

# ***Real People – Real Stories***

## **Holly Springs, NC (Wake County)**



**Exchange Project**  
BECAUSE OUR ENVIRONMENT AFFECTS OUR HEALTH

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## **Significance of Case**

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For more than three decades, the predominately Black neighborhoods in and around Holly Springs, NC have received a disproportionate share of Wake County's solid waste. In the late 1990s, residents used community organizing and legal action to try and halt Wake County's proposal to build a tenth permitted solid waste facility near the town. Despite significant resident opposition and more than five years of struggle, the state Supreme Court blocked a final attempt by the town to have permits for the South Wake Landfill revoked. Shortly thereafter, the county reached a settlement with opponents of the landfill, providing some protections for the community in exchange for rights to build the landfill. County commissioners awarded a contract to build and operate the landfill in June 2006.

## **Community History**

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Settlers founded Holly Springs in the early 1800s as a village at the crossroads of routes south towards Fayetteville and southeast towards Smithfield. The growing population constructed a general store, a Baptist Church and a Masonic Lodge. By 1860, the village had five stores, the Masonic Lodge and two schools. The village's population diminished during the Civil War as the male population joined the army, and the construction of the Chatham Railroad drew many families to the neighboring village of Apex. Holly Springs became a "deserted village" by 1871 (Town of Holly Springs, 2003). The arrival of Colonel George Alford in 1875 brought economic revival to the town. Colonel Alford was instrumental in the incorporation of the area in 1876 and acted as the political voice of the town until 1923. World War I and the Depression limited prosperity as young people left the area to find work.

In 1984, a group of students from the Department of City and Regional Planning (DCRP) at UNC reported that Holly Springs lacked basic services such as modern housing, grocery stores, schools, health care and employment (Brueggermann, 1993). This report also estimated that about 25% of residents were living in poverty and noted that land values were lower than in neighboring towns such as Apex and Cary. A 1992 study, also from the DCRP, cited improvements in employment, sewers, and housing but highlighted the continued absence of health services, grocery stores and local jobs (ibid).

In 1987, Holly Springs constructed a sewer system that provided the infrastructure necessary to attract industry. Warp Technology, a polyester fiber factory, moved into the area and employed 70 workers. However, employment data from the 1990 census

estimated unemployment in Holly Springs at 6.3%, which exceeded the Wake County figure of 3.4%.<sup>1</sup>

The 1990 U.S. Census<sup>2</sup> estimated a Black population in Holly Springs of 705 people or approximately 77.6% of the total population<sup>3</sup> (Brueggermann, 1993; U.S. Census Bureau, 2000). During the period between 1990 and 2000, the population in Holly Springs grew from 908 to 9192 people, a growth of 912%, due to annexation of land surrounding the town, as well as new construction (Bonner, 1998a; U.S. Census Bureau, 1990, 2000). Much of the construction occurring in the early 1990s consisted of new homes selling for \$180,000 or more. This encouraged an influx of affluent White buyers and shifted the racial makeup of Holly Springs. Even though the Black population increased in number to 1714 by the 2000 U.S. Census, the proportion of Black residents in Holly Springs decreased from 77.6% to 18.6% of the town's population.<sup>4</sup>

A research effort to identify, geographically map, and analyze permitted solid waste facilities in North Carolina reveals that, as of 2006, the Town of Holly Springs and its surrounding area are the location of ten permitted solid waste facilities,<sup>5</sup> including a facility originally proposed for the area in 1992 and permitted to operate in 2007<sup>6</sup> (Norton, 2006). In addition, the town has at least two known pre-regulatory dump sites which were sited prior to the requirement of permits.<sup>7</sup> That makes a total of twelve known facilities in the Holly Springs area.

Table 1 provides information on the ten permitted landfill facilities, including the name, street address, type of permit, and the status of the landfill as open or closed.

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<sup>1</sup> Unemployment estimates by local residents, including the town's mayor, were as high as 12-15% (Brueggerman, 1993).

<sup>2</sup> The geographic boundaries for Holly Springs are based U.S. census "place" designation.

<sup>3</sup> Historical accounts taken from the Holly Spring website and a community diagnosis document completed by UNC students in the School of Public Health do not mention the substantial Black population.

<sup>4</sup> The estimates of the Black population taken from the 2000 U.S. Census used the Black or African American alone category.

<sup>5</sup> Solid waste facilities include open and closed landfills, and the recycling, compost, or transfer services related to solid waste management

<sup>6</sup> The ten facilities are located on eight geographic sites. Two of the geographic sites were granted multiple facility permits. These distinct permitted facilities have distinct administrative dates (e.g., when proposed, opened, and closed) and distinct permitted uses (e.g., municipal solid waste, construction and demolition for the waste materials from the construction, remodeling, demolition, repair, and deconstruction of buildings, compost, land clearing and inert debris, or waste transfer station) and are thus considered distinct for purposes of this case study.

