



**US Army Corps
Of Engineers**
Wilmington District

PUBLIC NOTICE

Issue Date: July 30, 2019
Comment Deadline: August 30, 2019
Corps Action ID Number: SAW-2017-00348

The Wilmington District, Corps of Engineers (Corps) received an application from Johnston County seeking Department of the Army authorization to discharge dredged or fill material into waters of the United States, associated with the expansion of the existing municipal solid waste (MSW) landfill within the existing Johnston County Landfill. The Johnston County Landfill is located on a 1,153 acre parcel of land of which only 529.4 acres are within the approved Solid Waste Facility Boundary and available for use as a landfill (see Figure 4). The proposed project expands the existing facility through the construction of phases 6 through 10 of the MSW landfill. The proposed project site is located north of NC Highway 210, on both sides of County Home Road, west of the City of Smithfield, Johnston County, North Carolina.

Specific plans and location information are described below and shown on the attached plans. This Public Notice and all attached plans are also available on the Wilmington District Web Site at:

<https://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/>

Applicant: Johnston County
Mr. Rick J. Hester
Post Office Box 1049
Smithfield, North Carolina 27577

Agent: Carolina Ecosystems, Inc.
Mr. Phillip May
3040 NC Hwy 42 West
Clayton, North Carolina 27520

Authority

The Corps evaluates this application and decides whether to issue, conditionally issue, or deny the proposed work pursuant to applicable procedures of the following Statutory Authorities:

- Section 404 of the Clean Water Act (33 U.S.C. 1344)
- Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)

Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413)

Location

Location Description: The Johnston County Landfill is located in central Johnston County, approximately 3.8 miles west of the City of Smithfield and is situated north of NC Highway 210, on both sides of County Home Road. The project area is composed of the proposed expansion area of the existing MSW landfill and associated roadway improvements within the Johnston County Landfill.

Project Area (acres): ~104 acres
Nearest Town: Smithfield
Nearest Waterway: Middle Creek
River Basin: Neuse
Latitude and Longitude: 35.5133 N, -78.4244 W

Existing Site Conditions

The Johnston County Landfill is an approximately 1,153 acre site that is located in the piedmont physiographic region of North Carolina. Elevations range from 130 feet above mean sea level (MSL) on the northern portion of the Project Area to 256 feet MSL in the western end of the site.

Existing development on the Johnston County Landfill includes a scale house with an office, a convenience center, a 1.6 megawatt gas-to-electricity facility, a maintenance building with parking/storage area, the existing landfill, and the future landfill cell areas that currently exist as borrow area, open fields, along with areas transitioning from scrub-shrub to forested areas.

The Johnston County Landfill is located in the Neuse River Basin Hydrologic Unit Code (HUC) 03020201 and includes both perennial and intermittent streams with adjacent wetlands. Surface waters on the property drain to Middle Creek which drains to Swift Creek and then to the Neuse River.

The proposed project area consists of an expansion from the existing MSW landfill that would expand operations to the north, west, and south of the MSW landfill and include access drive improvements at three locations within the overall Johnston County Landfill (see Figure Nos. EX. 1 – EX. 5 and EX. 7).

The Johnston County Landfill property contains approximately 49,598 linear feet (LF) of streams, whereas the proposed project area contains approximately 1,896 LF of streams. Substrate in the streams range from silt/sand to cobble/gravel and the Ordinary High Water Mark (OHWM) indicators include: natural lines impressed on the banks, shelving, matted down vegetation,

disturbed leaf litter, sediment deposition, wrack lines, sediment sorting, and bank scour. All streams in the project area carry the North Carolina Division of Water Resources (NCDWR) surface water classification of “C” and “NSW.” The classification C refers to those waters protected for uses such as secondary recreation, fishing, wildlife, fish consumption, aquatic life including propagation, survival and maintenance of biological integrity, and agriculture. Secondary recreation includes wading, boating, and other uses involving human body contact with water where such activities take place in an infrequent, unorganized, or incidental manner. The classification NSW (Nutrient Sensitive Waters) is a supplemental classification intended for waters needing additional nutrient management due to being subject to excessive growth of microscopic or macroscopic vegetation

