



US Army Corps  
Of Engineers  
Wilmington District

# PUBLIC NOTICE

Issue Date: August 10, 2018  
Comment Deadline: September 9, 2018  
Corps Action ID Number: SAW-2011-00181

The Wilmington District, Corps of Engineers (Corps) received an application on July 31, 2018, from Duke Energy (Applicant) seeking to modify the existing Department of the Army (DA) authorization for the Mayo Coal Combustion Product (CCP) Monofill Site – Phase 1. The existing permit authorized permanent impacts to 2,074 linear feet (lf) of stream channel for the construction of a synthetically-lined industrial landfill (Coal Combustion Product Monofill) and associated infrastructure at the Mayo Plant in Person County, North Carolina. This authorization was issued on August 22, 2012, and will expire on December 31, 2030. The Applicant requests to modify the existing DA authorization to permanently impact an additional 1.15 acres of wetlands and 227 lf of stream channel for the construction of a Lined Retention Basin (LRB) and for the Ash Basin Closure project at the Mayo Plant. Note that impacts associated with the LRB have already occurred and that the Applicant is requesting an after-the-fact permit modification for the impacts associated with the construction of the LRB.

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:

<http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx>

**Applicant:** Mr. Steve Cahoon  
Duke Energy  
411 Fayetteville Street  
Raleigh, North Carolina 27601

**Agent:** Mr. Richard Harmon  
Wood Environment and Infrastructure Solutions, Inc.  
4021 Stirrup Creek Drive, Suite 100  
Durham, North Carolina 27703



The predominant terrestrial community within the project area is mixed pine-hardwood upland forest. This community surrounds most of the streams and wetlands that occur within the project area. The canopy stratum includes loblolly pine (*Pinus taeda*), white oak (*Quercus alba*), northern red oak (*Quercus rubra*), southern red oak (*Quercus falcata*), sweetgum (*Liquidambar styraciflua*), American beech (*Fagus grandifolia*), and mockernut hickory (*Carya tomentosa*). The shrub stratum consists of American holly (*Ilex opaca*), sourwood (*Oxydendrum arboreum*), red maple (*Acer rubrum*), ironwood (*Ostrya virginiana*), eastern red cedar (*Juniperus virginiana*), saplings of the above listed hardwood species, and scattered occurrences of Chinese privet (*Ligustrum sinense*). The groundstory vegetation, although sparse, includes common greenbrier (*Smilax rotundifolia*), Japanese honeysuckle (*Lonicera japonica*), elephant's-foot (*Elephantopus* sp.), panic grasses (*Panicum* spp.), blackberry (*Rubus* sp.), wild onion (*Allium canadense*), Christmas fern (*Polystichum acrostichoides*), and hardwood seedlings.

According to the Soil Survey of Person County, the project area is dominated by either the Udorthents soil type or water (the ash basin) with smaller concentrations of Cecil sandy loams, Chewacla/Wehadkee soils, Helena sandy loams, Rion sandy loams, and Wedowee sandy loams. Of the soils that occur within the project area, only the Chewacla/Wehadkee soils (0-2% slopes, frequently flooded) and the Helena sandy loams (2-6% slopes) are classified as hydric soils.

### **Applicant's Stated Purpose**

The purpose of the modification request, as stated by the applicant, is the following:

“The purpose of the IP Modification request (proposed action) is to permit impacts to wetlands and streams from the LRB construction and impacts associated with future Ash Basin Closure activities. Additionally, the IP Modification will provide a mechanism for providing compensatory mitigation requirements for the LRB impacts as well as potential future Ash Basin Closure activity impacts.”

### **Project Description**

The Coal Ash Management Act (CAMA) of 2014 has accelerated the excavation and removal of Coal Combustion Residual (CCR) materials from ash basins at Duke Energy power generating plants with coal-fired facilities in the state of North Carolina. The bill, enacted on August 20, 2014, requires the Applicant to phase out wet ash handling. In conjunction with the CAMA, the NC Department of Environmental Quality (NCDEQ) has amassed comprehensive data about coal ash facilities statewide and has prioritized closure plans for the facilities with coal ash storage ponds. The Mayo Plant is identified as one of these facilities with a coal ash storage pond. As a result of these developments, the Applicant has proposed the LRB construction and Ash Basin Closure in order to address North Carolina regulatory requirements as related to the redirection of process water away from the ash basin in order to help facilitate the closure activities of CCR materials at the Mayo Plant.