<sup>7</sup> Pre-regulatory dump sites include the "Holly Springs Dump" at the Bass Lake site; and the "Old Cary Dump" located about one mile west of Main Street on the south side of West Holly Springs Road.

**Table 1. Known Landfill Facilities near Holly Springs, NC (2006)**

Name of site	Location	Permit Type (n=10)	Status
Sorrell Landfill (Holly Springs Dump)	Near 8000 Smith Rd (SR 1303)	• Municipal Solid Waste (unlined)	Closed 1994
Wake County (Feltonville) Landfill	6000 Old Smithfield Rd	• Municipal Solid Waste (unlined)	Closed 1997
Wake County (Feltonville) Landfill	6000 Old Smithfield Rd	• Construction/Debris	Closed 2003
South Wake Transfer Station	6000 Old Smithfield Rd	• Waste Transfer (e.g., asbestos and household hazardous waste)	Open
South Wake Landfill (Waste Industries USA, Inc)	Hwy 55 (adjacent to the 6000 Old Smithfield sites)	• Municipal Solid Waste	Opens 2007
BFI – Holly Springs Disposal, Inc.	4300 Holly Springs-Apex Rd	• Construction/Debris	Open
Currin Brothers Landfill	4525 Sunset Lake Rd	• Land Clearing/Debris	Open
Hwy 55 C&D Landfill & Recycling Ctr	5940 Old Smithfield Rd	• Construction/Debris	Open
Hwy 55 C&D Landfill & Recycling Ctr	5940 Old Smithfield Rd	• Compost	Open
Red Rock Disposal, LLC.	7130 New Landfill Rd	• Construction/Debris	Open
Holly Springs Dump	Bass Lake site	• Not permitted	Closed
Old Cary Dump	South side of Holly Springs Road	• Not permitted	Closed

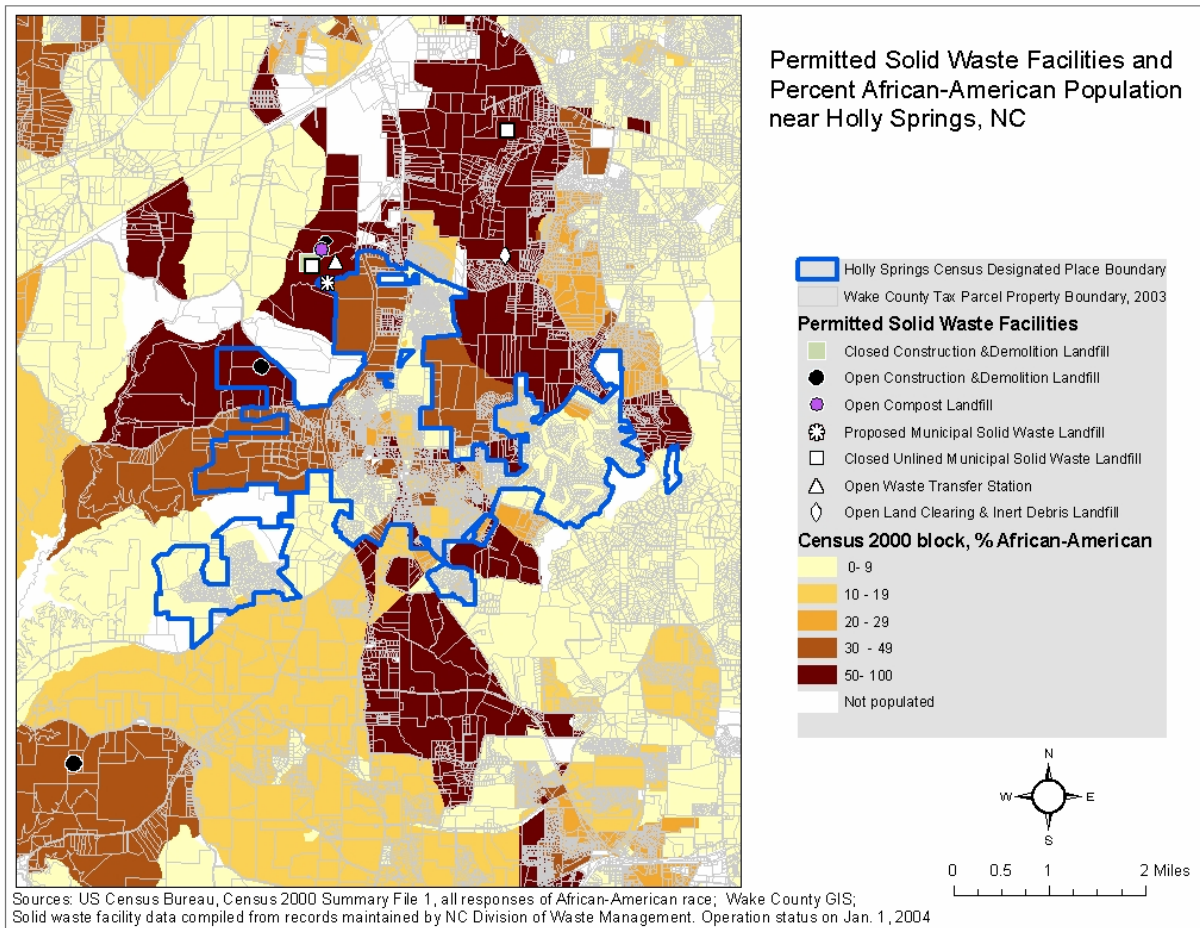
Source: Norton, J. (2006)

