

***I Had NO Idea This Was Coming!***  
**Public Duty Doctrine Applies to DENR in On-Site Cases But...**

**Summary:** The Court of Appeals recognized that the public duty doctrine applies to DENR in on-site cases but that an exception to the doctrine also applies. Because an exception applies, DENR will still be liable under the State Tort Claims Act (STCA) for negligence related to the issuance of on-site permits by agents of the State.

**Case:** *Watts v. NC Dept. of Env't. and Nat. Resources*, \_\_\_ N.C. App. \_\_\_, 641 S.E.2d 811 (2007)

**Facts:** In 1999, health department issued an on-site permit for a lakefront lot; Watts purchased the lot. In 2002, Watts applied for a new permit because he wanted to move the driveway. The second application was denied and the first permit revoked. He purchased adjoining property to support the system. He sued DENR and the Health Department under the State Tort Claims Act and won a hefty award. DENR appealed.

**Discussion:** One of DENR's many arguments on appeal was that the claim should be barred entirely by the "public duty doctrine." In short, the public duty doctrine is a principle that protects governments from liability even if the government has waived its sovereign or governmental immunity (through the purchase of insurance or through the STCA). The doctrine may apply if the government owes a duty to the general public (particularly a statutory duty) rather than to an individual. A government could owe a duty to an individual if (1) there is a special relationship between the injured party and the government or (2) the government has created a special duty to an individual by promising protection. With respect to lawsuits against local governments, the courts have interpreted the doctrine very narrowly. It only applies in the law enforcement context.

In 1998, the N.C. Supreme Court did extend the doctrine to protect state agencies. *Stone v. N.C. Dept. of Labor*, 347 N.C. 473, 495 S.E.2d 711 (1998) (shielding the Dept. from liability related to a failure to conduct inspections after employees of a food products plant died in a fire). The *Watts* case builds on *Stone* by concluding for the first time that the public duty doctrine does extend to protect DENR in on-site cases. However, the *Watts* court goes further by stating that the special duty exception applied. The court explained:

- There was a promise of protection when it issued the permit (suitable soil was a condition precedent for purchasing the lot).
- DENR failed to keep its promise when it revoked the permit (through its agent).
- Watts relied on the promise and suffered damages.

Because the exception applied, the agency could still be held liable.

One of the three judges wrote a dissent. He agreed that the public duty doctrine applied in this situation but disagreed with the majority's conclusion that the special duty exception applied. This decision will be appealed to the N.C. Supreme Court so stay tuned...