The Johnston County Landfill property contains approximately 163 acres of wetlands, whereas the proposed project area contains 2.87 acres of wetlands. These wetlands are primarily characterized by the North Carolina Wetland Assessment Method (NCWAM) as headwater forest wetlands and non-tidal freshwater marsh. Vegetation in the headwater forest wetlands consists of a canopy dominated by black willow (*Salix nigra*), river birch (*Betula nigra*), sweetgum (*Liquidambar styraciflua*), sweetbay (*Magnolia virginiana*), and red maple (*Acer rubrum*); a sapling/shrub layer dominated by the same tree species listed for the canopy plus Chinese privet (*Ligustrum sinense*); and a herbaceous and woody vine layer dominated by Japanese stilt-grass (*Microstegium vimineum*), false nettle (*Boehmeria cylindrica*), river cane (*Arundinaria gigantea*), common greenbrier (*Smilax rotundifolia*), Japanese honeysuckle (*Lonicera japonica*), and wild grape (*Vitis rotundifolia*). Vegetation in the non-tidal freshwater marsh consists of a sparse canopy dominated by red maple and sweetgum; a sparse sapling/shrub layer dominated by Chinese privet; and an herbaceous and woody vine layer dominated by cattail (*Typha latifolia*), river cane, and wild grape.

The entirety of the 1,153-acre Johnston County Landfill was delineated to identify the presence and location of potentially jurisdictional waters of the United States. The field work for the delineation was conducted in 2012 and in June, July and August of 2016. The delineation was reviewed by the Corps in 2012 and 2016. Additional areas associated with roadway improvements were delineated in November 2017 and were reviewed by the Corps on May 3, 2018.

Applicant’s Stated Purpose

The applicant’s stated purpose is to expand the existing Johnston County municipal solid waste (MSW) landfill, which would provide adequate landfill capacity for the foreseeable future for the citizens of Johnston County.

Project Description

The proposed project includes the expansion of an existing MSW landfill (Impact Site 1) and roadway improvements (Impact Sites 2-4) at the Johnston County Landfill. Implementation of the proposed project would result in direct impacts to 1,896 LF of streams and 2.87 acres of wetlands.

The proposed project would expand the existing MSW landfill west of the existing Phase 5 cell (Figure Nos. EX. 2 and EX. 7). Work would include grading to establish base elevations (including a 4-foot separation from ground water and bedrock) and construction of a base liner system which will include soil and geomembrane liners. The landfill would be expanded in the following order: Cell 6, 7, 8, 9, and 10. Each cell would be filled to capacity and capped with a final cover system including a geomembrane and vegetative soil cover as shown in Figure No. EX. 5.

The proposed project would also install two new internal access road crossings (Impact Sites 2 and 3) and convert one existing access road crossing from temporary to permanent impacts (Impact Site 4). Impact Site 2 (Figure 6.2 and Figure No. EX. 3) would be installed across Stream SE to provide access to northern portions of the future borrow area shown on Figure 4 and Figure No. EX. 1. Impact Site 3 (Figure 6.2 and Figure No. EX. 4) would be installed across Stream SE to provide access to southern portions of the future borrow area shown on Figure 4 and Figure No. EX. 1. Impact Site 4 was approved as a temporary crossing under a Nationwide Permit (NWP) 33 for Temporary Construction, Access, and Dewatering, on March 6, 2003 (Corps Action ID SAW-2003-20507. This crossing would be converted to a permanent crossing as part of this project and utilized in combination with Impact Site 2 to access the future borrow area. No new impacts to jurisdictional resources would result from the proposed Impact Site 4.

Avoidance and Minimization

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment:

The County has maximized use of the upland areas within the site and facility boundary and any additional landfill area besides the proposed project would involve either increased stream and wetland impacts, or an expansion of the facility boundary to allow landfill in the eastern section of the property. The expansion of the facility boundary, or location of a new landfill site, would involve significant effort including public review and subject to extremely tight regulatory restrictions. This process has been proven to be very difficult to successfully negotiate, as evidenced by the fact that only two new MSW landfill sites have been permitted in the State in the last 10 years.

Alternative site designs within the existing facility boundary were evaluated that encompassed complete avoidance of all resources as well as minimization alternatives. Each of these alternatives is presented in Table 1 below, a reduction in solid waste disposal capacity could result in higher costs being passed along to the public, and have possible negative impacts on future growth in the County.