As can be seen in Figure 1, seven of the permitted facilities are located just outside the northern town boundary, and one of the landfill facilities is located within the town. Six of the facilities are located within two miles of each other. Five of the existing facilities and the new proposed facility are located within the same ½-mile radius. Nine (90%) of the ten permitted facilities are located within predominantly Black communities, which is defined as US Census Blocks with 50-100% Black population. Only one of the ten solid waste facilities (including the future landfill) near Holly Springs is located in a primarily White community.

The Superfund Section of the North Carolina Department of Environment and Natural Resources (DENR) lists the Sorrell Landfill and the Wake County (Feltonville) Landfill as inactive<sup>8</sup> hazardous sites (North Carolina Department of Environment and Natural Resources, 2002). Wake County lists the 6000 Old Smithfield Road site, using the Feltonville landfill name, as a collection center for household hazardous waste (Wake County, 2003). There is no record of hazardous waste being permitted in the other landfill facilities.

<sup>8</sup> “Inactive” waste sites are those sites that are no longer in use. This does not necessarily mean that they have been cleaned up.

**Figure 1. Map of landfills near Holly Springs, NC (2006)**



Source: Norton, J. (2006)

One way to analyze the practice of siting landfills near Holly Springs is using a traditional “container” method of comparing the number of facilities within selected geographic areas.<sup>9</sup> For this example, we can compare the proportion of county landmass located within the town to the proportion of county landfills located near the town. The Town of Holly Springs contains approximately 1.2% of the landmass of Wake County.<sup>10</sup> There are 91 solid waste facilities identified in Wake County, including pre-regulatory “dumps” and the permitted facilities.<sup>11</sup> Twelve (13%) of these known facilities, including the newest landfill, are within two miles of Holly Springs, and most are just outside the

<sup>9</sup> E. Talen and L. Anselin reference this political science technique in their article, “Assessing spatial equity: an evaluation of measures of accessibility to public playgrounds.” *Environment and Planning* (1998); 30: 595-613.

<sup>10</sup> The 7.5 square miles which the US Census identifies as the size of Holly Springs, plus a one mile buffer around the town, is approximately 10 square miles. Since Wake County includes 832 square miles of land, the Town of Holly Springs is about 1.2% of the landmass of Wake County.

<sup>11</sup> NC DENR Solid Waste Division has made this information publicly available in an on-line report. Note that one duplicate entry was removed to yield a total of 91 facilities.

boundary of the town. To summarize, the siting practice in Wake County has resulted in the siting of 13% of its landfills on only 1% of its land (specifically within or adjacent to Holly Springs). Additionally, Wake County has sited 75% of the Holly Springs facilities (9 out of 12) on property that is located in primarily Black Communities.

The historic practice of siting waste facilities near Holly Springs is evident in records that document the Town of Cary opening a 14-acre landfill sometimes referred to as the "Old Cary Dump" or the "Old Holly Springs Dump" in the 1960s on property off Holly Springs Road adjacent to Black neighborhoods. In 1971, a privately run 16-acre landfill called the "Holly Springs Dump" opened next to a Black neighborhood on Bass Lake Road. Neither of these facilities were permitted and, therefore, do not appear on Figure 1. In 1975, Wake County opened the Feltonville landfill, a 300-acre, unlined facility next to an established Black neighborhood. Currently this site is closed and contains hazardous materials.

The Town of Holly Springs has also participated in events that have resulted in a density of landfills near Black residents. In 1991, the Town entered into an agreement that sited a privately managed, 75-acre facility disposing of construction and demolition debris less than a mile from a Black neighborhood on New Hill Road.<sup>12</sup> Later, in August 2001, as the Town wrestled with the decision whether to continue using the facility, Wake County Commissioners approved a new construction debris landfill<sup>13</sup> sited off Old Smithfield Road (Rochman, 2001c).

