

MW CLEARING & GRADING, INC., Petitioner v. NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF AIR
QUALITY, Respondent

No. 432A05

FILED 7 APRIL 2006

Environmental Law--open burning piles--one violation

The decision of the Court of Appeals affirming a civil penalty imposed on petitioner by the Environmental Management Commission for open burnings violations is reversed for the reasons stated in the dissenting opinion that the Commission erred by finding that nine burning piles located within 1000 feet of a dwelling constituted nine violations of N.C.G.S. § 143-215.114A rather than only one violation.

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 171 N.C. App. 170, 614 S.E.2d 568 (2005), affirming an order entered on 1 March 2004 by Judge Evelyn W. Hill in Superior Court, Wake County. Heard in the Supreme Court 13 March 2006.

*Knox, Brotherton, Knox & Godfrey, by Allen C.
Brotherton, for petitioner-appellant.*

*Roy Cooper, Attorney General, by Elizabeth J. Weese,
Assistant Attorney General, for respondent-appellee.*

PER CURIAM.

Petitioner appeals to this Court from the decision of the Court of Appeals on the basis of a dissent. For the reasons stated in the dissenting opinion, we reverse the decision of the Court of Appeals as to the appealable issue of right, i.e., whether the open burning in question constituted one separate violation or multiple violations under N.C.G.S. § 143-215.114A. The remaining issues addressed by the Court of Appeals are not properly before this Court and its decision as to these issues remains undisturbed. This case is remanded to the Court of

Appeals for further remand to the Wake County Superior Court for further proceedings not inconsistent with this opinion.

REVERSED IN PART AND REMANDED.