TABLE 1: Johnston County Landfill Expansion Alternatives

Alternative (see attached plans)	Waste Area (ac)	Capacity (mcy)	Impacts	
			Wetland (ac)	Stream* (lf)
Option 1 -No Impact	66.1	5.0	0 ac	0
Option 2 – Proposed Project	104.0	14.3	2.1	1,516
Option 3 – Full Build Out	118.0	18.2	2.1	2,314

ac = acres; mcy= million cubic yards; lf = linear feet; sq. ft. = square feet

Due to the rapid growth in Johnston County and surrounding areas, there is a continuous demand for waste disposal. As can be seen in Figure 8, there are a limited number of MSW facilities in the area. Within Johnston, Wake, Franklin, Nash, Wilson, Wayne, Sampson, and Harnett counties, only three other active MSW landfills exist. These include the South Wake MSWLF (9222-MSWLF-2008, 44.5 miles away), Wayne County MSWLF (9606-MSWLF-1998, 34.5 miles away), and Sampson County MSWLF (8202-MSWLF-2000, 46.7 miles away). The Johnston County MSWLF receives an average of 175,000 tons of waste per year. The cost, time, environmental, and safety issues associated with transporting Johnston County waste to one of these facilities is prohibitive. Therefore, there is a significant need for disposal capacity in the area.

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment:

Mitigation for unavoidable stream and wetland impacts will be provided through purchase of private mitigation bank credits, if available. Where no credits exist, mitigation will be satisfied through purchase of in-lieu fee credits. We have begun to identify mitigation opportunities and will provide notices of availability once secured.

Essential Fish Habitat

Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, this Public Notice initiates the Essential Fish Habitat (EFH) consultation requirements. The Corps' initial determination is that the proposed project would not effect EFH or associated fisheries managed by the South Atlantic or Mid Atlantic Fishery Management Councils or the National Marine Fisheries Service.

Cultural Resources

Pursuant to Section 106 of the National Historic Preservation Act of 1966, Appendix C of 33 CFR Part 325, and the 2005 Revised Interim Guidance for Implementing Appendix C, the District Engineer consulted district files and records and the latest published version of the National Register of Historic Places and initially determines that:

- Should historic properties, or properties eligible for inclusion in the National Register, be present within the Corps' permit area; the proposed activity requiring the DA permit (the undertaking) is a type of activity that will have no potential to cause an effect to an historic properties. The SHPO issued a letter on December 6, 1994 concluding that the project site were too disturbed to retain sufficient integrity to yield information important to history or prehistory.
- No historic properties, nor properties eligible for inclusion in the National Register, are present within the Corps' permit area; therefore, there will be no historic properties affected. The Corps subsequently requests concurrence from the SHPO (or THPO).
- Properties ineligible for inclusion in the National Register are present within the Corps' permit area; there will be no historic properties affected by the proposed work. The Corps subsequently requests concurrence from the SHPO (or THPO).
- Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; however, the undertaking will have no adverse effect on these historic properties. The Corps subsequently requests concurrence from the SHPO (or THPO).
- Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; moreover, the undertaking may have an adverse effect on these historic properties. The Corps subsequently initiates consultation with the SHPO (or THPO).
- The proposed work takes place in an area known to have the potential for the presence of prehistoric and historic cultural resources; however, the area has not been formally surveyed for the presence of cultural resources. No sites eligible for inclusion in the National Register of Historic Places are known to be present in the vicinity of the proposed work. Additional work may be necessary to identify and assess any historic or prehistoric resources that may be present.

The District Engineer's final eligibility and effect determination will be based upon coordination with the SHPO and/or THPO, as appropriate and required, and with full consideration given to the proposed undertaking's potential direct and indirect effects on historic properties within the Corps-identified permit area.