## **Hazard**

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Despite the existence of ten permitted solid waste facilities in the Holly Springs area, Wake County proposed another large facility, the South Wake Solid Waste Management Facility (the red dot on the map in Figure 1), on 471-acres adjacent to existing landfills and a low and middle class Black neighborhood in Holly Springs. While Wake County officials were in support of the landfill, some local Holly Springs officials were not pleased. As the

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<sup>12</sup> The former mayor of Holly Springs, Gerald Holleman, sold the land for the debris landfill (Bonner, 1998b). In November 2001, Holly Springs' commissioners debated whether to extend the town's franchise with an existing construction landfill (New Hill Road) until April 2004. This move would increase town revenue by \$800,000 in fees. There was some opposition based on philosophical arguments concerning the current battle against the South Wake landfill (Perez, 2001). A resident, Anne Allen, asked, "How can we go to the county again and again with the same refrain, if we cannot shut down the one landfill the town has control over?" (ibid). As of January 2003, Holly Springs' town commissioners approved an extension for this landfill lasting until 2005 (Perez, 2003). The NC Division of Solid Waste database lists this site as still open.

<sup>13</sup> In January 2001, Wake County Commissioners unanimously voted in favor of the construction of a demolition debris landfill near Holly Springs and Apex. The expansion of an already approved site came in the midst of Holly Springs' battle against the South Wake landfill (Construction landfill get go-ahead, 2001). The landfill did not attract the dissent associated with the South Wake landfill until a March 2001 County Commissioners meeting where 40 activists dressed in red compelled the board to put off their decision (Rochman, 2001b). However, because Wake County approved the site as a special-use permit, Holly Springs' Commissioners voted for it to avoid being sued.

Mayor Gerald Holleman of Holly Springs noted, many community members, particularly people of color, felt they were being mistreated: "Every one of [the landfills] has been in minority neighborhoods. Holly Springs has had enough" (Bonner, 1998a). The landfill itself would consist of 189 acres on Old Smithfield Road and would receive 100% of Wake County municipal waste by 2008 (Brueggermann, 1993). The landfill would remain open for 20 years with roughly one garbage truck entering the landfill each minute (Bonner, 1998a). Wake County officials stated that the Holly Springs landfill would save the county \$410 million in disposal costs over 24 years.<sup>14</sup> The original opening date was 1998 with subsequent postponement until 2006 due to litigation and other factors (Bonner, 1998a; Brueggermann, 1993).

Engineering studies completed in 1993 estimated that the landfill would receive more than 400,000 tons of garbage a year with a closing volume of 12 million tons (Brueggermann, 1993). According to county officials, the site's dense clay, low property values and sparse population made it an ideal landfill site. On the other hand, diabase dikes (natural underground rock formations that can funnel groundwater movement) are located underneath the site, and the site is near the Jonesboro Fault. Former Wake County solid waste director Phil Carter<sup>15</sup> concluded that these factors "would not be a problem for our landfill" (Brueggermann, 1993).

Wake County initiated a site feasibility study in 1988 for the South Wake Solid Waste Management Facility. According to North Carolina Court of Appeals documents filed in 2002, the Wake County Board of Commissioners authorized the purchase of land adjacent to the Feltonville landfill in 1990. In July 1991, the consulting firm hired by the Board reported that the current land purchases were insufficient for the long-term solid waste disposal, and Wake County purchased additional land, also adjacent to the Feltonville site. By the end of 1991, Wake County had purchased a total of 311 acres, all located within the Holly Springs zoning jurisdiction. Wake County officials began meeting with Holly Springs officials in December 1991. During interviews for his 1993 master's thesis, Martin Rudolf Brueggermann found that many residents had yet to hear about the planned landfill. Though county officials discussed the plans for the landfill during town council meetings, other public hearings were not held (Spencer & Bonner, 1998). Meeting minutes from town council meetings refer to the proposed project as an expansion to the Feltonville landfill,

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<sup>14</sup> Supporters of the landfill have not substantiated the \$410 million figure to the satisfaction of landfill opponents (Bonner, 1998c).

<sup>15</sup> Former Wake County Solid Waste Management Department director Phil Carter is now working for SANTEK Environmental, the company selected to run the Holly Springs landfill. Residents have concerns that he may use information he learned as a local government employee to counteract the local opposition to the landfill.



and Wake County officials provided maps detailing the extent of the expansion project (North Carolina Court of Appeals, 2002).

Wake County officials first referred to the project as a new facility, "South Wake Solid Waste Management Facility," in the December 1992 site application to the Department of Environment and Natural Resources (DENR). This application included approval from the Holly Springs Town Council,<sup>16</sup> which waived its zoning regulation in a letter to the state's solid waste section in September 1992 (Spencer & Bonner, 1998). In later court proceedings, Holly Springs' town officials maintained that they agreed to an expansion of the existing Feltonville site, not a new facility (Brueggermann, 1993; North Carolina Court of Appeals, 2002).

