



# PUBLIC NOTICE

**US Army Corps  
Of Engineers**  
Wilmington District

Issue Date: September 21, 2023  
Comment Deadline: October 23, 2023  
Corps Action ID Number: SAW-2015-01426

The Wilmington District, Corps of Engineers (Corps) received an application on September 13, 2023 from Duke Energy seeking Department of the Army authorization to discharge fill material into 0.90-acre of wetlands associated with the decommissioning of the RUTHE-070 Main Dam during the coal ash basin removal process in Mooresboro, Rutherford 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/Public-Notices/>

**Applicant:** Lori Tollie  
Duke Energy  
500 Utility Drive  
Lewisville, North Carolina 27012

**AGENT (if applicable):** James Cutler  
WSP USA Environment & Infrastructure  
4021 Stirrup Creek Drive  
Durham, North Carolina 27703

## 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 proposed project is located within the Duke Energy Rogers Energy Complex-Cliffside Stream Station at a physical address of 573 Duke Power Road in Mooresboro, North Carolina. This facility is located approximately one and one-half miles to the south of the unincorporated community of Cliffside, in Rutherford and Cleveland Counties, along the south side of the Broad River.

Project Area (acres): Approximately 90 acres  
Nearest Town: Mooresboro  
Nearest Waterway: Broad River  
River Basin: Broad River  
Latitude and Longitude: 35.2078 N, -81.7686 W

## **Existing Site Conditions**

The project site is fully encompassed by the Duke Energy Rogers Energy Complex-Cliffside Stream Station power plant facility. The specific project area is located within the power plant complex at the Unit 5 Inactive Ash Basin (U5IAB) which is currently within the closure process including removal of Coal Combustion Residual (CCR) materials. The project area shown is references the area identified as State Dam RUTHE-070, which is located between the U5IAB CCR basin and the Broad River. An approximate 0.90-acre bottomland hardwood forested wetland, identified as Wetland C, is located on the north side of the dam, directly abutting the Broad River.

## **Applicant's Stated Purpose**

The purpose of the project, as stated by the applicant, is to breach and remove the State Dam RUTHE-070 (Main Dam) based on the need to address the North Carolina Coal Ash Management Act (CAMA)-14 regulatory requirements related to coal ash basin closure (i.e., U5IAB) at the Cliffside Stream Station, and dispose of CCR materials in a safe and timely manner.

## **Project Description**

Enacted on August 20, 2014, the promulgation of the North Carolina CAMA-14 requires Duke Energy to phase out wet ash handling. In order to address the North Carolina regulatory requirements, the applicant has proposed to remove the CCR materials from U5IAB and remove the Main Dam. Once the CCR materials and the Main Dam have been removed, the proposed project would establish a pathway to route clean stormwater to the Broad River. Within the former ash basin, the applicant has proposed the construction of five stormwater channels and the reconnection of two existing stream features (Streams 7 and 8) through a single outlet channel to discharge clean stormwater into the Broad River. The outlet channel would consist of an engineered stormwater channel comprised of grouted riprap, with a gabion outlet into the Broad River, as depicted on Drawings CLS\_C999.011.007, CLS\_C999.011.017, and

CLS\_C999.011.201. The outlet channel, as proposed would permanently impact 0.9-acre of Wetland C.

### **Avoidance and Minimization**

The applicant provided the following to document efforts to avoid and/or minimize impacts to the aquatic environment:

Per the applicant, appropriate/practicable measures to minimize adverse impacts to waters of the U.S. (WOTUS) were considered during project planning. Complete avoidance of WOTUS is not practicable due to the location of Wetland C on the landscape (lowest topographical location and directly abutting the Broad River), and the necessity of the stormwater outlet channel to meet the project purpose and need. The proposed impacts to WOTUS are limited to only Wetland C; no other wetlands or stream features within or outside of U5IAB and Main Dam areas would be impacted.

An Erosion & Sediment Control (E&SC) Plan is currently being produced in accordance with North Carolina E&SC Planning & Design Manual. Activities would be completed in accordance with North Carolina Department of Environmental Quality rules/regulations. The E&SC Plan developed for the project includes a permit drawing set showing the erosion sediment control measures for initial, interim, and final conditions; interim conditions hydrologic and hydraulic (H&H) calculation; and final conditions H&H calculation.

### **Compensatory Mitigation**

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

Compensatory mitigation for the permanent 0.9-acre impact to Wetland C would be provided through credit purchase via the North Carolina Division of Mitigation Services In-Lieu Fee Program. No mitigation banks (service areas) in the Broad River Basin, specifically within HUC 03050102, offer wetland credits at the present time.

### **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:

- ☒ No resources listed in or eligible for inclusion in the National Register of Historic Places are known to be present in the vicinity of the proposed work; however, the permit area has not been formally surveyed for the presence of cultural resources. Additional work may be necessary to identify and assess any cultural resources that may be present. This notice serves as a request to SHPO, THPO,

and/or other interested parties to provide any information they may have regarding historic properties.

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.

☒ For the proposed project, the Corps has made the following determination for federally listed endangered or threatened species or their formally designated critical habitat: May Affect, Not Likely To Adversely Affect

☒ By copy of this public notice, the Corps initiates consultation under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.

### **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 applicant did not provide or satisfy all the elements required for a complete 401 certification request. Therefore, the 401 Certification process has not started. 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 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 at the NCDWR Central Office in Raleigh constitutes initial receipt of an application for a 401 Certification. Unless NCDWR is granted a time review extension, a waiver will be deemed to occur if the NCDWR fails to act on this request for certification within 120 days of the date of this public notice. 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 should do so in writing, within 30 days of the issue date of the notice by emailing comments to [publiccomments@deq.nc.gov](mailto:publiccomments@deq.nc.gov) with the subject line of "401 Water Quality Certification" or by mail to:

NCDWR Central Office  
Attention: Stephanie Goss, 401 and Buffer Permitting Branch  
1617 Mail Service Center, Raleigh, NC 27699-1617

Or,

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

## **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, October 23, 2023. Comments should be submitted to Ms. Brooke Davis, Asheville Regulatory Field Office, 151 Patton Avenue, Room 208, Asheville, North Carolina 28801-5006, or via email at [brooke.a.davis@usace.army.mil](mailto:brooke.a.davis@usace.army.mil). The Corps Project Manager can be contacted at (828) 271-7980 ext. 4232. Comments may also be submitted to [AshevilleNCREG@usace.army.mil](mailto:AshevilleNCREG@usace.army.mil).