The redirection of process water is necessary to ensure the long-term integrity of CCR materials and facilitate future ash basin closure activities at the Mayo Plant. The construction of the LRB is a component of The Mayo Plant Process Water Redirection Program associated with the Ash Basin Closure. The Process Water Redirection Program and Ash Basin Closure is a phased effort to bring the Mayo Plant into compliance with the new EPA effluent limitation guidelines and regulations for CCR materials.

The Applicant is requesting authorization for two separate but related activities:

1. The Applicant requests after-the-fact authorization to permanently discharge fill material into 227 lf of stream channel and 0.87 acre of wetlands that occurred as a result of the construction of the LRB. The LRB has been designed as the treatment unit for process and low volume waste streams from the coal-fired Mayo Plant. The LRB would have two primary cells and a secondary polishing pond to promote solids settling.
2. The Applicant proposes to permanently discharge fill material into 0.28 acre of wetlands in order to complete the Ash Basin Closure. The proposed method for Ash Basin Closure is to cap the ash basin in place. The components of the closure-in-place option include installing stormwater controls, a temporary dewatering/wastewater treatment system, removal of free water, and dewatering of ash material as needed. The ash basin would be re-graded, and the closure cap constructed. The final cover system would be designed to reduce infiltration and erosion. Typically, this involves the installation of a low permeability barrier layer and vegetated soil cover to protect the barrier layer. Portions of the ash basin dam would be removed, and disturbed areas would be restored in order to promote the free drainage of stormwater from the closure area. A groundwater remediation and long-term monitoring program would be instituted upon completion of this proposed project.

### **Avoidance and Minimization**

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

The Applicant indicated that they have considered appropriate and practicable steps to minimize potential adverse impacts to wetlands and streams through the analysis of development concepts during project planning for the LRB construction and for the Ash Basin Closure. The complete avoidance of waters of the United States was not practicable during construction of the LRB. The complete avoidance of waters of the United States is not practicable as the excavation and disposal of CCR materials for the Ash Basin Closure project at the Mayo Plant could not be accomplished without some impact to such waters.

All development projects in North Carolina that disturb an acre or greater of land require an approved Erosion & Sediment Control (E&SC) Plan. E&SC Plans must be produced in accordance with the North Carolina Erosion and Sediment Control Planning and Design Manual, dated May 2013. Person County is not in NPDES Phase II nor is the watershed in a regulated community, it does not have post-construction soil and erosion or stormwater control obligations. Person County relies upon the NCDEQ Raleigh Regional Office to oversee and enforce their federal soil and erosion control requirements for new construction. The process water redirection activities at the Mayo Plant would be completed in accordance with the NCDEQ Raleigh Regional Office water quality rules and regulations.

### **Compensatory Mitigation**

The Applicant evaluated the following compensatory mitigation options for the proposed action: (1) credit purchase from an approved private mitigation bank or (2) credit purchase through the North Carolina Division of Mitigation Services (NCDMS) In-Lieu Fee Program. Note that mitigation requirements for the existing CCP Monofill Site – Phase 1 were satisfied by the purchase of mitigation credits from the former NC Ecosystem Enhancement Program (currently NCDMS). Based on the review of the mitigation options available, it was determined that credit purchase through the NCDMS In-Lieu Fee Program was necessary because there are currently no mitigation banks offering wetlands and stream credits in the Roanoke River basin. On-site mitigation and off-site mitigation opportunities were not explored because the In-Lieu Fee option was available.

Wetland and stream mitigation credits within HUC 03010104 are currently available through the NCDMS In-Lieu Fee Program. The proposed mitigation ratios for the proposed project are listed below:

- A mitigation ratio of 1:1 was applied for riparian and non-riparian wetlands with a NC Wetland Assessment Method overall rating of low or medium that are hydrologically connected to the ash basin.
- A mitigation ratio of 1:1 was applied for intermittent streams with a NC Stream Assessment Method overall rating of low or medium and which drain directly into the ash basin.

### **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.
- 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 initiates consultation under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.
  - The Corps will consult under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.
  - The Corps has initiated consultation under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.
- 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 31, 2018, 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, September 10, 2018. 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, ext. 25.