A subsequent 1993 administrative code<sup>17</sup> changed the construction specifications for municipal solid waste landfills to include leachate<sup>18</sup> regulations. The law required that all landfills have a system to collect and treat leachate and necessitated the closure of unlined landfills, such as the Feltonville landfill, by January 1, 1998. Under these new requirements, the project could no longer be an expansion of the Feltonville landfill. However, the plan submitted to the Holly Springs Town Council and the landfill application was not subsequently revised to comply with the change in requirements (North Carolina Court of Appeals, 2002).

On December 15, 1994, the Wake County Commissioners forgave a \$298,291 loan from the 1980s construction of the Holly Springs wastewater treatment plant and agreed to pay \$228,000<sup>19</sup> for a sewer pump and a force main to service the landfill site (North Carolina Court of Appeals, 2002; Spencer & Bonner, 1998). In return, Holly Springs entered into an Interlocal Agreement where the Town agreed to treat 50,000 gallons of landfill leachate daily. According to North Carolina Court of Appeals documents, the Interlocal agreement reinforced Holly Springs' approval of the landfill site. The Department of Environment and Natural Resources approved the landfill site application on March 14, 1995 and authorized Wake County to pursue a permit application. On May 20, 1997, Holly Springs Town Council adopted Resolution 97-23, approving Wake County's Ten Year Comprehensive Solid Waste Management Plan, which stated that waste would be disposed of and stored at a proposed new facility partially located in Holly Springs (North Carolina Court of Appeals, 2002).

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<sup>16</sup> The local governing body of Holly Springs is alternately referred to as a "board of commissioners" or "town council" in newspaper articles. For simplicity, the term "town council" is used throughout this summary.

<sup>17</sup> North Carolina Administrative Code [15A NCAC 13B.0103(i)]

<sup>18</sup> Leachate is liquid exposed to garbage that takes on the pollutant characteristics of the garbage (Catawba County Government, n.d.).

<sup>19</sup> Holly Springs amended the Interlocal agreement with the County such that Holly Springs received payment before the County received a permit to construct the landfill from DENR (NCCOA, 2002).

One year later, on May 19, 1998, the Holly Springs Town Council rescinded its approval in response to resident opposition to the landfill. The board stated it was willing to return the money received from the Interlocal agreement (Spencer & Bonner, 1998). However, by that time, Wake County had already spent \$7 million in site preparation (Spencer, 1998a), and the county had a stake in seeing the Holly Springs landfill constructed and opened. Michael Ferrell, Wake County's attorney, asserted, "You can't agree to do something, then change your mind" (Lee, 1999). To garner support for the landfill site in Holly Springs, employees from the county's Solid Waste Management Division solicited written support from other Wake County towns including Raleigh, Morrisville, Knightdale, and Wendell in August 1998. The director of the Solid Waste Management Division, Carlette Southern-Robert, stated that "this is a democracy . . . and certainly Holly Springs has the right to be heard. But so do the other communities in Wake County" (Spencer, 1998a). The support for the landfill from other towns would not directly affect the landfill's construction; however, such support might mitigate political fears of state officials pressured by Holly Springs residents to reject the landfill.

In January of 1999, Wake County Commissioners voted 5-2 to continue pursuing a state permit. Two votes in favor of this action (Betty Mangum and Linda Coleman) came despite campaign promises to oppose the landfill (Bonner, 1999). Mangum said the application for the site was "too far along" and continued delays were not realistic. Coleman explained that DENR would not suspend work on the county's application without the identification of an alternate site. In March 1999, the Holly Springs Town Council voted (3-2) against suing Wake County over the proposed landfill, citing possible repercussions from the county such as denial of future requests for services like schools, parks and libraries (Lee, 1999).

After receiving the state permit, Wake County petitioned for a waiver of the highway bypass condition in 1999. This state permit condition barred the landfill from opening until after the completion of a \$25.2 million, 5.2-mile NC bypass. The county stated that they could not afford the delay of the landfill's opening (Elsley, 1999). The appeal came despite the fact that the highway bypass was vital to the county's argument that the landfill would intrude only slightly upon the community.

