Institute Center for Law and Freedom
100 South Harrington St.
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Counsel for Plaintiff

This the 18th day of November, 2015.



Asher P. Spiller
Assistant Attorney General