Endangered Species

Pursuant to the Endangered Species Act of 1973, the Corps reviewed the project area, examined all information provided by the applicant and consulted the latest North Carolina Natural Heritage Database. Based on available information:

- The Corps determines that the proposed project would not affect federally listed endangered or threatened species or their formally designated critical habitat.
- The Corps determines that the proposed project may affect federally listed endangered or threatened species or their formally designated critical habitat. The Corps reviewed this project in accordance with (IAW) the NLEB Standard Local Operating Procedures for Endangered Species (SLOPES) between the USACE, Wilmington District, and the Asheville and Raleigh U.S. Fish and Wildlife Service (Service) Offices, and determined that the action area for this project is located outside of the highlighted areas/red 12-digit HUCs and activities in the action area do not require prohibited incidental take; as such, this project meets the criteria for the 4(d) rule and any associated take is exempted/excepted.
- The Corps determines that the proposed project may affect federally listed endangered or threatened species or their formally designated critical habitat. Consultation has been completed for this type of activity and the effects of the proposed activity have been evaluated and/or authorized by the National Marine Fisheries Service (NMFS) in the South Atlantic Regional Biological Opinion or its associated documents, including 7(a)(2) & 7(d) analyses and Critical Habitat assessments. A copy of this public notice will be sent to the NMFS.
- The Corps is not aware of the presence of species listed as threatened or endangered or their critical habitat formally designated pursuant to the Endangered Species Act of 1973 (ESA) within the project area. The Corps will make a final determination on the effects of the proposed project upon additional review of the project and completion of any necessary biological assessment and/or consultation with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service.

Other Required Authorizations

The Corps forwards this notice and all applicable application materials to the appropriate State agencies for review.

North Carolina Division of Water Resources (NCDWR): The Corps will generally not make a final permit decision until the NCDWR issues, denies, or waives the state Certification as required by Section 401 of the Clean Water Act (PL 92-500). The receipt of the application and this public notice, combined with the appropriate application fee, at the NCDWR Central Office in Raleigh constitutes initial receipt of an application for a 401 Certification. A waiver will be deemed to occur if the NCDWR fails to act on this request for certification within sixty days of receipt of a complete application. Additional information regarding the 401 Certification may be reviewed at the NCDWR Central Office, 401 and Buffer Permitting Unit, 512 North Salisbury Street, Raleigh, North Carolina 27604-2260. All persons desiring to make comments regarding the application for a 401 Certification should do so, in writing, by August 19, 2019, to:

NCDWR Central Office
Attention: Ms. Karen Higgins, 401 and Buffer Permitting Unit
(USPS mailing address): 1617 Mail Service Center, Raleigh, NC 27699-1617

Or,

(physical address): 512 North Salisbury Street, Raleigh, North Carolina 27604

North Carolina Division of Coastal Management (NCDCM):

The application did not include a certification that the proposed work complies with and would be conducted in a manner that is consistent with the approved North Carolina Coastal Zone Management Program. Pursuant to 33 CFR 325.2 (b)(2) the Corps cannot issue a Department of Army (DA) permit for the proposed work until the applicant submits such a certification to the Corps and the NCDCM, and the NCDCM notifies the Corps that it concurs with the applicant's consistency certification. As the application did not include the consistency certification, the Corps will request, upon receipt, concurrence or objection from the NCDCM.

Based upon all available information, the Corps determines that this application for a Department of Army (DA) permit does not involve an activity which would affect the coastal zone, which is defined by the Coastal Zone Management (CZM) Act (16 U.S.C. § 1453).

Evaluation

The decision whether to issue a permit will be based on an evaluation of the probable impacts including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values (in accordance with Executive Order 11988), land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving the discharge of dredged or fill materials in waters of the United States, the evaluation of the impact of the activity on the public interest will include application of the Environmental Protection Agency's 404(b)(1) guidelines.

Commenting Information

The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials, including any consolidated State Viewpoint or written position of the Governor; Indian Tribes and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Requests for a public hearing will be granted, unless the District Engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing.

The Corps of Engineers, Wilmington District will receive written comments pertinent to the proposed work, as outlined above, until 5pm, August 30, 2019. Comments should be submitted to Mr. Ross Sullivan,

Raleigh Regulatory Field Office , 3331 Heritage Trade Drive, Suite 105 ,
Wake Forest, North Carolina 27587, at (919) 554-4884 extension 25 or
roscoe.l.sullivan@usace.army.mil.

In cases where the proposed action May Effect a listed species or a species proposed for listing pursuant to Section 7 of the Endangered Species Act, and/or In cases where the proposed action will have an Effect on a property listed, or eligible to be listed, on the National Register of Historic Places pursuant to Section 106 of the National Historic Preservation Act, the DE will be unable to make a final decision on the proposed action until the requirements of the appropriate statute have been satisfied.