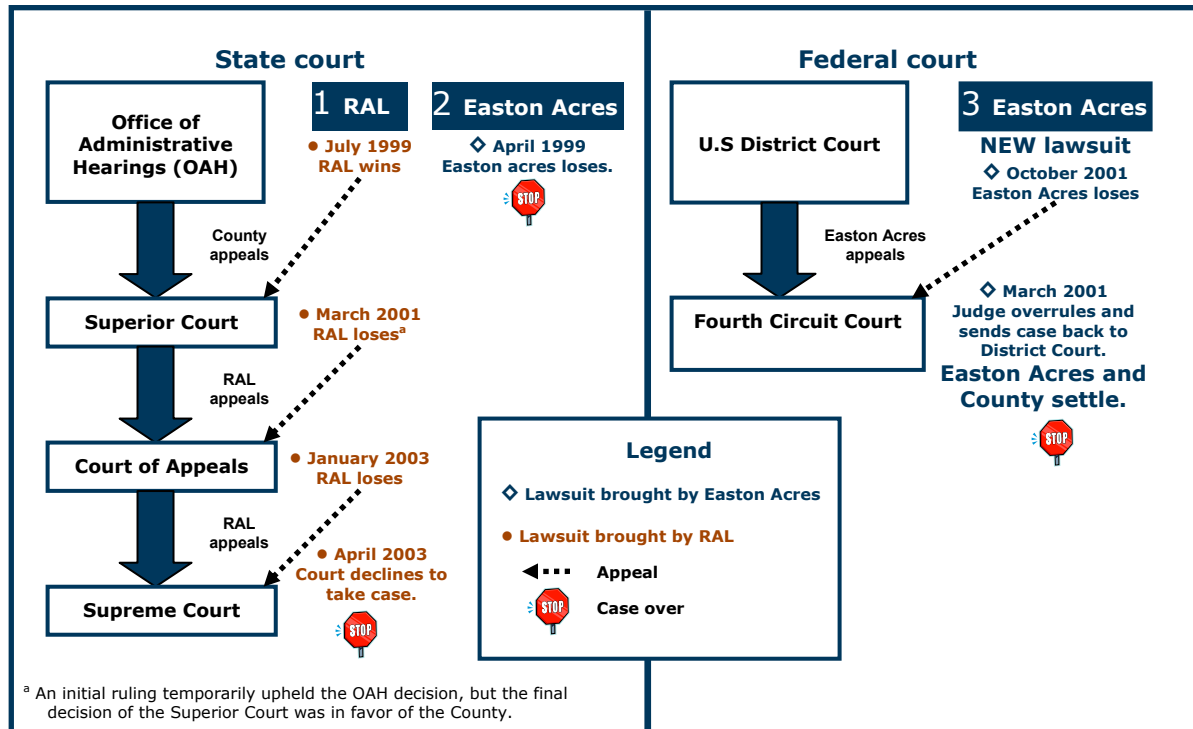
## **Response**

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Residents of different communities in Holly Springs began to mobilize around the same time the Holly Springs Town Council attempted to rescind their approval for the landfill in 1998. Jerry Franks, a resident of Easton Acres, a predominantly Black

neighborhood and the community most affected by the proposed landfill, engaged in community organizing activities such as going door-to-door to inform community members.

**Figure 2. Results of lawsuits related to Holly Springs landfill**



Franks and the Land Loss Prevention Project<sup>20</sup> filed an appeal of the state’s approval of Wake County’s plan to place a municipal solid waste landfill in Holly Springs with the Office of Administrative Hearing in March 1999, requesting an injunction against the landfill construction (Spencer, 1999). The injunction attempted to have the revocation of the Holly Springs’ approval declared legal. The brief cited North Carolina General Statute § 153A-136(c),<sup>21</sup> which requires a county to conduct socio-demographic studies, investigate alternative sites, and hold public hearings prior to the selection or approval of a landfill site that is within one mile of another landfill. William Sessoms, an engineer with the solid waste section of the North Carolina Department of Environment and Natural Resources, said that the requirement was not applicable in Holly Springs because the site selection occurred in October 1990, before the approval of these requirements (Bonner, 1998b). Opponents of the landfill argued that land purchases for the landfill site continued until 1994 (Spencer & Bonner, 1998). In April 1999, Judge Meg Scott Phipps denied the injunction sought by

<sup>20</sup> The Land Loss Prevention Project is a not-for-profit law firm founded by the North Carolina Association of Black Lawyers to address the widespread loss of family farms by Black families (<http://www.landloss.org/>).  
<sup>21</sup> NC Gen. Stat. § 153A-136(c) governs the actions of counties for the landfill siting process.

Franks and the Land Loss Prevention Project, stating that although there were “legitimate legal and procedural issues,” there was not “immediate and irreparable harm to merit the issuance of an injunction” (Spencer, 1999).

Parallel with efforts from the Easton Acres community, the Citizen’s Action Committee (CAC) began to protest the landfill’s placement in Holly Springs. The group, founded by Holly Springs’ resident Bob Kapel, attempted to help newcomers become involved in local government. While the group did not originally focus on a single issue, the landfill became the dominant concern. Eventually a subgroup, Residents Against the Landfill<sup>22</sup> (RAL), branched off from the Citizen’s Action Committee. Christine Dickson, wife of a Holly Springs town council member, eventually took the lead of the group whose membership included 25 core members, although they received donations from more than 500 people (McTague, 2002). Ms. Dickson noted that RAL received broad-based community support because residents felt the need to stand up against the county, saying, “We love Holly Springs. We don’t want to fight with Wake County, but we are not going to let them do this to us.” (Lee, 1999). Another RAL member Debbie Romanchok agreed, commenting, “Traffic, property values, [the] health and safety of our children are at stake. Our county officials have abandoned this small town.” (Bonner, 1998b). Residents Against the Landfill members completed extensive research on landfills, visited other landfills in Wake County and investigated recycling programs using incinerated garbage for energy. They collaborated with the Citizen’s Action Committee in a number of ways. For example, Jerry Franks stated, “A lot of people in my community work. They don’t have computers or access to e-mail. But [members of RAL] go to the morning meetings [of local government]. They’ve done the research and that has been helpful to us” (Spencer, 1998b).

On the same day Jerry Franks and the Easton Acres residents filed their appeal in March 1999, John Schifano, a Holly Springs resident and attorney, filed a separate appeal along with 60 other residents associated with RAL. This appeal claimed that Wake County gained Holly Springs Town Council’s approval by representing the landfill as an expansion rather than a new landfill. It also alleged that a Commissioner, Stewart Adcock, violated state law by benefiting from the sale of land for the landfill. An attorney for Wake County, Mike Ferrell, countered that the land belonged to Adcock’s wife. Finally, the petition referred to violation of North Carolina General Statute § 160A-325(c) because public hearings and a demographic assessment were not carried out despite the proposed landfill’s location within one mile of an existing landfill.<sup>23</sup>

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<sup>22</sup> Members of the Citizen’s Action Committee did not want the group to focus solely on the landfill issue (McTague, 2002).

<sup>23</sup> NC Gen. Stat. § 160A-325 governs the landfill siting process of cities and towns.

Judge Meg Scott Phipps heard the appeal to the permit in July 1999 and ruled that the permit received from the state Department of Environment and Natural Resources (DENR) was illegal. Judge Scott Phipps ruled that Wake County did not fulfill the required legal procedures before receiving the permit. For Holly Springs residents, this represented at least a temporary victory. As Jerry Franks commented, "People of color have been burdened with landfills for a long time, so it's time to stop that. This is a victory, for now." (Collins, 1999). Wake County maintained that they chose the Holly Springs site before the state enacted these procedures; however, Judge Scott Phipps highlighted that the state did not approve the site until 1995.<sup>24</sup>

In April 2000, Sherri Evans-Stanton, DENR's deputy secretary for policy and programs, remanded the permit, saying the county did not conduct the required studies about the effect of the landfill on its neighbors. She specifically cited that Wake County did not conduct a public hearing, nor did it consider alternative sites or the landfill's socioeconomic impact as required by the 1993 North Carolina General Statute (Rochman, 2000). Additionally, Evans-Stanton noted that county minutes referred to the project as an expansion, not a new facility, thus invalidating the county's position that they chose the site for a new facility before the new regulations. In August 2000, a Wake County Superior judge ruled that DENR took too long to render the ruling that remanded the landfill permit. However, the ruling reinstated the previous ruling by administrative Judge Meg Scott Phipps, which stated that DENR should not have issued the permit because Wake County did not investigate alternative sites or hold public hearings ("Holly Springs landfill decision put off," 2000). Residents fighting the proposed landfill were pleased. Resident Julie Keeler, who lives less than half a mile from the proposed landfill site, said that, "I think RAL has shown David can do some damage against Goliath" (Price, 2001).

The reinstatement of the Judge Scott Phipps ruling, however, did not guarantee the end of the legal battle surrounding the South Wake landfill (Price, 2001). In March 2001, Superior Court Judge Don Stephens ruled that DENR should reissue a permit to Wake County for the landfill (Rochman, 2001a). DENR<sup>25</sup> complied with this ruling one week later. Residents decided to take the case to the state Court of Appeals, the last stop before the state Supreme Court (Price, 2001; Rochman, 2001b).

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<sup>24</sup> State agencies frequently ignore administrative judge rulings. In 1998, data from the state Office of Administrative Hearing showed that state agencies rejected approximately 45% (38 out of 85) of administrative rulings that were against them (Collins, 1999).

<sup>25</sup> At the Superior Court ruling, a DENR attorney reversed their previous position and expressed support for Wake County's argument. Judge Stephens said he would not consider the agency's shift in his ruling (Rochman, 2001b).

In January 2003, a three-judge panel of the Court of Appeals upheld the County's right to build the landfill. With the unanimous vote from the Court of Appeals, the town did not have any automatic rights to appeal (Perez, 2003a). Holly Springs Town Council voted to petition the State Supreme Court for review, but the State Supreme Court declined to review the previous court's ruling in April 2003 (Perez, 2003b; Zebrowski, 2003). At that point Wake County was free to build the proposed South Wake landfill in Holly Springs. Mayor Dick Sears said that the town would not pursue legal action. Rather, the town's strategy shifted toward convincing the county that commercial development or a high school would be a better use of the proposed landfill site (Zebrowski, 2003). As Mayor Sears noted, "I think we can develop the property and give a revenue stream to the county that would far exceed a landfill" (Zebrowski, 2003). Although County Commissioners listened to arguments for alternative uses of the site, they continued to oppose alternative proposals to ship municipal waste out of county. For example, County Commissioner Betty Magnum stated, "I feel from a good stewardship perspective, this county should be responsible for its own trash" (Perez, 2002).

After their unsuccessful state court case, in December 2000, Jerry Franks, LaVerne Cofield and the Easton Acres Residents Association filed a federal case against Wake County, the Wake County Board of Commissioners and the North Carolina Department of Environment and Natural Resources (DENR). The case cited violations of Title VI of the Civil Rights Acts of 1964,<sup>26</sup> Title VIII of the Civil Rights Act of 1968,<sup>27</sup> the Equal Protection Clause of the Fourteenth Amendment,<sup>28</sup> and a state public policy.<sup>29</sup> In October 2001, the United States District Court for the Eastern District of North Carolina-Western Division dismissed each of the above claims and denied the plaintiff's motion to amend their complaint to include Title 42 § 1983 of the United States Code.<sup>30</sup> On appeal, the Fourth Circuit reversed the dismissal of the plaintiff's claims of Title IV and the Equal Protection Clause violations but did grant the dismissal of the state policy violation. The Fourth Circuit Court ruled that the District Court "abused its discretion" when it denied the plaintiff's motion to file an amended complaint, and the plaintiffs were allowed to file a Second Amended Complaint on May 9, 2003 (Land Loss Prevention Project, 2003a).

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<sup>26</sup> Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, and national origin in programs and activities receiving federal financial assistance.

<sup>27</sup> Title VIII of the Civil Rights Act of 1968 prohibits discrimination in housing.

<sup>28</sup> The Equal Protection Clause of the Fourteenth Amendment of the U.S Constitution prohibits any state to deprive any person of life, liberty, or property, without due process of law. Further, no state may deny any person within its jurisdiction the equal protection of the laws.

<sup>29</sup> State policies employees prohibit employees from personal financial gain from decisions made in the public section.

<sup>30</sup> Title 42, §1983 of the United States Code allows for civil action for the deprivation of rights.

Wake County and DENR filed separate motions to dismiss the plaintiff's claims under Title VI, Title VIII, Title 42 §1983, and the Equal Protection Clause. The Court denied DENR's motion to dismiss the Title VI and the Equal Protection Clause violations, but granted dismissal of the Title VIII, Title VI, and §602 brought under Title 42 § 1983 claims.

### **Current Status/Updates**

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In December 2003, the federal case initiated by Jerry Franks, Laverne Cofield and the Easton Acres Residents Association reached a settlement agreement with the Secretary of DENR, the director of the Solid Waste Management, and the Wake County Board of Commissioners (Land Loss Prevention Project & Wake County, 2003b). The settlement agreement is not "an admission of liability, fault or culpability" by the defendants, but it does outline a compromise between the two parties. The affirmative obligations are effective only if Wake County constructs and operates the South Wake County Landfill. Some of the settlement agreement's terms include:

- Wake County will locate and maintain a vegetative buffer between the landfill site and the Easton Acres community.
- Wake County will not construct or operate any additional landfills within 5 miles of the Easton Acres community.
- Wake County will adhere to a stipulated construction plan and specific guidelines for excavation, grading and clearing of the land.
- Hours of operation will be the same as used at North Wake Landfill.
- Posted signage will reroute trucks to the Highway 55 Bypass.
- Easton Acres residents will receive contact information for the county position responsible for the daily operations of the landfill.
- An Easton Acres resident will serve on the Wake County Solid Waste Technical Advisory Committee.
- Wake County will examine alternative sites for the landfill. Additionally, the county will investigate other methods of solid waste disposal and soliciting proposals from the private sector.

The settlement releases and discharges the defendants (and their future representatives) from past, present or future claims that are not within the complaint or do not arise from it. The settlement applies to plaintiffs (and their future representatives) and is binding and complete. Plaintiffs assume the risk for any existing claims that may have affected the

Plaintiff's decision to enter into the settlement agreement. The settlement agreement became effective on December 8, 2003.

Despite the settlement agreement allowing Wake County to permit the landfill, residents opposed to the South Wake Landfill feel proud of their effort, noting that the landfill construction was delayed for more than five years and that some concessions were made by the county. As noted by Jerry Franks, "We're a small group of people who have been trying to deal with a county. It's been a very long, hard fight. But I still feel very strongly. I would do it again" (Zebrowski, 2003b).

As of June 2006, after twelve years of debate and efforts to lure alternative industry to the proposed landfill site, Wake County Commissioners voted 5-2 to move forward with the South Wake Landfill (Beckwith, 2006). In mid June, Waste Industries, USA, Inc. was awarded a 25-year contract to build and operate the landfill, which is scheduled to open in late 2007 and to remain open for 25 years (Reuters, 2006).



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